



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

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20 Queen Street West  
Toronto ON M5H 3S8

22e étage  
20, rue queen ouest  
Toronto ON M5H 3S8

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**IN THE MATTER OF  
FIRST CLASS CRYPTO INC., JOHNATHAN  
HARRIS, MITCHELL CARNIE AND NEILL KLOSS**

**SETTLEMENT AGREEMENT**

**PART I – INTRODUCTION**

1. Between December 2017 and May 2018, First Class Crypto Inc. (**FCCI**) and its principals Johnathan Harris, Mitchell Carnie and Neill Kloss encouraged Ontarians to invest approximately \$365,000 into their business. Investors were led to believe that FCCI would use their funds to purchase computing hardware that mines crypto assets (known as “mining rigs”). Investors were told that their original investment with FCCI was guaranteed and that they could earn significant monthly returns from the company’s crypto asset mining activities.

2. However, investors were not told that FCCI’s principals had no experience in crypto asset mining, no business plan and no ability to protect, much less guarantee, investments and returns. This did not stop the Respondents from soliciting and accepting investments from members of the public. The Respondents lacked the skills, knowledge and experience needed to manage investor funds and purchase mining rigs. While the Respondents attempted to find mining rigs, investor funds were being held in crypto assets that were rapidly decreasing in value. The Respondents also failed to maintain even basic documentation regarding FCCI’s operations, which hindered FCCI’s ability to pay the promised monthly returns and track repayments to investors. When FCCI was finally shut down in June 2018, a substantial amount of investor funds had been lost.

3. Although new and innovative crypto asset products can seem appealing, investors should be cautious when promised risk-free investments. The Respondents raised funds from the public without being registered as dealers and without disclosing the risks of the investments in a prospectus. The importance of protecting investor interests by complying with registration and

prospectus requirements and maintaining accurate and complete books and records is heightened when operating in the crypto asset sector.

## **PART II - JOINT SETTLEMENT RECOMMENDATION**

4. The parties will jointly file a request that the Ontario Securities Commission (the **Commission**) issue a Notice of Hearing (the **Notice of Hearing**) to announce that it will hold a hearing (the **Settlement Hearing**) to consider whether, pursuant to ss. 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5 (the **Act**), it is in the public interest for the Commission to make certain orders against FCCI, Johnathan Harris, Mitchell Carnie and Neill Kloss (collectively, the **Respondents**).

5. Staff of the Commission (**Staff**) recommend settlement of the proceeding (the **Proceeding**) against the Respondents commenced by the Notice of Hearing, in accordance with the terms and conditions set out in Part V of this Settlement Agreement. The Respondents consent to the making of an order (the **Order**) substantially in the form attached as Schedule “A” to this Settlement Agreement based on the facts set out herein.

6. For the purposes of the Proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, the Respondents agree with the facts set out in Part III of this Settlement Agreement and the conclusion in Part IV of this Settlement Agreement.

## **PART III - AGREED FACTS**

### **A. SOLICITATION OF INVESTORS**

7. FCCI is an Ontario company that was purportedly in the business of crypto asset mining. Harris and Carnie are founding shareholders, directors, officers and directing minds of FCCI. Subsequently, Kloss became a shareholder and *de facto* director or officer of FCCI. Kloss represented himself as the Chief Financial Officer and a Vice-President of FCCI.

8. From December 2017 to May 2018, the Respondents solicited investments in FCCI using two forms of investment contracts (**FCCI Investment Contracts**):

- (a) the Lending Mining Contract (**LMC**), also referred to as the “Investment Mining Contract”, which promised investors compounded monthly returns and that

investor funds would not be subject to the volatility of the crypto asset market, but instead would be used to purchase mining rigs; and

- (b) the Crypto Security Plan (**CSP**), which promised investors annual returns on investor funds held in the crypto asset market.

9. The Respondents promoted FCCI Investment Contracts to the public in marketing materials, including using PowerPoint presentations, flyers, social media and a website.

10. The Respondents held weekly investment seminars at FCCI's office in Whitby, Ontario to promote the FCCI Investment Contracts. At these seminars, the Respondents encouraged members of the public to invest in FCCI. The Respondents also promoted FCCI Investment Contracts from a booth at a flea market in Pickering, Ontario.

11. In addition to soliciting investors directly, the Respondents encouraged individuals to become "recruiters" of FCCI. FCCI recruiters were promised referral fees for soliciting investments in the FCCI Investment Contracts. The Respondents held training seminars and created training materials for FCCI recruiters.

12. The Respondents raised \$364,082 from 43 Ontario investors between December 2017 and May 2018 by entering into FCCI Investment Contracts. Most investors entered into the LMC investment contract.

13. Ontarians invested funds with FCCI. In some cases, investor funds were delivered to the Respondents in Canadian dollars and the Respondents facilitated the exchange of investor funds into crypto assets using a third-party exchange service. Those crypto assets were subsequently transferred to wallets controlled by the Respondents. In other cases, investors invested in FCCI by transferring crypto assets directly to wallets controlled by the Respondents.

14. Investors expected to earn a profit from purchasing FCCI Investment Contracts. Investors were promised earnings between 3% and 6% compounded monthly for LMCs and 12% annually for CSPs. The success of the investment and the ability to deliver the promised returns depended on the undeniably significant efforts of the Respondents. The Respondents' efforts, including sourcing, establishing and maintaining mining rigs for LMC investors and making and managing

investments in the crypto asset market for CSP investors, were essential managerial efforts that affected the failure or success of the FCCI enterprise.

15. Accordingly, the FCCI Investment Contracts are “investment contracts” and therefore “securities” under the Act. Further, the Respondents’ business centered on the continuous sale of securities to investors, both directly by the individual Respondents and indirectly by enlisting investors to become recruiters of FCCI in exchange for referral fees.

16. Each of the Respondents engaged in, or held themselves out as engaging in, the business of trading in securities, contrary to s. 25(1) of the Act. None of the Respondents were registered with the Commission and no exemptions from registration were available to them.

17. The sales of the FCCI Investment Contracts were trades in securities not previously issued and therefore “distributions” under the Act. No preliminary prospectus or prospectus was filed with the Commission, nor were prospectus receipts obtained from the Director pursuant to s. 53(1) of the Act. The investments in the FCCI Investment Contracts did not qualify for any exemption from the prospectus requirement, and no reports of exempt distributions were filed with the Commission. Accordingly, each of the Respondents also participated in a distribution of securities, contrary to s. 53(1) of the Act.

## **B. PROHIBITED REPRESENTATIONS**

18. The Respondents made numerous false or misleading statements that induced investors into signing FCCI Investment Contracts. Statements made to investors also omitted facts that FCCI investors would consider relevant. False and misleading statements were made in person, in marketing materials and in the FCCI Investment Contracts, and include the following:

- (a) the Respondents had mining rig facilities and enough mining rigs to meet obligations to investors;
- (b) LMC investment funds would be used to purchase mining rigs;
- (c) LMC investment funds were guaranteed and not subject to the fluctuation of the crypto asset markets;

- (d) FCCI had insurance that could protect LMC investment funds;
- (e) FCCI's crypto asset holdings and mining rigs were protected by physical and technological security; and
- (f) FCCI would pay compounded monthly returns to investors in LMCs and annual returns to investors in CSP.

19. In reality, FCCI did not have established mining facilities. From December 2017 to May 2018, the Respondents could not purchase mining rigs to meet FCCI's obligations under the LMCs. While the Respondents attempted to source mining rigs, LMC investment funds were being held in volatile crypto assets, which were decreasing in value. Further, FCCI had no insurance on any mining rigs and no insurance that would purportedly protect principal investments of LMC investors.

20. Harris was primarily responsible for inducing individuals to invest with FCCI. He conducted the weekly presentations to prospective investors and prepared the marketing materials used at the presentations. While Carnie also had significant involvement in presentations to investors and preparing marketing materials, he was primarily responsible for purchasing mining rigs to meet obligations to investors and arranging for insurance on the mining rigs. Kloss' involvement with prospective investors was more limited and included executing FCCI Investment Contracts on behalf of the company, representing the company at the flea market in Pickering and overseeing the development of FCCI's website.

21. By the time the Respondents decided to shut the business down in June 2018, a substantial amount of investor funds had been lost. The Respondents asked investors to sign documents purporting to cancel the FCCI Investment Contracts and acknowledge that investors had been paid in full. For some investors, the Respondents also issued promissory notes promising to repay investor losses. Not only did the Respondents fail to repay the principal amounts originally invested in FCCI, the Respondents also failed to pay investors the monthly and annual returns promised.

22. A reasonable investor would consider the misrepresentations described above as relevant in deciding whether to enter into or maintain investments with FCCI. Accordingly, each of the Respondents made prohibited representations, contrary to s. 44(2) of the Act.

### **C. LIABILITY OF DIRECTORS AND OFFICERS**

23. From December 2017 to May 2018, Harris, Carnie and Kloss, as directors, officers or *de facto* directors or officers of FCCI, authorized, permitted or acquiesced in FCCI's breaches of ss. 25(1), 53(1) and 44(2) of the Act (as described above) and thereby are deemed to have not complied with Ontario securities law, pursuant to s. 129.2 of the Act.

### **D. CONDUCT CONTRARY TO THE PUBLIC INTEREST**

24. The Respondents engaged in conduct contrary to the public interest by breaching the Act as described above.

25. The Respondents also engaged in conduct contrary to the public interest by failing to operate the business in a manner that protected FCCI investors and investor funds.

26. The Respondents assumed the role of registrants, but lacked the proficiency, integrity and solvency necessary to protect investors. The Respondents accepted investor funds without any business plan and lacked the skills, knowledge and experience needed to manage those funds.

27. The Respondents failed to adequately maintain basic documentation regarding FCCI's operations, including a complete list of investors and contracts, support for the receipt, exchange, segregation and partial return of investor funds and a complete list of the blockchain wallet addresses used by the Respondents.

28. Further, upon winding down the business, the Respondents cancelled access to corporate email accounts, liquidated crypto asset balances and deleted records, including all records of blockchain wallet addresses. The importance of protecting investor interests by maintaining accurate and complete books and records is heightened when operating in the crypto asset sector. The lack of records impeded the Respondents' ability to make repayments to investors after FCCI was shut down. While Kloss assumed the role of Chief Financial Officer and responsibility for recordkeeping and administrative tasks, each of the individual Respondents had some involvement

in collecting, managing or tracking of investor funds and each had a responsibility to ensure FCCI kept accurate and complete books and records.

#### **E. MITIGATING FACTORS**

29. The Respondents have sought to reach an early resolution of this matter, prior to the commencement of proceedings.

30. The Respondents proactively facilitated the partial return of funds to certain investors upon shutting down FCCI in June 2018. The Respondents continued to make some additional repayments to certain investors subsequent to FCCI's shut down.

31. At the time of this Settlement Agreement, the Respondents have provided information to Staff that suggests that \$215,453 of the principal amount originally raised from investors has been repaid.

#### **PART IV - NON-COMPLIANCE WITH ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST**

32. The Respondents acknowledge and admit to the following breaches of Ontario securities law and conduct contrary to the public interest:

- (a) the Respondents made statements that were untrue or omitted information necessary to prevent the statements from being false or misleading in the circumstances in which they were made that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship with the Respondents, contrary to s. 44(2) of the Act;
- (b) the Respondents engaged, or held themselves out as engaging, in the business of trading in securities without being registered in accordance with Ontario securities law, and where no exemption to the registration requirement was available, contrary to s. 25(1) of the Act;
- (c) the Respondents engaged in a distribution of securities without a preliminary prospectus or prospectus, or an exemption from the prospectus requirements, contrary to s. 53(1) of the Act;

- (d) Harris, Carnie and Kloss, as directors, officers or *de facto* directors or officers of FCCI, authorized, permitted or acquiesced in FCCI's breaches of ss. 25(1), 53(1) and 44(2) and thereby are deemed to have not complied with Ontario securities law, pursuant to s. 129.2 of the Act; and
- (e) the Respondents engaged in conduct that is contrary to the public interest.

## **PART V - TERMS OF SETTLEMENT**

- 33. The Respondents agree to the terms of settlement set forth below.
- 34. The Respondents consent to the Order, which includes the following terms:

### ***Financial Sanctions***

- (a) pursuant to paragraph 9 of s. 127(1) of the Act:
  - (i) Harris shall pay an administrative penalty of \$41,125;
  - (ii) Carnie shall pay an administrative penalty of \$31,125;
  - (iii) Kloss shall pay an administrative penalty of \$17,750;
- (b) pursuant to paragraph 10 of s. 127(1) of the Act:
  - (i) FCCI, Harris and Carnie, jointly and severally, shall disgorge to the Commission \$120,000;
  - (ii) Kloss shall disgorge to the Commission \$28,629;
- (c) pursuant to s. 127.1 of the Act:
  - (i) FCCI, Harris and Carnie, jointly and severally, shall pay costs to the Commission of \$20,250;
  - (ii) Kloss shall pay costs to the Commission of \$4,750;



***Other Sanctions***

- (d) pursuant to paragraph 2 of s. 127(1) of the Act:
- (i) FCCI is permanently prohibited from trading in any securities or derivatives;
  - (ii) Harris is prohibited from trading in any securities or derivatives until the later of: (A) a period of 12 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Harris set out in sub-paragraphs (a), (b) and (c) above are paid in full;
  - (iii) Carnie is prohibited from trading in any securities or derivatives until the later of: (A) a period of 7 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Carnie set out in sub-paragraphs (a), (b) and (c) above are paid in full;
  - (iv) Kloss is prohibited from trading in any securities or derivatives for a period of 5 years;
- (e) pursuant to paragraph 2.1 of s. 127(1) of the Act:
- (i) FCCI is permanently prohibited from acquiring any securities;
  - (ii) Harris is prohibited from acquiring any securities until the later of: (A) a period of 12 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Harris set out in sub-paragraphs (a), (b) and (c) above are paid in full;
  - (iii) Carnie is prohibited from acquiring any securities until the later of: (A) a period of 7 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Carnie set out in sub-paragraphs (a), (b) and (c) above are paid in full;
  - (iv) Kloss is prohibited from acquiring any securities for a period of 5 years;

- (f) pursuant to paragraph 3 of s. 127(1) of the Act:
  - (i) all exemptions contained in Ontario securities law shall not apply to FCCI permanently;
  - (ii) all exemptions contained in Ontario securities law shall not apply to Harris until the later of: (A) a period of 12 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Harris set out in sub-paragraphs (a), (b) and (c) above are paid in full;
  - (iii) all exemptions contained in Ontario securities law shall not apply to Carnie until the later of: (A) a period of 7 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Carnie set out in sub-paragraphs (a), (b) and (c) above are paid in full;
  - (iv) all exemptions contained in Ontario securities law shall not apply to Kloss for a period of 5 years;
- (g) pursuant to paragraphs 7, 8.1 and 8.3 of s. 127(1) of the Act:
  - (i) Harris, Carnie and Kloss shall resign any positions they may hold as a director or officer of any issuer or registrant;
- (h) pursuant to paragraphs 8, 8.2 and 8.4 of s. 127(1) of the Act:
  - (i) Harris is prohibited from becoming or acting as a director or officer of any issuer or registrant until the later of: (A) a period of 12 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Harris set out in sub-paragraphs (a), (b) and (c) above are paid in full;
  - (ii) Carnie is prohibited from becoming or acting as a director or officer of any issuer or registrant until the later of: (A) a period of 7 years from the date

on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Carnie set out in sub-paragraphs (a), (b) and (c) above are paid in full;

- (iii) Kloss is prohibited from becoming or acting as a director or officer of any issuer or registrant for a period of 5 years;
- (i) pursuant to paragraph 8.5 of s. 127(1) of the Act:
  - (i) FCCI is prohibited from becoming or acting as a registrant or promoter permanently;
  - (ii) Harris is prohibited from becoming or acting as a registrant or promoter until the later of: (A) a period of 12 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Harris set out in sub-paragraphs (a), (b) and (c) above are paid in full;
  - (iii) Carnie is prohibited from becoming or acting as a registrant or promoter until the later of: (A) a period of 7 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Carnie set out in sub-paragraphs (a), (b) and (c) above are paid in full;
  - (iv) Kloss is prohibited from becoming or acting as a registrant or promoter for a period of 5 years;

***Reprimand***

- (j) pursuant to paragraph 6 of s. 127(1) of the Act, the Respondents shall be reprimanded;

***Conditions and Exceptions***

- (k) the amounts referred to in sub-paragraphs (a) and (b) above shall be designated for allocation or use by the Commission in accordance with ss. 3.4(2)(b)(i) or (ii) of the Act;
- (l) Harris and Carnie shall each pay installments of \$10,000 to the Commission every six months, starting on the date that is six months from the date on which the Settlement Agreement is approved, until the amounts ordered against them set out in sub-paragraphs (a), (b) and (c) above are paid in full;
- (m) as an exception to the sanctions in sub-paragraphs (d) and (e) above, Harris, Carnie and Kloss are permitted to trade securities and derivatives and acquire securities on their own behalf in a registered retirement savings plan, registered education saving plan, tax-free savings account or self-directed retirement savings plan, solely through a registered dealer or registered advisor that has first been given a copy of the Order in this proceeding;
- (n) as an exception to the sanctions in sub-paragraphs (g) and (h) above, Harris is permitted to continue as, or become, a director or officer of a company that meets the following criteria:
  - (i) Harris must be the sole shareholder of the company;
  - (ii) the business operated by the company must be strictly limited to providing construction-related services, including the purchase, renovation and resale of residential properties (i.e. house flipping); and
  - (iii) the company shall not raise capital through the issuance of securities to the public;
- (o) as an exception to the sanctions in sub-paragraphs (g) and (h) above, Carnie is permitted to continue as, or become, a director or officer of a company that meets the following criteria:

- (i) Carnie must be the sole shareholder of the company;
  - (ii) the business operated by the company must be strictly limited to providing construction-related services, including landscaping; and
  - (iii) the company shall not raise capital through the issuance of securities to the public; and
- (p) pursuant to s. 2(2) of the *Tribunal Adjudicative Records Act, 2019*, SO 2019, c 7 and Rule 22(4) of the Commission's *Rules of Procedure and Forms*, the sworn Statements of Financial Condition referred to in paragraph 37 of the Settlement Agreement shall be kept confidential.

35. To the extent the full amount of the financial sanctions for which Harris and Carnie are jointly and severally responsible set out in sub-paragraphs 34 (a), (b) and (c) above remain unpaid, Harris and Carnie agree to each provide Staff with an updated sworn Statement of Financial Condition within three business days of March 1, 2021 for the period starting January 1, 2019, and a further updated sworn Statement of Financial Condition within three business days of March 1, 2023 for the period starting January 1, 2021.

36. Prior to the Settlement Hearing, Harris agrees to pay \$5,000 to the Commission towards the amount set out in paragraph 34(a)(i) above, Carnie agrees to pay \$3,000 to the Commission towards the amount set out in paragraph 34(a)(ii) above and Kloss agrees to pay \$51,129 to the Commission. With respect to the periodic payments specified in paragraph 34(1) above, Harris and Carnie agree to make those periodic payments first towards the amounts set out in paragraph 34(a) above, then towards the amount set out in paragraph 34(b) above, and finally towards the amount set out in paragraph 34(c) above.

37. Harris and Carnie have each provided Staff with a sworn Statement of Financial Condition indicating a limited ability to make full, up-front payments of the agreed financial sanctions. These Statements of Financial Condition will be provided to the Commission at the confidential settlement conference and public settlement hearing, but will not be made public.

38. Any Respondent may apply to the Commission pursuant s. 144 of the Act to vary the terms of the Order, including to the extent payments are made to FCCI investors. Staff will consider any evidence of payments filed by the Respondent(s) on such an application in determining Staff's position on the amount owing to the Commission and the periodic payments specified in subparagraph 34 (l) above. For greater clarity, the Respondents acknowledge that the financial sanctions agreed in this Settlement Agreement in no way alter any existing or future obligations that the Respondents may have at law to make payments to FCCI investors. A template "Investor Confirmation Letter" for the Respondents to track FCCI investors who are being repaid is attached to this Settlement Agreement as Schedule "B".

39. The Respondents acknowledge that, in addition to any proceedings referred to in paragraphs 42 and 43, failure to pay the amounts ordered will result in the Respondents' names being added to the list of "Respondents Delinquent in Payment of Commission Orders" published on the Commission's website.

40. The Respondents consent to a regulatory order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the sanctions set out in paragraph 34. These sanctions may be modified to reflect the provisions of the relevant provincial or territorial securities law.

41. The Respondents acknowledge that this Settlement Agreement and the Order may form the basis for orders of parallel effect in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions allow orders made in this matter to take effect in those other jurisdictions automatically, without further notice to the respondents. The Respondents should contact the securities regulator of any other jurisdiction in which the Respondents intend to engage in any securities- or derivatives-related activities, prior to undertaking such activities.

## **PART VI - FURTHER PROCEEDINGS**

42. If the Commission approves this Settlement Agreement, Staff will not commence or continue any proceeding against the Respondents under Ontario securities law based on the misconduct described in Part III of this Settlement Agreement, unless the Respondents fail to comply with any term in this Settlement Agreement, in which case Staff may bring proceedings under Ontario securities law against any Respondent that failed to comply with a term in this

Settlement Agreement. Such proceedings may be based on, among other things, the facts set out in Part III of this Settlement Agreement as well as the breach of this Settlement Agreement. Staff reserve the right to amend the Statement of Allegations in the Proceeding to include further and other allegations against the Respondents.

43. The Respondents acknowledge that, if the Commission approves this Settlement Agreement and the Respondents fail to comply with any term in it, Staff or the Commission are entitled to bring any proceedings necessary to, among other things, recover the amounts set out in subparagraphs 34 (a), (b) and (c) above. For greater clarity, if FCCI, Harris and Carnie fail to make any of the periodic payments specified in subparagraph 34 (l) above, Staff or the Commission are entitled to bring any proceedings necessary to, among other things, recover the full amounts set out in subparagraphs 34 (a), (b) and (c) above.

44. The Respondents waive any defences to a proceeding referenced in paragraph 43 above. The respondents waive any defenses to a proceeding referenced in paragraph 42 above that are based on the limitation period in the Act, provided that no such proceeding shall be commenced later than six years from the date of the occurrence of the last failure to comply with this Settlement Agreement.

45. Staff have relied in part upon representations by the Respondents that FCCI raised \$364,082 from 43 Ontario investors and that \$148,629 of the principal amount raised remains unpaid. Should materially more funds have been raised, materially more investors have been involved, materially more investors remain unpaid, or materially more funds remain unpaid to investors than as set out here, then Staff may bring proceedings under Ontario securities law against the Respondents despite this Settlement Agreement.

46. The Respondents agree and confirm that they have sought and received, or were provided with the opportunity to seek and receive, independent legal advice on this Settlement Agreement. The Respondents agree and confirm they have read and understood the terms of this Settlement Agreement and that the admissions they make are voluntary. The Respondents understand the Settlement Agreement is a legally binding contract and they agree to be bound by the Settlement Agreement. The Respondents agree that this Settlement Agreement constitutes the entire agreement between Staff and the Respondents. The Respondents do not rely on any

representations, warranties, conditions or collateral agreements made by Staff in respect of this settlement.

## **PART VII - PROCEDURE FOR APPROVAL OF SETTLEMENT**

47. The parties will seek approval of this Settlement Agreement at the Settlement Hearing before the Commission, which shall be held on a date determined by the Secretary to the Commission in accordance with this Settlement Agreement and the *Ontario Securities Commission Rules of procedure and Forms* (as amended).

48. The parties have consented to proceeding in writing for the Settlement Hearing.

49. The parties confirm that this Settlement Agreement sets forth all of the agreed facts that will be submitted at the Settlement Hearing, unless the parties agree that additional facts should be submitted at the Settlement Hearing.

50. If the Commission approves this Settlement Agreement:

- (a) the Respondents irrevocably waive all rights to a full hearing, judicial review or appeal of this matter under the Act; and
- (b) neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the Settlement Hearing.

51. Whether or not the Commission approves this Settlement Agreement, the Respondents will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness or any other remedies or challenges that may be available.

## **PART VIII - DISCLOSURE OF SETTLEMENT AGREEMENT**

52. If the Commission does not make the Order:

- (a) this Settlement Agreement and all discussions and negotiations between Staff and the Respondents before the Settlement Hearing will be without prejudice to Staff and the Respondents; and



(b) Staff and the Respondents will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations contained in the Statement of Allegations in respect of the Proceeding. Staff reserve the right to amend the Statement of Allegations in the Proceeding to include further and other allegations against the Respondents. Any such proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this Settlement Agreement.

53. The parties will keep the terms of this Settlement Agreement confidential until the Settlement Hearing, unless they agree in writing not to do so or unless otherwise required by law.

**PART IX - EXECUTION OF SETTLEMENT AGREEMENT**

54. This Settlement Agreement may be signed in one or more counterparts which together constitute a binding agreement.

55. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

**DATED** at Fort Lauderdale, Florida this 8th day of May, 2020.

*“Maria Ameijeiras”*

*“Johnathan Harris”*

\_\_\_\_\_  
Witness: Maria Ameijeiras

\_\_\_\_\_  
**JOHNATHAN HARRIS**

**DATED** at Whitby, Ontario this 26th day of May, 2020.

*“Kyle Falvo”*

*“Mitchell Carnie”*

\_\_\_\_\_  
Witness: Kyle Falvo

\_\_\_\_\_  
**MITCHELL CARNIE**

**DATED** at Toronto, Ontario this 30th day of April, 2020.

*“Christi Hunter”*

*“Neill Kloss”*

\_\_\_\_\_  
Witness: Christi Hunter

\_\_\_\_\_  
**NEILL KLOSS**

**DATED** at Fort Lauderdale, Florida this 8th day of May, 2020.

**FIRST CLASS CRYPTO INC.**

*“Johnathan Harris”*

By: \_\_\_\_\_

Name: Johnathan Harris

Title: President

**DATED** at Toronto, Ontario, this 26th day of May, 2020.

**ONTARIO SECURITIES COMMISSION**

*“Jeff Kehoe”*

By: \_\_\_\_\_

Name: Jeff Kehoe

Title: Director, Enforcement Branch

## SCHEDULE "A"

### FORM OF ORDER



Ontario  
Securities  
Commission  
3S8

Commission des  
valeurs mobilières  
de l'Ontario

22<sup>nd</sup> Floor  
20 Queen Street West  
Toronto ON M5H 3S8

22e étage  
20, rue queen ouest  
Toronto ON M5H

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### IN THE MATTER OF FIRST CLASS CRYPTO INC., JOHNATHAN HARRIS, MITCHELL CARNIE AND NEILL KLOSS

File No. [#]

[Name(s) of Commissioner(s) comprising the Panel]

[Day and date Order made]

#### ORDER

(Sections 127 and 127.1 of the  
*Securities Act*, RSO 1990, c S.5)

WHEREAS the Ontario Securities Commission held a hearing in writing to consider the request made jointly by First Class Crypto Inc. (**FCCI**), Johnathan Harris (**Harris**), Mitchell Carnie (**Carnie**) and Neill Kloss (**Kloss**) (collectively, the **Respondents**) for approval of a settlement agreement dated [DATE] (the **Settlement Agreement**);

ON READING the Joint Application for a Settlement Hearing, including the Statement of Allegations dated [DATE], and the Settlement Agreement, and on reading the written submissions of the representative for Staff, and on being advised by Staff that Staff has received payments from Harris, Carnie and Kloss of \$5,000, \$3,000 and \$51,129 (respectively);

IT IS ORDERED THAT:

1. The Settlement Agreement is approved;
2. Pursuant to paragraph 9 of s. 127(1) of the Act:
  - (a) Harris shall pay an administrative penalty of \$41,125;
  - (b) Carnie shall pay an administrative penalty of \$31,125;
  - (c) Kloss shall pay an administrative penalty of \$17,750;
3. Pursuant to paragraph 10 of s. 127(1) of the Act:
  - (a) FCCI, Harris and Carnie, jointly and severally, shall disgorge to the Commission \$120,000;

- (b) Kloss shall disgorge to the Commission \$28,629;
4. Pursuant to s. 127.1 of the Act:
- (a) FCCI, Harris and Carnie, jointly and severally, shall pay costs to the Commission of \$20,250;
  - (b) Kloss shall pay costs to the Commission of \$4,750;
5. Pursuant to paragraph 2 of s. 127(1) of the Act:
- (a) FCCI is permanently prohibited from trading in any securities or derivatives;
  - (b) Harris is prohibited from trading in any securities or derivatives until the later of: (A) a period of 12 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Harris set out in sub-paragraphs 2(a), 3(a) and 4(a) above are paid in full;
  - (c) Carnie is prohibited from trading in any securities or derivatives until the later of: (A) a period of 7 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Carnie set out in sub-paragraphs 2(b), 3(a) and 4(a) above are paid in full;
  - (d) Kloss is prohibited from trading in any securities or derivatives for a period of 5 years;
6. Pursuant to paragraph 2.1 of s. 127(1) of the Act:
- (a) FCCI is permanently prohibited from acquiring any securities;
  - (b) Harris is prohibited from acquiring any securities until the later of: (A) a period of 12 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Harris set out in sub-paragraphs 2(a), 3(a) and 4(a) above are paid in full;
  - (c) Carnie is prohibited from acquiring any securities until the later of: (A) a period of 7 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Carnie set out in sub-paragraphs 2(b), 3(a) and 4(a) above are paid in full;
  - (d) Kloss is prohibited from acquiring any securities for a period of 5 years;
7. Pursuant to paragraph 3 of s. 127(1) of the Act:
- (a) all exemptions contained in Ontario securities law shall not apply to FCCI permanently;
  - (b) all exemptions contained in Ontario securities law shall not apply to Harris until the later of: (A) a period of 12 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Harris set out in sub-paragraphs 2(a), 3(a) and 4(a) above are paid in full;

- (c) all exemptions contained in Ontario securities law shall not apply to Carnie until the later of: (A) a period of 7 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Carnie set out in sub-paragraphs 2(b), 3(a) and 4(a) above are paid in full;
  - (d) all exemptions contained in Ontario securities law shall not apply to Kloss for a period of 5 years;
- 8. Pursuant to paragraphs 7, 8.1 and 8.3 of s. 127(1) of the Act:
  - (a) Harris, Carnie and Kloss shall resign any positions they may hold as a director or officer of any issuer or registrant;
- 9. Pursuant to paragraphs 8, 8.2 and 8.4 of s. 127(1) of the Act:
  - (a) Harris is prohibited from becoming or acting as a director or officer of any issuer or registrant until the later of: (A) a period of 12 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Harris set out in sub-paragraphs 2(a), 3(a) and 4(a) above are paid in full;
  - (b) Carnie is prohibited from becoming or acting as a director or officer of any issuer or registrant until the later of: (A) a period of 7 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Carnie set out in sub-paragraphs 2(b), 3(a) and 4(a) above are paid in full;
  - (c) Kloss is prohibited from becoming or acting as a director or officer of any issuer or registrant for a period of 5 years;
- 10. Pursuant to paragraph 8.5 of s. 127(1) of the Act:
  - (a) FCCI is prohibited from becoming or acting as a registrant or promoter permanently;
  - (b) Harris is prohibited from becoming or acting as a registrant or promoter until the later of: (A) a period of 12 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Harris set out in sub-paragraphs 2(a), 3(a) and 4(a) above are paid in full;
  - (c) Carnie is prohibited from becoming or acting as a registrant or promoter until the later of: (A) a period of 7 years from the date on which the Settlement Agreement is approved; or (B) the date on which the amounts owed by Carnie set out in sub-paragraphs 2(b), 3(a) and 4(a) above are paid in full;
  - (d) Kloss is prohibited from becoming or acting as a registrant or promoter for a period of 5 years;
- 11. Pursuant to paragraph 6 of s. 127(1) of the Act, the Respondents shall be reprimanded;
- 12. The amounts referred to in paragraphs 2 and 3 above shall be designated for allocation or use by the Commission in accordance with ss. 3.4(2)(b)(i) or (ii) of the Act;

13. Harris and Carnie shall each pay installments of \$10,000 to the Commission every six months, starting on the date that is six months from the date on which the Settlement Agreement is approved, until the amounts ordered against them set out in paragraphs 2, 3 and 4 above are paid in full;

14. As an exception to the sanctions in paragraphs 5 and 6 above, Harris, Carnie and Kloss are permitted to trade securities and derivatives and acquire securities on their own behalf in a registered retirement savings plan, registered education saving plan, tax-free savings account or self-directed retirement savings plan, solely through a registered dealer or registered advisor that has first been given a copy of this Order;

15. As an exception to the sanctions in paragraphs 8 and 9 above, Harris is permitted to continue as, or become, a director or officer of a company that meets the following criteria:

- (a) Harris must be the sole shareholder of the company;
- (b) the business operated by the company must be strictly limited to providing construction-related services, including the purchase, renovation and resale of residential properties (i.e. house flipping); and
- (c) the company shall not raise capital through the issuance of securities to the public;

16. As an exception to the sanctions in paragraphs 8 and 9 above, Carnie is permitted to continue as, or become, a director or officer of a company that meets the following criteria:

- (a) Carnie must be the sole shareholder of the company;
- (b) the business operated by the company must be strictly limited to providing construction-related services, including landscaping; and
- (c) the company shall not raise capital through the issuance of securities to the public; and

17. Pursuant to s. 2(2) of the *Tribunal Adjudicative Records Act, 2019*, SO 2019, c 7 and Rule 22(4) of the Commission's *Rules of Procedure and Forms*, the sworn Statements of Financial Condition referred to in paragraph 37 of the Settlement Agreement shall be kept confidential.

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[Commissioner]

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[Commissioner]

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[Commissioner]

**SCHEDULE "B"**

**INVESTOR CONFIRMATION LETTER TEMPLATE**

**INVESTOR CONFIRMATION LETTER  
FOR INVESTMENTS IN FIRST CLASS CRYPTO INC.**

First Class Crypto Inc.

Johnathan Harris  
770 Lexington Street  
Oshawa, ON L1G 6V3

and

Mitchell Carnie  
201 Centre Street North  
Whitby, Ontario  
L1N 4S9

I am writing this letter to confirm receipt of payment regarding my investment with First Class Crypto Inc. The details of this payment are as follows:

Date I received payment:  
(MM/DD/YYYY)

\_\_\_\_\_

Amount I received as payment:

\_\_\_\_\_

Currency of the amount I received as payment (Canadian dollars, type of crypto asset, etc.):

\_\_\_\_\_

How the payment was made:  
(e-transfer, cheque, wire transfer etc.)

\_\_\_\_\_

Name of the person that made the payment:

\_\_\_\_\_

I have attached the following document(s) as proof of the payment I received (examples: e-transfer confirmation, bank statement, cancelled cheque, wire form).

\_\_\_\_\_

I understand this letter and the attached supporting documents may be provided to the Ontario Securities Commission as evidence of repayments made to investors in First Class Crypto Inc.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ in \_\_\_\_\_, Ontario.

\_\_\_\_\_  
Name of First Class Crypto Inc. Investor

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Signature of First Class Crypto Inc. Investor

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Contact Information of First Class Crypto Inc.  
Investor (email address & phone number)