



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

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**IN THE MATTER OF AN APPLICATION FOR HEARING AND REVIEW OF A  
DIRECTOR'S DECISION**

**-and-**

**IN THE MATTER OF  
3iQ CORP. and THE BITCOIN FUND**

File No. 2019-7

**MOTION  
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

**A. ORDER SOUGHT**

The Moving Party, Staff ("**Staff**") of the Ontario Securities Commission (the "**Commission**"), request with notice, that the Commission make the following orders:

1. An Order, if necessary, permitting Staff to file the decision of the Division of Trading and Markets of the United States Securities and Exchange Commission ("**SEC**") dated October 9, 2019, Release No. 34-87267 (the "**SEC Decision**") on the application for a proposed rule change relating to the listing and trading of shares of the Bitwise Bitcoin ETF Trust ("**Bitwise ETF**");
2. If necessary, an Order permitting Staff to reopen its case for the purpose of filing the fresh evidence of the SEC Decision referred to in paragraph 1; and
3. Such further and other relief as to this Commission may seem just.

**B. GROUNDS**

The grounds for the motion are:

4. At the hearing and review of this matter, 3iQ Corp. and The Bitcoin Fund (collectively, the “**Applicants**”) relied on a presentation<sup>1</sup> (“**Bitwise Presentation**”) and paper<sup>2</sup> (“**Bitwise Paper**”) filed in support of the application before the SEC relating to the Bitwise ETF;
5. The Applicants argued that the Bitwise Presentation and Bitwise Paper should be accorded significant weight by the Panel because these documents were submitted to the SEC as part of a process to obtain approval for the Bitwise ETF;
6. On October 9, 2019, the SEC released the SEC Decision;
7. In the SEC Decision, the SEC commented on and/or made determinations in relation to a number of conclusions contained in the Bitwise Presentation and the Bitwise Paper that are being relied on by the Applicants in this matter;
8. The SEC Decision is relevant to the issues and matter before the Panel;
9. The Panel has not yet rendered its decision on the matter before it;
10. The Panel should have the benefit of reviewing the SEC’s analysis of the conclusions contained in the Bitwise Presentation and the Bitwise Paper before rendering its decision in this matter;
11. The SEC Decision was not available to Staff in July 2019 when Staff closed its case; and
12. Such further and other grounds as counsel may advise and this Commission may permit.

**C. EVIDENCE:**

The Moving Party intends to rely on the following evidence for the motion:

13. The SEC Decision;
14. Documents already filed or in the record including:
  - a. Hearing Exhibit 2: Application Record, Tab 2 – the affidavit of Shaun Cumby sworn April 12, 2019;
  - b. Hearing Exhibit 6: Reply Application, Tab 1 – the affidavit of Shaun Cumby sworn May 29, 2019;

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<sup>1</sup> Hearing Exhibit 2: Application Record, Tab 2, Exhibit “AA”.

<sup>2</sup> Hearing Exhibit 6: Reply Application, Tab 1, Exhibit J.

- c. Transcripts of the hearing on June 6, 2019, June 7, 2019 and July 24, 2019; and
  - d. Responding Memorandum of Fact and Law of the Applicants dated July 8, 2019;  
and
15. Such further and other evidence as counsel may provide and this Commission may permit.

**DATED** at Toronto this 18<sup>th</sup> day of October, 2019

**Ontario Securities Commission**

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*Staff of the Ontario Securities Commission*