

Fidelity Digital Asset Services, LLC

Headnote

Application for time-limited relief from the requirement to be recognized as a clearing agency; National Instruments 21-101 *Marketplace Operation*, 23-101 *Trading Rules*, 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces*, 24-102 *Clearing Agency Requirements*; and prospectus and trade reporting requirements – relief to allow the Filer to operate a platform that facilitates the buying, selling and holding of crypto assets – relief granted subject to certain conditions set out in the decision — relief will expire in 5 years – relief granted based on the particular facts and circumstances of the application with the objective of fostering innovative businesses in Canada – decision should not be viewed as precedent for other filers.

Statute cited

Securities Act, R.S.O. 1990, c. S.5, as amended, ss. 1(1), 21.2(0.1), 53, 74 & 147

Instrument, Rule or Policy cited

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

National Instrument 21-101 *Marketplace Operation*, s. 15.1

National Instrument 23-101 *Trading Rules*, s. 12.1

National Instrument 23-103 *Electronic Trading and Direct Access to Marketplaces*, s. 10

National Instrument 24-102 *Clearing Agency Requirements*, s. 6.1

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

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

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

AND

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

AND

**IN THE MATTER OF
FIDELITY DIGITAL ASSET SERVICES, LLC
(the Filer or FDAS)**

DECISION

Background

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

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

The Canadian Securities Administrators (**CSA**) take the position that the relevant service offered by the Filer includes the purchase, sale and settlement of trades of Crypto Contracts involving bitcoin, ether, and anything commonly considered a crypto asset, digital or virtual currency, or digital or virtual token that itself is not a security or derivative (collectively, **Crypto Assets**) with an entity in the Fidelity group of companies, Fidelity Clearing Canada ULC (**FCC**). Because the CSA considers the Filer to be facilitating the purchase, sale and settlement of Crypto Contracts with FCC for Canadian securities law purposes, the Filer filed an application to be exempted from certain requirements under applicable securities legislation. This decision (the **Decision**) has been tailored for the specific facts and circumstances of the Filer, and the securities regulatory authority or regulator in the provinces and territories of Canada will not consider this Decision as constituting a precedent for other filers.

Relief Requested

The securities regulatory authority or regulator in the Jurisdiction and in each of the other applicable Jurisdictions, as defined below (the **Coordinated Review Decision Makers**), have received an application from the Filer (the **Coordinated Review Application**) for a decision under the securities legislation of those Jurisdictions (the **Legislation**) exempting the Filer from the following (the **Requested Coordinated Relief**):

- (i) except in British Columbia, New Brunswick, Nova Scotia, and Saskatchewan, the Marketplace Rules (as defined in Appendix A) (the **Marketplace Relief**);
- (ii) in Ontario, British Columbia, Saskatchewan, Alberta and Quebec, the Clearing Recognition Requirement (as defined in Appendix A) (the **Clearing Recognition Relief**);
- (iii) in Ontario, British Columbia, Saskatchewan, Alberta and Quebec, the Clearing Agency Rules (as defined in Appendix A) (the **Clearing Relief**); and

- (iv) the Local Trade Reporting Rules (as defined in Appendix A) (the **Trade Reporting Relief**).

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

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

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

The Coordinated Review Application and the Passport Application are collectively the **Application**, and the Requested Coordinated Relief and the Requested Prospectus Relief are collectively the **Requested Relief**.

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:

FCC means Fidelity Clearing Canada ULC.

FCC Decisions means, collectively, (i) the decision document of the Jurisdictions exempting FCC from certain of the requirements under the securities legislation of the Jurisdictions in relation to Crypto Contracts that FCC enters into with its clients relating to Crypto Assets on the condition that, among others, FCC retains FDAS as its foreign custodian and custodies all of FCC's clients' Crypto Assets with FDAS and (ii) the decision document of the Jurisdictions permitting FCC to custody or sub-custody Crypto Assets and cash held by investment funds governed by National Instrument 81-102 *Investment Funds* and permitting FDAS to sub-custody Crypto Assets held by such investment funds.

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

FDAS Matching Service, for purposes of the Marketplace Relief, means only that portion of the FDAS Service that involves the execution of purchase or sale transactions relating to Crypto Contracts with FCC based on FDAS' internal matching engine, and does not include the portion of the FDAS Service that involves purchase or sale transactions relating to Crypto Contracts with FCC that are executed by FDAS based on prices received from external counterparties through FDAS' smart order router.

FDAS Service, for purposes of this Decision, means the purchase by FDAS of Crypto Contracts from FCC, and the sale by FDAS of Crypto Contracts to FCC, in each case upon the receipt by FDAS of a purchase or sale order from FCC, and the reconciliation, trade settlement and delivery of the Crypto Assets, that are related to such Crypto Contracts, into or out of FCC's custodial account(s) at FDAS through corresponding adjustments made by FDAS to the cash and/or Crypto Asset balances in FCC's custodial account(s) pursuant to the terms of the custodial services agreement between FDAS and FCC.

FDAS Wallets means the FDAS omnibus digital wallets holding Crypto Assets relating to, in the case of Crypto Assets held for FCC, Crypto Contracts.

IIROC means the Investment Industry Regulatory Organization of Canada.

Jurisdictions means each of the provinces and territories of Canada.

Representations

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

The Filer

1. 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.
2. FDAS is part of the Fidelity group of companies known as Fidelity Investments. FCC, which is also part of the Fidelity group of companies, is, and will be, the only Canadian client of FDAS.
3. FDAS is currently operating in Canada as described in this Decision. Subject to the Requested Relief, FDAS is not in default of securities legislation of any of the Jurisdictions.
4. The United States has a comprehensive financial services regime that FDAS is subject to. The New York State Department of Financial Services requires FDAS to satisfy, among other things, certain prescribed financial and capital requirements.

The Filer's Operating Model in Canada

5. FCC is FDAS' sole Canadian client. FDAS will not otherwise carry on business in Canada and will not advertise or otherwise market its services or business in Canada.
6. FCC is registered as an investment dealer in each of the Jurisdictions, a futures commission merchant in Ontario, a dealer (futures commission merchant) in Manitoba and a derivatives dealer in Québec. As an investment dealer, FCC is a member of IIROC. FCC is also approved by IIROC to act as a carrying broker. Accordingly, FCC is subject to regulation and regulatory oversight in Canada.
7. Any other person in Canada that wishes to use the FDAS Service must do so through the services offered by FCC.
8. FCC relies on the relief granted in the FCC Decisions in connection with its own services involving Crypto Contracts. The FCC Decisions include a number of conditions that address, among other things, the regulatory framework that applies to FDAS, the steps taken by FDAS to mitigate operational and custodial risks, appropriate systems oversight, and the supervision, insurance and capital requirements that FDAS is subject to.

The FDAS Service

9. While the only Crypto Contracts currently available through the FDAS Service are based on bitcoin and ether, FDAS plans to expand the FDAS Service in the future to include other Crypto Assets.
10. Under the FDAS Service, all orders and executions only occur through FDAS. In other words, for FCC orders submitted through the FDAS Service, FDAS is the seller on each FCC buy order and the purchaser on each FCC sell order. The bilateral contract or arrangement between FCC and FDAS in connection with that buy or sell transaction and FCC's contractual right relating to the Crypto Asset is referred to as a Crypto Contract.
11. In all cases, including with orders placed by FCC, FDAS, insofar as it trades as principal, manages its risk with offsetting trades being executed immediately against other FDAS clients or approved counterparties as described in representations 12 through 15.
12. In order to establish the execution price, subject to the requirements of the applicable order type, FCC's orders with FDAS are either (a) matched internally with another client of FDAS under the FDAS Matching Service or (b) failing that, routed away and filled based on prices provided to FDAS by FDAS' approved counterparties. FCC does not know if an executed order is internally matched or routed away. FCC also does not know the identity of any FDAS client whose orders facilitated an internal match, nor the identity of approved counterparties to whom an order has been routed.
13. The FDAS Matching Service involves the operation by FDAS of a non-displayed order book that facilitates the matching of client orders. Order matching is conducted on a price-time priority basis – orders with the highest (buy) or lowest (sell) price are prioritized over orders with a lower (buy) or higher (sell) price; orders are then ranked on the system by

arrival time. Orders matched through the FDAS Matching Service are assigned a trade price of the mid-point of prices that are derived from reference prices from external marketplaces, subject to the constraints of the applicable order type. FCC does not know the execution price of an order before the order is executed. If an order is not matched through the FDAS Matching Service, it will be routed away to FDAS' approved counterparties in the manner described in the next paragraph.

14. The routing algorithm used by FDAS prioritizes orders by price in order to attempt to provide FCC and FDAS' other clients with the best price for orders available from the FDAS Matching Service and, if an order is not matched through the FDAS Matching Service, FDAS' network of approved counterparties. For this purpose, "best price" means the highest available price for sell orders and the lowest available price for buy orders. If an order is not matched through the FDAS Matching Service, the FDAS Service requests the best prices that are available from FDAS' approved counterparties. The order handling process chooses the best price from among the prices quoted by these approved counterparties within a narrow range, and executes the order against FDAS at that price as the execution price, subject to the requirements of the applicable order type. FDAS then executes the client order in a riskless principal trade. For trades executed with FCC, FDAS does not mark-up or mark-down quotes received from approved counterparties.
15. If an order is not executed after it is routed away, it remains eligible either to be matched through the FDAS Matching Service or to be executed through FDAS' approved counterparties until the client cancels the order or the order is cancelled systematically at the end of the day. The manner in which an initially unfilled order is handled depends upon the order type.
16. Reference data is provided by FDAS to FCC and FDAS' other clients on a proprietary user interface. This reference data shows purchase and sale prices for trades on certain digital asset trading venues. This indicative pricing is not reflective of the liquidity available through the FDAS Matching Service or its approved counterparties, or of FDAS client trades executed through the FDAS Service, and is not to be relied upon by FCC as the expected execution price for any order.
17. FDAS provides information to each client regarding the status of the client's orders and resulting trades. Together with the reference data provided, as referred to in the preceding paragraph, FDAS provides sufficient information to facilitate the trading decisions of FCC, and compliance by FCC with its best execution obligations under IIROC rules, which, for greater certainty, require fair pricing. FDAS also provides information to FCC to allow it to understand how its orders are handled and executed, how trades are priced and any associated fees applied by FDAS in the context of a trade.
18. FDAS clears and settles trades between FCC and FDAS in the manner described below and by recording appropriate transfers between the FDAS Wallets and the FDAS Bank Account.
19. Under the FDAS Service, all trades involving an order placed by FCC are settled only between U.S. dollars and Crypto Contracts, and the full value of each transaction is exchanged (less any fees). Proceeds from buy or sell orders are made available to FCC

after FDAS' trade settlement processes are complete. When a buy order is executed, the notional U.S. dollar value of the transaction is debited from FCC's U.S. dollar cash custody account with FDAS, and the Crypto Assets relating to the Crypto Contract traded are reflected in FDAS's custody dashboard. When a sell order is executed, the amount of Crypto Assets to which FCC has an interest are debited from its balance in FCC's custody account with FDAS, and the U.S. dollars to be received by FCC are reflected in FDAS' custody dashboard. Once FDAS' trade settlement processes are completed, the Crypto Assets relating to the Crypto Contract or the U.S. dollar proceeds of the transaction are available to FCC.

20. The FDAS Service does not enable short selling, as the FDAS Service does not implement a sell order unless the client holds the requisite Crypto Assets with FDAS.
21. FDAS has established and will maintain and apply effective policies and procedures to prevent fraud and market manipulation in connection with the FDAS Service, including through policies and procedures to monitor for and investigate potential instances of abusive trading. Certain features of the FDAS Service also help to limit the opportunities for fraud or market manipulation. These features include:
 - a) limiting the use of the FDAS Service to approved clients;
 - b) only allowing orders to be entered by authorized users;
 - c) not displaying orders entered on the FDAS Matching Service to other clients;
 - d) using the pricing mechanics described in paragraph 13 to price trades via the FDAS Matching Service;
 - e) hiding trade details for transactions executed between FDAS and a client from all of its other clients and from public view; and
 - f) prohibiting the crossing of trades between accounts of the same client.

In addition, FDAS does not provide economic incentives to counterparties to attract order flow.

22. The Filer has also established and maintains policies that address and escalate complaints, that govern the cancellation, variation and correction of trades executed through the FDAS Service and that address the maintenance of books, records and other documents relating to the transactions executed by the Filer with FCC, including, but not limited to, records of all orders and trades, including the product, price, volume, time when the order is entered, matched, cancelled or rejected, any reference pricing used to assign prices to trades resulting from the FDAS Matching Service, and the identifier of the FCC authorized user that entered the order.
23. The Filer has risk management policies and procedures and internal controls in place to minimize the risk that clearing and settlement of trades will not take place according to the Filer's rules, policies and procedures. These policies and procedures address, and mitigate, counterparty risk by, among other things, establishing an approval process for counterparties, establishing risk limits per counterparty and addressing the potential for counterparty default.

24. Conflicts of interest are minimized, as the components of the FDAS Service do not permit for any level of differentiation between clients. This means that all of FDAS' clients, including FCC and FDAS' affiliates that use the FDAS Service, are treated the same. Further, FDAS does not provide any economic or other incentive to FCC or to FDAS' affiliates to use the FDAS Service (including to attract order flow), and all fees are transparent to the client. FDAS also does not trade against its clients through the FDAS Service for speculative purposes.

Other Considerations

25. Staff of the CSA have informed FDAS that staff are of the view that as a result of FDAS' provision of the FDAS Service to FCC, in certain Jurisdictions, the FDAS Matching Service constitutes a "marketplace", as that term is defined in NI 21-101.
26. The Filer submits that the application of the Marketplace Rules is not warranted. Further, the terms and conditions to be imposed in this Decision on FDAS and by the FCC Decisions on FCC, the only Canadian client of FDAS, are adequate to address key risks.
27. Staff of the CSA have informed FDAS that staff are of the view that as a result of FDAS' provision of the FDAS Service to FCC, in certain Jurisdictions the FDAS Service constitutes a "clearing agency" or a "clearing house", as such terms are defined or referred to in securities or commodities futures legislation.
28. Given the structure of the FDAS Service, the terms and conditions set out in this Decision, and the fact that FCC, a regulated investment dealer subject to the IIROC registration and compliance regime, will be FDAS' sole Canadian client, the Filer submits that it is appropriate to exempt FDAS from the recognition requirement that applies to clearing agencies or clearing houses, as applicable, seeking to carry on business in the Jurisdictions. FDAS is a limited liability trust company regulated by the New York State Department of Financial Services, it is not systemically important and it does not pose a significant risk to the capital markets because the FDAS Services is very limited in scope, particularly in Canada.
29. Generally, the PFMI Principles and PFMI Disclosure Framework Document (as defined in NI 24-102) are not relevant to FDAS because of the nature and scope of the FDAS Services, and FDAS' global regulatory environment.
30. Under the FDAS Service, FDAS is the counterparty to each transaction entered into by FCC through the FDAS Service. Accordingly, the Filer submits that given the structure of the FDAS Service and given the fact that the only Canadian client that will use the FDAS Service is FCC, a regulated investment dealer, the FDAS Service and FDAS do not present the same risk profile as other Crypto Asset trading platforms that operate or wish to operate in the Jurisdictions as a clearing agency or clearing house, as applicable.
31. For the reasons specified above, the Filer submits that it is not prejudicial to the public interest to grant the Requested Relief.

Decision

The Principal Regulator is satisfied that the Decision meets the test set out in the Legislation for the Principal Regulator to make the Decision and each Coordinated Review Decision Maker is satisfied that the Decision in respect of the Requested Coordinated 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 Requested Coordinated Relief, as applicable.

The Decision of the Principal Regulator under the Legislation is that the Requested Relief is granted, and the Decision of each Coordinated Review Decision Maker under the securities legislation of its jurisdiction is that the Requested Coordinated Relief is granted, subject to the Filer complying with the following terms and conditions:

Limitations on dealings with Canadian clients

- A. The Filer will not provide the FDAS Service to any Canadian client other than FCC.
- B. The Filer will only continue to offer the FDAS Service to FCC so long as FCC is registered as an investment dealer in one of the Jurisdictions, is an IIROC member dealer in good standing, and is in compliance with applicable securities law.
- C. The Filer will require FCC to provide prompt notification to the Filer if it is no longer registered as an investment dealer in any of the Jurisdictions, is no longer an IIROC member dealer in good standing, or is not in compliance with applicable securities law.

Limitations on trading by Filer

- D. The Filer will not submit orders to the FDAS Service on a proprietary basis, other than in connection with offsetting trades relating to client orders that are executed on a riskless principal basis, or as it otherwise deems appropriate for the delivery of its services. For clarity, at no time shall the Filer trade against its clients through the FDAS Service for speculative purposes.

Regulatory status and compliance with applicable law

- E. The Filer will continue to be regulated as a New York State-chartered trust company by the New York State Department of Financial Services and registered as a “money services business” with the Financial Crimes Enforcement Network, a bureau of the U.S. Department of the Treasury, and will comply with all applicable requirements.
- F. The Filer will promptly notify the Principal Regulator if the New York State Department of Financial Services makes a determination that the Filer is not permitted by that regulatory authority to continue to offer the FDAS Service being provided to FCC.
- G. The Filer will promptly notify the Principal Regulator if it is required by the U.S. Securities and Exchange Commission, the U.S. Commodity Futures Trading Commission, the Financial Industry Regulatory Authority, or the National Futures Association to transition

to or be regulated under a regulatory framework overseen by any one of those financial or other regulators.

H. The Filer will comply with applicable securities law.

General filings

I. The Filer will file with the Principal Regulator the information otherwise required to be filed by an ATS in Exhibit E of the Form 21-101F2 as it relates to the FDAS Service provided by the Filer to FCC.

Financial viability

J. The Filer will at all times satisfy the financial and capital requirements imposed on it by the New York State Department of Financial Services and will otherwise maintain sufficient financial resources for the proper performance of the FDAS Service provided to FCC, and for its performance of those functions in furtherance of its compliance with these terms and conditions.

K. The Filer will notify the Principal Regulator immediately upon becoming aware that the Filer does not or may not have sufficient financial resources in accordance with the requirements of condition J.

Market integrity

L. The Filer will take reasonable steps to ensure that the operation of the FDAS Service does not interfere with fair and orderly markets.

M. The Filer will maintain and ensure compliance with effective policies and procedures to prevent fraud and market manipulation in connection with the FDAS Service, including policies and procedures to monitor for and investigate potential instances of abusive trading.

N. The Filer will maintain and ensure compliance with reasonable policies addressing and escalating complaints and governing the cancellation, variation or correction of trades executed through the FDAS Service.

Conflicts of interest

O. The Filer will establish, maintain and ensure compliance with effective policies and procedures to manage any conflict of interest arising from the FDAS Service in a manner that ensures that none of its affiliates receives an unreasonable advantage in their use of the FDAS Service to the detriment of FCC or FCC's use of the FDAS Service.

Transparency of operations and of order and trade information

- P. The Filer will provide FCC with information reasonably necessary to enable it to understand the FDAS Service, including how orders are handled and interact, how trades are priced and any associated fees or spreads.
- Q. The Filer will provide FCC with sufficient and relevant information regarding market pricing (for example, current pricing from relevant indices) and trade information to facilitate the trading decisions of FCC, and compliance by FCC with its best execution obligations under IIROC rules.

Confidentiality of users' order and trade information

- R. The Filer will maintain appropriate and sufficient controls to protect the confidentiality of FCC's order and trade information, subject to FCC consenting to the disclosure or such information and/or disclosure to any of the applicable Canadian securities regulatory authorities as required by applicable securities laws.

Books and records

- S. The Filer will keep books, records and other documents reasonably necessary for the proper recording of its business and to demonstrate compliance with applicable securities laws and the conditions of this Decision, including, but not limited to, records of all orders and trades, including the product, price, volume, time when the order is entered, matched, cancelled or rejected, any reference pricing used to assign prices to trades resulting from the FDAS Matching Service, and the identifier of any FCC authorized user that entered the order, for all transactions that the Filer executes with FCC and any related transactions undertaken by the Filer in facilitating the execution with FCC.
- T. The Filer will maintain the books, records and other documents referred to in paragraph 22 in electronic form and promptly provide them in the format and at the time requested by the Principal Regulator pursuant to applicable securities laws. Such books, records and other documents will be maintained by the Filer for a minimum of seven years.

Systems and internal controls

- U. The Filer will maintain effective internal controls to manage operational risks, including risks related to systems that support the FDAS Service, including internal controls to ensure that its systems function properly and have adequate capacity and security.
- V. The Filer will maintain effective procedures and processes to ensure the provision of accurate and reliable settlement services in connection with trades executed through the FDAS Service.
- W. The Filer will establish, maintain and apply effective risk management policies and procedures and internal controls in place to minimize the risk that settlement will not take place as expected.

- X. The Filer will maintain effective information technology controls, and conduct regular reviews and testing of such controls, to support the FDAS Service, including controls relating to operations, information security, cyber resilience, change management, problem management, network support and system software support.
- Y. The Filer will establish, maintain and apply policies and procedures that appropriately govern the selection and oversight of service providers to which key services or systems supporting the FDAS Service have been outsourced. Policies and procedures will include:
 - a. steps for appropriate due diligence in selecting a provider,
 - b. requirements relating to:
 - i. a written contract,
 - ii. access to appropriate books and records relating to the service provided,
 - iii. conflicts management,
 - iv. appropriate internal controls relating to, among other things, information security and cyber resilience; and
 - c. a process for monitoring performance and adherence to the contract.
- Z. The Filer will maintain, update and test a business continuity plan, including emergency procedures, and a plan for disaster recovery that provides for the timely recovery of operations and fulfilment of its obligations with respect to the FDAS Service, including in the event of a wide-scale or major disruption.

Reporting

- AA. The Filer will provide at least 45 days advance notice to the Principal Regulator for any significant changes to the information filed in the Application and any supporting documents to the extent that such changes materially change the FDAS Service as described to the Principal Regulator.
- BB. The Filer will deliver to the Principal Regulator, in a form and format acceptable to the Principal Regulator, within 30 days of the end of each March, June, September and December a report that includes, for every type of Crypto Asset traded with FCC during the prior quarter, the total number of trades the Filer executed with FCC during that quarter, the aggregate value of those trades, and an indication of the number and aggregate value of such trades that were filled through the FDAS Matching Service.
- CC. The Filer shall promptly notify the Principal Regulator of any of the following:
 - a. any material system failure of the FDAS Service (including cybersecurity breaches) that adversely impacts FCC's use of the FDAS Service;
 - b. any problem with the clearing and settlement of trades executed through the FDAS Service that could materially affect the safety and efficiency of the FDAS Services provided to FCC;
 - c. any material event of default by one of the Filer's approved counterparties that has affected, or is expected to affect, the settlement of trades executed through the FDAS Service;

- d. any known investigation of, or regulatory action against, the Filer by a regulatory authority in any jurisdiction in which it operates;
 - e. details of any material litigation instituted against the Filer;
 - f. notification that the Filer has instituted a petition for a judgment of bankruptcy or insolvency or similar relief, or to wind up or liquidate the Filer or has a proceeding for any such petition instituted against it; and
 - g. the appointment of a receiver or the making of any voluntary arrangement with creditors.
- DD. The Filer will provide FCC with notice as soon as practicable if any new regulation or change to an existing regulation is proposed that will materially impact the FDAS Service provided to FCC.
- EE. In addition to any other reporting required herein and subject to the application of solicitor-client privilege, the Filer will provide to the Principal Regulator, on a timely basis, any report, data, document or information about the FDAS Service provided to FCC, that may be requested by the Principal Regulator from time to time. Unless otherwise prohibited under applicable law, the Filer will share with the Principal Regulator information relating to regulatory and enforcement matters that will materially impact the FDAS Service provided to FCC.

Trade Reporting Data

- FF. In connection with the Filer's obligations under the Local Trade Reporting Rules, the Filer has agreed with FCC that FCC will be delegated the responsibility to report, or will be the reporting counterparty, under the Local Trade Reporting Rules, as applicable, which obligations can be satisfied by FCC providing the same type and frequency of reporting as required under condition (y) of the FCC Decisions.

Submission to jurisdiction

- GG. With respect to a proceeding brought by a securities regulatory authority in a province or territory arising out of, related to, concerning or in any other manner connected with the securities regulatory authority's regulation and oversight of the activities of the Filer in the applicable province or territory, the Filer will submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals in, and (ii) an administrative proceeding in, the applicable province or territory.
- HH. The Filer will file with each Coordinated Review Decision Maker a valid and binding appointment of an agent for service in the Coordinated Review Decision Maker's province or territory upon whom the applicable securities regulatory authority may serve a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of or relating to or concerning the applicable securities regulatory authority's regulation and oversight of the Filer's activities in the province or territory.

Amendments and expiry

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

JJ. This Decision shall expire five years from the date of this Decision.

In respect of the Requested Coordinated Relief and the Requested Prospectus Relief

Date: January 18, 2023

“Susan Greenglass”

Director, Market Regulation
Ontario Securities Commission

APPENDIX A

MARKETPLACE RULES, CLEARING RECOGNITION REQUIREMENT, CLEARING RULES AND LOCAL TRADE REPORTING RULES

In this Decision,

- a) the “**Marketplace Rules**” collectively means each of the following:
 - (i) National Instrument 21-101 – *Marketplace Operation* (**NI 21-101**) in whole;
 - (ii) National Instrument 23-101 – *Trading Rules* (**NI 23-101**) in whole; and
 - (iii) National Instrument 23-103 – *Electronic Trading and Direct Electronic Access to Marketplaces* (**NI 23-103**) in whole;
- b) the “**Clearing Recognition Requirement**” means each of the following:
 - (i) the requirement to be recognized as a clearing agency in section 67 of the *Securities Act* (Alberta);
 - (ii) the requirement to be recognized as a clearing agency in section 25 of the *Securities Act* (British Columbia);
 - (iii) the requirement to be recognized as a clearing agency in subsection 21.2(0.1) of the *Securities Act* (Ontario);
 - (iv) the requirement to be recognized as a settlement system under section 169 of the *Securities Act* (Québec); and
 - (v) the requirement to be recognized as a clearing agency in section 21.2 of *The Securities Act* (Saskatchewan);
- c) the “**Clearing Agency Rules**” mean National Instrument 24-102 – *Clearing Agency Requirements* (**NI 24-102**) in whole; and
- d) the “**Local Trade Reporting Rules**” means each of the following:
 - (i) Part 3, Data Reporting of Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (**OSC Rule 91-507**), and the power to grant exemption orders set out in Section 42 of OSC Rule 91-507;
 - (ii) Part 3, Data Reporting of Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (**MSC Rule 91-507**), and the power to grant exemption orders set out in Section 42 of MSC Rule 91-507; 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 (**MI 96-101**), and the power to grant exemption orders set out in Section 43 of MI 96-101.