



THE MANITOBA  
SECURITIES  
COMMISSION

THE SECURITIES ACT                    )  
  )  
MSC Rule 91-507                         )

Order No. 7558


June 18, 2021

**CO-ORDINATED REVIEW**

**DETERMINATION**

**WEALTHSIMPLE DIGITAL ASSETS INC.**

The Manitoba Securities Commission makes the same determination on the application as the Principal Jurisdiction, a copy of which is attached, and opts in on the attached Decision Document.

  
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**Director**

June 18, 2021

**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  
Wealthsimple Digital Assets Inc.  
(the Filer)**

**Decision**

**Background**

As set out in CSA Staff Notice 21-327 *Guidance on the Application of Securities Legislation to Entities Facilitating the Trading of Crypto Assets (CSA SN 21-327)*, if crypto assets that are securities and/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 an interim, time-limited registration framework that would allow crypto asset platforms to operate within a regulated environment, with regulatory requirements tailored to the crypto asset platform's operations. The overall goal of the regulatory framework is to ensure there is a balance between the need to be flexible and facilitate innovation in the Canadian capital markets, while upholding the regulatory mandate of promoting investor protection and fair and efficient capital markets.

The Filer is currently registered in all provinces. The Filer previously applied for and received exemptive relief in decisions dated August 7, 2020 (the **Prior Decisions**) on terms substantially similar to this Decision. Under the terms of the Prior Decisions, the Filer operates, on an interim

basis, a platform that permits clients resident in Canada to enter into Crypto Contracts to purchase, hold and sell Bitcoin and Ether through the Filer. The Filer wishes to ultimately carry on this activity through its affiliated entity, which is registered as an investment dealer and a member of the Investment Industry Regulatory Organization of Canada (**IIROC**). While the Filer is engaged in discussions with IIROC on a regulatory approach for its affiliated entity to carry on this activity, the Filer has commenced operations.

The Filer has submitted an application to expand the types of crypto assets that clients may purchase, hold and sell through the Filer, to amend the annual deposit limit, and to change its business model to permit clients to transfer into their account with the Filer, crypto assets they have purchased outside the Filer's platform and withdraw from their account with the Filer, crypto assets they have purchased pursuant to their Crypto Contracts with the Filer. This 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 securities legislation of the Jurisdiction (the **Legislation**) exempting the Filer from:

- a) the prospectus requirements under the Legislation in respect of the Filer entering into Crypto Contracts with clients to purchase, hold and sell Crypto Assets (as defined below) (the **Prospectus Relief**); and
- b) the requirement in subsection 12.10(2) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) to deliver annual audited financial statements to the regulator and the requirement in section 13.3 of NI 31-103 to take reasonable steps to ensure that, before it makes a recommendation to or accepts instructions from a client to buy or sell a security, the purchase or sale is suitable for the client (collectively, the **Registrant Obligations Relief**).

The securities regulatory authority or regulator in the Jurisdiction and each of the other jurisdictions referred to in **Appendix A** (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 (as defined in Appendix A) (the **Trade Reporting Relief**, and together with the Prospectus Relief and Registrant Obligations Relief, the **Requested Relief**).

The Filer has applied for the revocation of the exemptive relief in a decision dated August 7, 2020 (the **Prior CSA Decision**) effective as of the date of this Decision (the **Repeal and Replacement Relief Sought**).

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

- a) the Ontario Securities Commission is the principal regulator for this Application (the **Principal Regulator**),
- b) in respect of the Prospectus Relief and Registrant Obligations 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 **Non-Principal Jurisdictions**, and, together with the Jurisdiction, the **Applicable Jurisdictions**), 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**

For the purposes of this Decision, “Specified Crypto Asset” means the crypto assets, digital or virtual currencies, and digital or virtual tokens listed in Appendix B to this Decision.

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this Decision, unless otherwise defined.

### **Representations**

This decision (the **Decision**) is based on the following facts represented by the Filer:

#### *The Filer*

1. The Filer is a corporation incorporated under the federal laws of Canada with its principal office in Toronto, Ontario.
2. The Filer is a wholly owned subsidiary of Wealthsimple Financial Corp. (**WFC**), a holding company that owns 100% of the issued and outstanding securities of several operating companies that are registered under applicable securities legislation in each of the provinces and territories of Canada, including Wealthsimple Inc., a registered adviser in the category of portfolio manager, and Canadian ShareOwner Investments Inc. (**ShareOwner**), a registered dealer in the category of investment dealer and member of IIROC.
3. The Filer does not have any securities listed or quoted on an exchange or marketplace in any jurisdiction inside or outside of Canada. However, a majority of the voting securities of WFC are controlled by subsidiaries and entities affiliated with Power Corporation. Power Corporation is a reporting issuer under the legislation of the Applicable Jurisdictions and its securities are listed for trading on the Toronto Stock Exchange.

4. The Filer is or will be registered as a dealer in the category of restricted dealer with the Applicable Jurisdictions. In Québec, the Filer has received exemptions from certain requirements on similar terms as the Prior CSA Decision (the **Prior Québec Decision**). The Filer has applied for the revocation of the Prior Québec Decision effective as of the date of this Decision.
5. The Filer's books and records, financial controls and compliance systems (including its policies and procedures) are designed to closely resemble in all material respects, except as necessary to address operational differences, those in place today at ShareOwner. The ultimate designated person (**UDP**) and chief compliance officer (**CCO**) of the Filer are the same individuals who are also the UDP and CCO of ShareOwner.
6. The Filer's personnel consists, and will consist, of software engineers, compliance professionals and finance professionals who each have deep experience operating in a regulated financial services environment and expertise in blockchain technology. All of the Filer's personnel have passed and new personnel will have passed criminal records and credit checks. The Filer does not have any dealing representatives, but may add dealing representatives in the future after it has transitioned to ShareOwner.
7. Except as set out in representation 8 below, neither the Filer nor ShareOwner is in default of securities legislation of any of the Applicable Jurisdictions.
8. Between August 7, 2020 and the date of this Decision, the Filer permitted a number of clients to exceed the fiat deposit limit of \$30,000 prescribed by condition XIX of the Prior CSA Decision and condition xviii of the Prior Québec Decision. The Filer has stopped allowing additional clients to exceed the fiat deposit limit of the Prior CSA Decision. Where in some cases, clients were able to exceed the fiat deposit limit due to systems failures, the Filer has implemented additional controls to prevent such occurrences. The Filer has made changes to its practices and systems that will prevent clients from exceeding the investor limits set out in the terms and conditions of this Decision.

#### *Wealthsimple Crypto*

9. The Filer operates under the business name of "Wealthsimple Crypto". The Filer was established to operate, on an interim basis, a proprietary and fully automated internet-based platform (the **Platform**) that enables clients to facilitate the buying, selling, holding, deposit and withdrawal of crypto assets such as bitcoin, ether, and anything commonly considered a crypto asset, digital or virtual currency, or digital or virtual token that are not themselves securities or derivatives (the **Crypto Assets**) through the Filer.
10. The Filer's role under Crypto Contracts is to buy or sell Crypto Assets and to manage the custody of all purchased Crypto Assets.
11. The Filer's trading of Crypto Contracts is consistent with activities described in CSA SN 21-327 and constitutes the trading of securities and/or derivatives.

12. The Filer and ShareOwner would like the Platform to be operated by ShareOwner. The Filer and ShareOwner are working with IIROC on a regulatory approach to transition the Platform to ShareOwner in the future. The Filer and ShareOwner will continue to work actively and diligently with IIROC to transition the operation of the Platform from the Filer to ShareOwner.
13. The Filer does not and will not hold any proprietary positions in Crypto Assets for itself; it will not take a long or short position in a Crypto Asset with any party, including clients.
14. The Filer does not have any authority to act on a discretionary basis on behalf of clients and will not manage any discretionary accounts.
15. The Filer is not a member firm of the Canadian Investor Protection Fund (**CIPF**) and the Crypto Assets custodied do not qualify for CIPF coverage. The Risk Statement (defined below) includes disclosure that there is no CIPF coverage for the Crypto Assets and clients must acknowledge that they have received, read and understood the Risk Statement before opening an account with the Filer.
16. The preparation of audited financial statements for a registered dealer in Canada that trades Crypto Contracts and holds Crypto Assets in trust at a third-party custodian is novel. In consultation with its external auditors and external legal counsel, the Filer has worked diligently, for a sustained period of time, to establish a suitable framework for preparing audited financial statements. The Filer anticipates that it will be able to obtain audited financial statements for the Filer's 2021 financial year end.
17. During the period of this relief:
  - a) the Filer will work closely with its auditors to be able to file annual audited financial statements in accordance with subsection 12.10(2) of NI 31-103, and
  - b) the financial statements of the Filer will be consolidated with the annual audited financial statements of its parent, WFC, and until such time as the Filer can deliver annual audited financial statements, the Filer will file both annual unaudited financial statements and the annual audited financial statements of WFC with the Principal Regulator.

*Crypto Assets Made Available through the Platform*

18. The Filer has established and applies policies and procedures to review Crypto Assets and to determine whether to allow clients on its Platform to enter into Crypto Contracts to buy and sell the Crypto Asset on its Platform. Such review includes, but is not limited to, publicly-available information concerning:
  - a) The creation, governance, usage and design of the Crypto Asset, including the source code, security and roadmap for growth in the developer community and, if applicable, the background of the developer(s) that created the Crypto Asset;

- b) The supply, demand, maturity, utility and liquidity of the Crypto Asset;
  - c) 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
  - d) 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.
19. The Filer only offers and only allows clients to enter into Crypto Contracts to buy and sell Crypto Assets that are not each themselves a security and/or a derivative.
20. The Filer does not allow clients to enter into a Crypto Contract to buy and sell Crypto Assets unless the Filer has taken steps to
- a) assess the relevant aspects of the Crypto Asset, including the information specified in paragraph 18, to determine whether it is appropriate for its clients,
  - b) approve the Crypto Asset, and Crypto Contracts to buy and sell such Crypto Asset, to be made available to clients, and
  - c) monitor the Crypto Asset for significant changes and review its approval under (b) where a significant change occurs.
21. 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 persons.
22. The Filer has established and applies policies and procedures to determine whether a Crypto Asset available to be bought and sold through a Crypto Contract is a security and/or derivative and is being offered in compliance with securities and derivatives laws, which include but are not limited to:
- a) 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 derivative; and
  - b) If the Filer determines it to be necessary, obtaining legal advice as to whether the Crypto Asset is a security and/or derivative under securities legislation of the Applicable Jurisdictions.
23. The Filer monitors ongoing developments related to Crypto Assets available on its Platform

that may cause a Crypto Asset's legal status or the assessment conducted by the Filer described in paragraphs 18 and 22 above to change.

24. The Filer acknowledges that any determination made by the Filer as set out in paragraphs 18 to 22 of this Decision does not prejudice the ability of any 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 and sell is a security and/or derivative.
25. The Filer has established and applies policies and procedures to promptly stop the trading of any Crypto Asset available on its Platform and to allow clients to liquidate their positions in Crypto Contracts with underlying Crypto Assets that the Filer ceases to make available on its Platform.

#### *Account Opening*

26. The Platform is available to any individual who is resident in Canada, who has reached the age of majority in the jurisdiction in which they are resident, and who has the legal capacity to open a securities brokerage account.
27. Clients of the Filer open a Wealthsimple Crypto account using the Wealthsimple Trade mobile app (the **App**) or website, which is owned by Wealthsimple Technologies Inc., a wholly-owned subsidiary of WFC. Clients use their Wealthsimple Crypto accounts to trade in Crypto Contracts.
28. Clients also use the App or website to open accounts with ShareOwner. Clients' cash is held in these accounts with ShareOwner. ShareOwner does not take orders from clients to buy or sell Crypto Assets. ShareOwner's role is limited to processing debits and credits into and out of a client's cash brokerage account, based on instructions received from a client or from the Filer acting with the client's authorization. Clients' cash is only sent from their account with ShareOwner to the Filer and from the Filer to their account with ShareOwner, unless the client wishes to withdraw their cash from ShareOwner.
29. The Filer complies with the applicable "know your client" account opening requirements under applicable legislation and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and its regulations.
30. In order for a prospective client to open and operate a Wealthsimple Crypto account, the Filer determines, prior to opening the account, whether it would be appropriate for the prospective client to use the Platform to enter into a Crypto Contract in order to buy and sell Crypto Assets.
31. As part of the account opening process:
  - a) the Filer collects know-your-client information to verify the identity of the client;
  - b) the Filer will provide a prospective client with a separate statement of risks (the **Risk**



**Statement)** that clearly explains the following in plain language:

- (i) the Crypto Contracts;
  - (ii) the risks associated with the Crypto Contracts;
  - (iii) a prominent statement that no securities regulatory authority has expressed an opinion about the Crypto Contracts or any of the Crypto Assets made available through the Platform, including an opinion that the Crypto Assets are not themselves securities and/or derivatives;
  - (iv) the due diligence performed by the Filer before making a Crypto Asset available through the Platform, including the due diligence taken by the Filer to assess whether the Crypto Asset is a security and/or derivative under the securities legislation of each of the jurisdictions of Canada and the securities and derivatives laws of the foreign 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 Platform, with instructions as to where on the Platform the client may obtain the descriptions (each, a **Crypto Asset Statement**);
  - (vi) the Filer's policies for halting, suspending and withdrawing a Crypto Asset from trading on the Platform, 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, the risks and benefits to the client of the Crypto Assets being held in that manner,
  - (viii) the manner in which the Crypto Assets are accessible by the Filer, and the risks and benefits to the client arising from the Filer having access to the Crypto Assets in that manner;
  - (ix) the Filer is not a member of the Canadian Investor Protection Fund (**CIPF**) and the Crypto Assets held by the Filer (directly or indirectly through third parties) will not qualify for CIPF protection; and
  - (x) a statement that the statutory rights in section 130.1 of the *Securities Act* (Ontario) (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.
32. In order for a prospective client to open and operate an account with the Filer, the Filer will obtain an electronic acknowledgement from the prospective client confirming that the prospective client has received, read and understood the Risk Statement. Such acknowledgement will be prominent and separate from other acknowledgements provided by the prospective client as part of the account opening process.
33. A copy of the Risk Statement acknowledged by a client will be made available to the client in the same place as the client's other statements on the Platform.

34. The Filer has policies and procedures for updating the Risk Statement and each Crypto Asset Statement to reflect any material changes to the disclosure or include any material risks 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, existing clients of the Filer 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 will be notified through in-App and website disclosures, with links provided to the updated Crypto Asset Statement.
35. For clients with pre-existing accounts with the Filer at the time of this Decision, the Filer will deliver to the client a revised Risk Statement from the version the client acknowledged having received, read and understood under the Prior Decisions and will require the client to provide electronic acknowledgement of having received, read and understood the revised Risk Statement at the earlier of (i) before placing their next trade or deposit of Crypto Assets and (ii) the next time they log in to their account with the Filer. The Risk Statement must be prominent and separate from other disclosures given to the client at that time, and the acknowledgement must be separate from other acknowledgements by the client at that time.
36. Before a client enters an order to buy a Crypto Asset, the Filer will provide instructions for the client to read the Crypto Asset Statement for the Crypto Asset, which will include a link to the Crypto Asset Statement on the Filer's website or App.
37. Each Crypto Asset Statement will include:
  - a) a prominent statement that no securities regulatory authority in Canada has expressed an opinion about the Crypto Contracts or any of the Crypto Assets made available through the Platform, including an opinion that the Crypto Assets are not themselves securities and/or derivatives,
  - b) a description of the Crypto Asset, including the background of the team that first created the Crypto Asset, if applicable,
  - c) a description of the due diligence performed by the Filer with respect to the Crypto Asset,
  - d) any risks specific to the Crypto Asset,
  - e) 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 Platform,
  - f) 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

- g) the date on which the information was last updated.
38. The Filer also prepares and makes available to its clients, on an ongoing basis and in response to emerging issues in Crypto Assets, educational materials and other informational updates about trading on the Platform and the ongoing development of Crypto Assets and Crypto Asset trading markets. To do so, the Filer builds upon the existing communication channels and techniques used by affiliates in the WFC group of companies.

#### *Platform Operations*

39. All Crypto Contracts entered into by clients to buy and sell Crypto Assets are placed with the Filer through the App or website. Clients are able to submit market and limit buy and sell orders, either in units of the applicable Crypto Asset or in Canadian dollars, 24 hours a day, 7 days a week.
40. The Filer does not provide recommendations or advice to clients or conduct a trade-by-trade suitability determination for clients, but rather performs account and product assessments, taking into account a client's experience and knowledge in investing in Crypto Assets, a client's experience in using order execution only online brokerages, a client's financial assets and income, a client's risk tolerance and the Crypto Assets approved to be made available, by entering into Crypto Contracts, on the Platform.
41. The Filer will adopt policies and procedures to conduct an assessment to establish appropriate limits on the losses that a client can incur and what net realized loss limits will apply to such client. After completion of the assessment, the Filer will implement controls to monitor and apply such limits.
42. The factors mentioned in paragraph 40 are used by the Filer to evaluate whether entering into Crypto Contracts with the Filer is appropriate for a prospective client before the opening of an account. After completion of the assessments, a prospective client receives appropriate messaging about using the Platform to enter into Crypto Contracts, which, in circumstances where the Filer has evaluated that entering into Crypto Contracts with the Filer is not appropriate for the client, will include prominent messaging to the client that this is the case.
43. The Filer monitors the account after opening to identify activity inconsistent with the client's account and product assessment. If warranted, the client may receive further messaging about the Platform and the Crypto Assets, specific risk warnings and/or receive direct outreach from the Filer about their activity. The Filer will also monitor compliance with the net realized loss limits established in paragraph 41.
44. The Filer relies upon multiple crypto asset trading firms (**Liquidity Providers**) to act as sellers of Crypto Assets that may be purchased by the Filer for its clients. Liquidity Providers also buy any Crypto Assets from the Filer that a client has purchased using the Platform and wishes to sell.
45. The Filer evaluates the price obtained from its Liquidity Providers on an ongoing basis against global benchmarks to provide fair and reasonable pricing to its clients.

46. The Filer has verified that each Liquidity Provider is appropriately registered and/or licensed to trade in the Crypto Assets in their home jurisdiction, or that their activities do not require registration in their home jurisdiction, and that they are not in default of securities legislation in the Applicable Jurisdictions.
47. The Filer has verified that each Liquidity Provider has effective policies and procedures to address concerns relating to fair price, fraud and market manipulation.
48. A Crypto Contract is a bilateral contract between a client and the Filer. Accordingly, the Filer is the counterparty to each buy or sell transaction initiated by a client. For each client transaction, the Filer is also a counterparty to a corresponding Crypto Assets buy or sell transaction with a Liquidity Provider. The Filer trades as a riskless principal, in that the Filer does not take any proprietary positions when trading with clients or with a Liquidity Provider.
49. After the order has been placed by a client, the Platform obtains a price for the Crypto Asset from a Liquidity Provider, after which the Platform incorporates a 'spread' to compensate the Filer, and presents this adjusted price to the client as the price at which the Filer is willing to transact against the client.
50. If the client finds the price agreeable, the client accepts the price and agrees to the trade.
51. In a buy transaction under a Crypto Contract, this results in the client instructing the Filer to request cash from the client's account with ShareOwner in order to fund the purchase. In a sell transaction under a Crypto Contract, cash proceeds are transferred by the Filer to the client's account with ShareOwner.
52. The Filer does not and will not extend margin or otherwise offer leverage to clients.
53. The Filer confirms the transaction with the Liquidity Providers.
54. The Filer records in its books and records the particulars of each trade.
55. The Filer promptly, and no later than two days after the trade, settles transactions with the Liquidity Providers on a net basis. Where there are net purchases of Crypto Assets, the Filer arranges for the cash to be transferred to the Liquidity Providers and Crypto Assets to be sent by the Liquidity Providers to the Filer's custodian. Where there are net sales of Crypto Assets, the Filer arranges for Crypto Assets to be sent from the Filer's custodian to the Liquidity Providers in exchange for cash received by the Filer from the Liquidity Providers.
56. Clients receive electronic trade confirmations and monthly statements setting out the details of the transaction history in their account with the Filer.
57. The Filer is compensated by the spread on trades. It does not currently charge any account opening or maintenance fees, commissions, or other charges of any kind.

58. In addition to the Risk Statement, Crypto Asset Statement and ongoing education initiatives described in paragraphs 31 to 38 above, and the account and product assessments described in paragraphs 30, 40 and 42 above, and the net realized loss limits described in paragraphs 41 to 43 above, the Filer also monitors client activity, and contacts clients to discuss their trading behaviour if it indicates a lack of knowledge or understanding of Crypto Asset trading, in an effort to identify and deter behaviours that may indicate that trading a Crypto Contract is not appropriate for the client, or that additional education is required. The outcome of this engagement with a client may result, in some cases, in a decision by the Filer to close a client's account.

#### *Custody of Crypto Assets and Cash*

59. The Filer will maintain its own hot wallets to hold limited amounts of Crypto Assets that will be used to facilitate client deposit and withdrawal requests. However, the majority of Crypto Assets is and will be held with Gemini Trust Company, LLC (**Gemini**) and/or other regulated financial entities that are "qualified custodians" (as defined in section 1.1 of NI 31-103). Gemini is a licensed digital asset exchange and a New York trust company regulated by the New York State Department of Financial Services. Gemini is a "qualified custodian" and has completed a SOC 2 Type 2 examination. The Filer has conducted due diligence on Gemini, including a review of the SOC 2 Type 2 examination report, and has not identified any material concerns.
60. Gemini operates a custody account for the Filer to use for the purpose of holding clients' Crypto Assets. The Filer is not permitted to pledge, re-hypothecate or otherwise use any Crypto Assets owned by its clients in the course of its business.
61. Gemini holds all Crypto Assets in trust for clients of the Filer in an omnibus account in the name of the Filer and separate and distinct from the assets of the Filer, the Filer's affiliates, and all of Gemini's other clients.
62. Gemini 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.
63. The Filer has assessed the risks and benefits of using Gemini 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 Gemini, a U.S. custodian, to hold client assets than using a Canadian custodian.
64. A client can maintain their Crypto Contract with the Filer indefinitely.
65. Neither the Filer nor Gemini hold client cash. As set out in paragraph 28 above, each client of the Filer opens a non-registered cash brokerage account with ShareOwner for the sole purpose of holding cash that the client may use to engage in transactions on the Platform.

66. Gemini currently maintains \$200 million *in specie* coverage for digital assets, including the Crypto Assets owned by clients of the Filer, held in Gemini's cold storage system. Gemini also maintains separate commercial crime insurance coverage for any digital assets that may be temporarily custodied in its "hot wallet", including the Crypto Assets owned by clients of the Filer.
67. Clients will be permitted to transfer into their account with the Filer, Crypto Assets they purchased outside the Platform or withdraw from their account with the Filer Crypto Assets they have purchased pursuant to their Crypto Contracts with the Filer. The Filer will promptly deliver possession and/or control of the Crypto Assets purchased under a Crypto Contract to a blockchain address specified by the client, subject to first satisfying all applicable legal and regulatory requirements, including anti-money laundering requirements.
68. The Filer has expertise in and has developed anti-fraud and anti-money laundering monitoring systems, for both fiat and Crypto Assets, to reduce the likelihood of fraud, money laundering, or client error in sending or receiving Crypto Assets to incorrect wallet addresses.
69. Where the Filer holds Crypto Assets for operational purposes outside of cold storage, it holds the Crypto Assets separate and distinct from the assets of the Filer.
70. The Filer is proficient and experienced in holding Crypto Assets and has established and applied policies and procedures that manage and mitigate custodial risks, including, but not limited to, an effective system of controls and supervision to safeguard the Crypto Assets. The Filer also maintains appropriate policies and procedures related to IT security, cyber-resilience, disaster recovery capabilities, and business continuity plans.
71. The insurance obtained by the Filer includes coverage for loss or theft of the Crypto Assets, in accordance with the terms of the Filer's insurance policy.

#### *Marketplace and Clearing Agency*

72. The Filer does not and will 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.
73. The Filer does not and will not operate a "clearing agency" or a "clearing house" as the terms are defined or referred to in securities legislation. Any clearing or settlement activity conducted by the Filer is incidental to the Filer engaging in the business of a Crypto Asset dealer. 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 its 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 Prior CSA Decision is revoked and the Requested Relief is granted, and the Decision of each Coordinated Review Decision Maker under the securities legislation in its jurisdiction is that the Trade Reporting Relief is granted, provided that:

- A. Unless otherwise exempted by a further decision of the Principal Regulator, the Filer complies with all of the terms, conditions, restrictions and requirements applicable to a registered dealer under securities legislation, including the Legislation, and any other terms, conditions, restrictions or requirements imposed by a securities regulatory authority or regulator on the Filer.
- B. The Filer is registered as a restricted dealer in the Jurisdiction and the jurisdiction in which the client is resident.
- C. The Filer will work actively and diligently with IIROC to transition the operation of the Platform from the Filer to ShareOwner.
- D. The Filer, and any representatives of the Filer, will not provide recommendations or advice to any client or prospective client on the Platform.
- E. The Filer will only engage in the business of trading Crypto Contracts in relation to Crypto Assets, and performing its obligations under those contracts. The Filer will seek the appropriate approvals from the Principal Regulator and, if required under securities legislation, the regulator or securities regulatory authority of any other Applicable Jurisdiction, prior to undertaking any other activity governed by securities legislation.
- F. The Filer will 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 legislation.
- G. At all times, the Filer will hold not less than 80% of the total value of all Crypto Assets held on behalf of clients with a custodian that meets the definition of a "qualified custodian" under NI 31-103, unless the Filer has obtained the prior written approval of the Principal Regulator to hold a different percentage with a "qualified custodian".
- H. Before the Filer holds Crypto Assets with a custodian referred to in condition G, the Filer will take reasonable steps to verify that the custodian:
  - a) has appropriate insurance to cover the loss of Crypto Assets held at the custodian,

- b) has established and applies written policies and procedures that manage and mitigate the custodial risks, including, but not limited to, an effective system of controls and supervision to safeguard the Crypto Assets for which it acts as custodian,
  - c) has obtained a SOC 2 Type 2 report within the last 12 months, unless the Filer has obtained the prior written approval of the Principal Regulator to alternatively verify that the custodian has obtained a SOC 1 Type 1 or Type 2 report within the last 12 months.
- I. 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 is not permitted by that regulatory authority to hold client Crypto Assets.
- J. For the Crypto Assets held by the Filer, the Filer:
- a) Will hold the Crypto Assets for its clients separate and distinct from the assets of the Filer;
  - b) Will ensure there is appropriate insurance for the loss of Crypto Assets held by the Filer; and
  - c) Will have established and apply 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.
- K. The Filer will only use a Liquidity Provider that it has verified 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 a Liquidity Provider if (i) the Filer is made aware that the Liquidity Provider is, or (ii) a court, regulator or securities regulatory authority in any jurisdiction of Canada has determines it to be, not in compliance with securities legislation.
- L. The Filer will evaluate the price obtained from its Liquidity Providers on an ongoing basis against global benchmarks and will provide fair and reasonable prices to its clients.
- M. Before each prospective client opens an account, the Filer will deliver to the client a Risk Statement, and will require the client to provide electronic acknowledgement of having received, read and understood the Risk Statement.
- N. The disclosure in condition M will be prominent and separate from other disclosures given to the client as part of the account opening process, and the acknowledgement will



be separate from other acknowledgements by the client as part of the account opening process.

- O. For each client with a pre-existing account at the date of this Decision, the Filer will deliver to the client a revised Risk Statement and will require the client to provide electronic acknowledgement of having received, read and understood the revised Risk Statement at the earlier of (a) before placing their next trade or deposit of Crypto Assets on the Platform and (b) the next time they log in to their account with the Filer.
- P. The disclosure in condition O will be prominent and separate from other disclosures given to the client at that time, and the acknowledgement will be separate from other acknowledgements by the client at that time.
- Q. A copy of the Risk Statement acknowledged by a client will be made available to the client in the same place as the client's other statements in the App or on the website.
- R. Before a client enters into a Crypto Contract to buy a Crypto Asset, the Filer will provide instructions for the client to read the Crypto Asset Statement for the Crypto Asset, which will include a link to the Crypto Asset Statement on the Filer's website and includes the information set out in paragraph 37.
- S. The Filer will promptly update the Risk Statement and each Crypto Asset Statement to reflect any material changes to the disclosure or include any material risks that may develop with respect to the Crypto Contracts and/or Crypto Assets and,
  - a) in the event of any update to the Risk Statement, will promptly notify each existing client of the update and deliver to them a copy of the updated Risk Statement, and
  - b) in the event of any update to a Crypto Asset Statement, will promptly notify clients through in-App and website disclosures, with links provided to the updated Crypto Asset Statement.
- T. 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 delivered to the client to the Principal Regulator.
- U. For each client, the Filer will perform an appropriateness assessment as described in paragraphs 40 to 43 prior to opening an account, on an ongoing basis and at least annually.
- V. The Filer will monitor client activity, and contact clients to discuss their trading behaviour if it indicates a lack of knowledge or understanding of Crypto Asset trading, in an effort to identify and deter behaviours that may indicate that trading a Crypto Contract is not appropriate for the client, or that additional education is required.
- W. The Filer will ensure that the maximum amount of Crypto Assets, excluding Specified

Crypto Assets, that an individual client, except those individual clients resident in Alberta, British Columbia, Manitoba and Québec, may enter into Crypto Contracts to purchase and sell on the Platform (calculated on a net basis and is an amount not less than \$0) in the preceding 12 months does not exceed a net acquisition cost of \$30,000.

- X. The Filer will establish, apply and monitor limits on the losses a client can incur as set out in paragraphs 40 to 43.
- Y. In the jurisdictions where the Prospectus Relief is required, the first trade of a Crypto Contract is deemed to be a distribution under securities legislation of that jurisdiction.
- Z. The Filer will provide the Principal Regulator with at least 10 days' prior written notice of any:
  - a) change of or use of a new custodian; and
  - b) material changes to the Filer's ownership, its business operations, including its systems, or its business model.
- AA. The Filer will notify the Principal Regulator, promptly, of any material breach or failure of its or its custodian's system of controls or supervision, and what steps have been taken by the Filer to address each such breach or failure. The loss of any amount of Crypto Assets will be considered a material breach or failure.
- BB. The Filer will only trade Crypto Contracts based on Crypto Assets that are not in and of themselves securities or derivatives.
- CC. The Filer will evaluate Crypto Assets as set out in paragraphs 18 to 23.
- DD. The Filer will not trade Crypto Contracts based on crypto assets, digital or virtual currencies, and digital or virtual tokens listed in Appendix C to this Decision.
- EE. 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.

#### *Data Reporting*

- FF. The Filer will provide the following information to the Principal Regulator, and to the securities regulatory authority or regulator in each of the Non-Principal Jurisdictions with respect to clients in those jurisdictions individually, within 30 days of the end of

each March, June, September and December:

- a) aggregate reporting of activity conducted pursuant to Crypto Contracts that will include the following:
  1. number of client accounts opened each month in the quarter;
  2. number of client accounts closed each month in the quarter;
  3. number of trades in each month of the quarter;
  4. average value of the trades in each month of the quarter;
  5. number of client accounts with a net acquisition cost greater than \$30,000 of Crypto Assets at the end of each month in the quarter;
  6. number of client accounts with no trades during the quarter;
  7. number of client accounts that have not been funded at the end of each month in the quarter; and
  8. number of client accounts that hold a positive amount of Crypto Assets at the 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 on the Platform during the calendar quarter, any resulting harms and effects 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 Liquidity Provider, per Crypto Asset during the quarter.

GG. The Filer will deliver to the regulator or the securities regulatory authority in each of the Applicable Jurisdictions, in a form and format acceptable to the regulator or the securities regulatory authority, a report that includes the following anonymized account-level data for activity conducted pursuant to a Crypto Contract for each client within 30 days of the end of each March, June, September and December:

- a) unique account number and unique client identifier, as applicable;
- b) jurisdiction where the client is located;
- c) the date the account was opened;
- d) the amount of fiat held with ShareOwner at the beginning of the reporting period and at the end of the reporting period;
- e) cumulative realized gains/losses since account opening in CAD;
- f) unrealized gains/losses as of the report end date in CAD;
- g) quantity traded, deposited and withdrawn by Crypto Asset during the quarter in number of units;
- h) Crypto Asset traded by the client;
- i) quantity held of each Crypto Asset by the client as of the report end date in units;
- j) CAD equivalent aggregate value for each Crypto Asset traded by the client, calculated as the amount in (i) multiplied by the market price of the asset in (h) as

- of the report end date;
  - k) age of account in months;
  - l) the net realized loss limit imposed by the Filer on each account.
- HH. Within 7 calendar days from the end of each month, the Filer will deliver to the regulator or securities regulatory authority in each of the Applicable Jurisdictions, a report of all accounts for which the limits established pursuant to paragraph 41 were exceeded during that month.
- II. Until such time as the Filer can deliver annual audited financial statements in accordance with subsection 12.10(2) of NI 31-103, the Filer will deliver annual unaudited financial statements of the Filer and the annual audited financial statements of WFC for each financial year to the Principal Regulator as soon as they are available.
- JJ. The Filer will deliver to the Principal Regulator (i) with the quarterly reporting referred to in condition FF and GG for the quarter in which the Filer first allowed clients to deposit or withdraw Crypto Assets, its policies and procedures on the operations of its wallets (including, but not limited to, establishment of wallets, transfers into and out of the wallets, and authorizations to access the wallets) and (ii) within 30 days of the end of each March, June, September and December, either (A) blackline copies of changes made to the policies and procedures on the operations of its wallets that were previously delivered to the Principal Regulator or (B) a nil report stating no changes have been made to its policies and procedures on the operations of its wallets in the quarter.
- KK. In addition to any other reporting required by Legislation, the Filer will provide, on a timely basis, any report, data, document or information to the Principal Regulator, including any information about the Filer's custodian(s) and the Crypto Assets held by the Filer's custodian(s), 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 the Decision, in a format acceptable to the Principal Regulator.
- LL. 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 on the Platform that may be useful to advance the development of the Canadian regulatory framework for trading crypto assets.
- MM. The Filer will promptly make any changes 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 arising from the operation of the Platform.
- NN. This Decision shall expire upon the earlier of:
- a) two years from the date of this Decision; or
  - b) the date of the transition of the Platform to ShareOwner.

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

In respect of the Prospectus Relief:

*“Wendy Berman”*

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Wendy Berman  
Vice Chair  
Ontario Securities Commission

*“Tim Moseley”*

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Tim Moseley  
Vice Chair  
Ontario Securities Commission

In respect of the Requested Relief other than the Prospectus Relief:

*“Debra Foubert”*

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Debra Foubert  
Director, Compliance and Registrant Regulation  
Ontario Securities Commission

## Appendix A - Local Trade Reporting Rules

In this Decision the “Local Trade Reporting Rules” collectively means each of the following:

- a. Part 3, Data Reporting of Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (**OSC Rule 91-507**);
- b. Part 3, Data Reporting of Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (**MSC Rule 91-507**);
- c. 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**).

## **Appendix B – List of Specified Crypto Assets**

- Bitcoin
- Ether
- Bitcoin cash
- Litecoin

## **Appendix C – Prohibited Crypto Assets**

- Tether