



THE MANITOBA
SECURITIES
COMMISSION

THE SECURITIES ACT)
)
MSC Rule 91-507)

Order No. 7589

April 25, 2022

CO-ORDINATED REVIEW

DETERMINATION

BITVO 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.

Director

In the Matter of
the Securities Legislation of
Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest
Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Québec, Saskatchewan and
Yukon (**collectively, the Jurisdictions**)

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
Bitvo Inc. (**the Filer**)

Decision

Background

As set out in Joint CSA/IIROC Staff Notice 21-329 *Guidance for Crypto-Asset Trading Platforms: Compliance with Regulatory Requirements (Staff Notice 21-329)* and CSA Staff Notice 21-327 *Guidance on the Application of Securities Legislation to Entities Facilitating the Trading of Crypto Assets (Staff Notice 21-327)*, securities legislation applies to crypto asset trading platforms (CTPs) that facilitate or propose to facilitate the trading of instruments or contracts involving crypto assets, 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 regulatory framework that would allow CTPs to operate within a regulated environment, with regulatory requirements tailored to the CTP's operations. The overall goal of the regulatory framework is to ensure there is a balance between the need to be flexible and facilitate innovation in the Canadian capital markets, while upholding the regulatory mandate of promoting investor protection and fair and efficient capital markets.

The Filer operates a CTP and has applied for registration as a restricted dealer in accordance with Staff Notice 21-329 in the Jurisdictions. While registered as a restricted dealer, the Filer intends to seek membership with the Investment Industry Regulatory Organization of Canada (**IIROC**). This decision (**Decision**) has been tailored for the specific facts and circumstances of the Filer, and the securities regulatory authority or regulator in the Jurisdictions will not consider this Decision as constituting a precedent for other filers.

Relief requested

The securities regulatory authority or regulator in Alberta and Ontario (the **Dual Exemption Decision Makers**) have received an application from the Filer (the **Dual Application**) for a

decision under the securities legislation of those jurisdictions (the **Legislation**) exempting the Filer from:

- (a) the prospectus requirements of 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**);
- (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 (the **Audited Financial Statements Relief**); and,
- (c) the requirement in section 13.3 of NI 31-103 that, before it opens an account, takes investment action for a client, or makes a recommendation or exercises discretion to take investment action, to determine on a reasonable basis that the action is suitable for the client (the **Suitability Relief** and, together with the Prospectus Relief and the Audited Financial Statements Relief, the **Dual Relief**).

The securities regulatory authority or regulator in the jurisdictions referred to in Appendix A (the **Coordinated Review Decision Makers**) has received an application from the Filer (collectively, with the Dual 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**).

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

- (a) the Alberta Securities Commission is the principal regulator for this Application (the **Principal Regulator**),
- (b) the Decision in respect of the Dual Relief is the decision of the Principal Regulator and the decision evidences the decision of the securities regulatory authority or regulator in Ontario,
- (c) in respect of the Dual 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, and
- (d) the Decision in respect of the Trade Reporting Relief is the decision of each Coordinated Review Decision Maker.

Interpretation

For the purposes of 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 is based on the following facts represented by the Filer:

The Filer

1. The Filer is a corporation incorporated under the laws of the Province of Alberta with its principal and head office located in Calgary, Alberta.
2. The Filer operates under the business name of **Bitvo**.
3. The Filer is a wholly-owned subsidiary of Pateno Payments Inc. (**Pateno**), a payment services provider that provides payment processing services to the Filer, CTPs domiciled in Canada and other online businesses in various industry sectors. The Filer is also an affiliate of Digital Commerce Bank, a Schedule I Canadian chartered bank with its head office in Calgary, Alberta.
4. The Filer and Pateno do not have any securities listed or quoted on an exchange or marketplace in any jurisdiction inside or outside of Canada.
5. The Filer's personnel consist of financial professionals, software engineers, compliance professionals and client support representatives who each have experience operating in a regulated environment as a money services business (**MSB**) and expertise in blockchain technology. All of the Filer's personnel have passed, and new personnel will have passed, criminal records checks.
6. The Filer is not in default of securities legislation of any of the Jurisdictions, except in respect of the Filer's trading of Crypto Contracts prior to the date of this Decision.

Bitvo Platform

7. The Filer operates a proprietary and fully automated internet-based platform for the trading of crypto assets in Canada (the **Bitvo Platform**) that enables clients to buy, sell, hold, deposit and withdraw 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.
8. The Filer's role under the Crypto Contract is to buy or sell Crypto Assets and to provide custodial services for all Crypto Assets held in accounts on the Bitvo Platform.
9. The Filer is registered as an MSB under regulations made under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada)* (**Canadian AML/ATF Law**).
10. To use the Bitvo Platform, each client must open an account (a **Client Account**) using the Filer's website or mobile application. Client Accounts are governed by a user agreement (the **User Agreement**) that is accepted by clients at the time of account opening. The User Agreement governs all activities in Client Accounts, including with respect to all Crypto Assets purchased on, or transferred to, the Bitvo Platform (**Client Assets**). While clients are entitled to transfer Client Assets out of their Client Accounts immediately after purchase, many clients choose to leave their Client Assets in their Client Accounts.
11. Under the User Agreement, the Filer maintains certain controls over Client Accounts to ensure compliance with applicable law and provide secure custody of Client Assets.

12. The Filer's trading of Crypto Contracts is consistent with activities described in Staff Notice 21-327 and constitutes the trading of securities and/or derivatives.
13. The Filer does not have any authority to act on a discretionary basis on behalf of clients and will not offer or provide discretionary investment management services relating to Crypto Assets.
14. The Filer is not a member firm of the Canadian Investor Protection Fund (**CIPF**) and the Crypto Assets in the Filer's custody on the Bitvo Platform do not qualify for CIPF coverage. The Risk Statement (as 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 a Client Account.
15. The Filer has unaudited financial statements and is working with the auditor to prepare audited unconsolidated financial statements. The Filer anticipates that it will be able to obtain audited financial statements for the Filer's 2022 financial year end.

OTC Trading

16. In addition to the Bitvo Platform, the Filer operates an over-the-counter (**OTC**) trading desk for orders of a minimum size of C\$25,000. The OTC trading desk allows clients to purchase or sell Crypto Assets from or to the Filer. The Filer immediately delivers, as described in Staff Notice 21-327, any purchased Crypto Assets to the purchaser at a blockchain wallet address specified by the purchaser which is not under the ownership, possession or control of the Filer.

Know-Your-Product (KYP) Policy

17. The Filer has established and applies policies and procedures to review Crypto Assets and to determine whether to allow clients on the Bitvo Platform to enter into Crypto Contracts to buy and sell the Crypto Assets on the Bitvo Platform (**KYP Policy**). 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.
18. 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 pursuant to the KYP Policy and as described in representation 17 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) if a significant change occurs.
19. 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.
20. As set out in the KYP Policy, the Filer determines 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 in Canada, other regulators of the International Organization of Securities Commissions 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 any of the Jurisdictions.
21. The Filer monitors ongoing developments related to Crypto Assets available on the Bitvo Platform that may cause a Crypto Asset's status as a security and/or derivative or the assessment conducted by the Filer pursuant to its KYP Policy and as described in representations 17 and 20 above to change.
22. The Filer acknowledges that any determination made by the Filer does not prejudice the ability of any of the regulators or securities regulatory authorities of any of the Jurisdictions to determine that a Crypto Asset that a client may enter into a Crypto Contract to buy and sell that Crypto Asset is a security and/or derivative.
23. As set out in the KYP Policy, the Filer applies policies and procedures to promptly stop the trading of any Crypto Asset available on the Bitvo Platform and to allow clients to liquidate their positions in Crypto Contracts with underlying Crypto Assets that the Filer ceases to make available on the Bitvo Platform.

KYC and Account Appropriateness Assessment

24. The Filer has adopted eligibility criteria for its clients. All clients on the Bitvo Platform must: (a) successfully complete Bitvo's know-your-client (**KYC**) process which satisfies the identity verification requirements applicable to reporting entities under Canadian AML/ATF Law; and (b) hold an account with a Canadian financial institution. Each client

who is an individual, and each individual who is authorized to give instructions for a client that is a legal entity, must: (c) be a Canadian citizen or permanent resident; and (d) be 19 years of age or older.

25. The Filer does not provide recommendations or advice to clients or conduct a trade-by-trade suitability determination for clients, but rather performs product assessments pursuant to the KYP Policy and account assessments taking into account the following factors (the **Account Appropriateness Factors**):
 - (a) the client's experience and knowledge in investing in Crypto Assets;
 - (b) the client's financial assets and income;
 - (c) the client's risk tolerance; and
 - (d) the Crypto Assets approved to be made available to a client by entering into Crypto Contracts on the Bitvo Platform.
26. The Filer will apply policies and procedures to conduct an assessment to establish appropriate limits on the losses that a client that is not a permitted client (as defined in NI 31-103) 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 such limits.
27. The Account Appropriateness Factors 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 a Client Account.
28. After completion of the account appropriateness assessment, a prospective client receives appropriate messaging about using the Bitvo 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 and that the client will not be permitted to open an account with the Filer.
29. Additionally, the Filer monitors and will continue to monitor Client Accounts after opening to identify activity inconsistent with the client's account and Crypto Asset assessment. If warranted, the client may receive further messaging about the Bitvo Platform and the Crypto Assets, specific risk warnings and/or receive direct outreach from the Filer about their activity. The Filer will monitor compliance with the loss limits established in representation 26. If warranted, the client will receive messaging when their account is approaching its loss limit and receive instructions on how to implement a stop loss order to prevent further losses.
30. As part of the account opening process:
 - (a) the Filer collects the KYC information specified in representation 24 from the prospective client;

- (b) the Filer provides a prospective client with a statement of risks (the **Risk Statement**) that clearly explains the following in plain language:
- (i) the Crypto Contracts;
 - (ii) risks associated with the Crypto Contracts;
 - (iii) prominently, a statement that no securities regulatory authority in Canada has expressed an opinion about any of the Crypto Contracts or Crypto Assets made available through the Bitvo Platform, including any opinion that the Crypto Assets are not securities and/or derivatives;
 - (iv) the due diligence performed by the Filer before making a Crypto Asset available through the Bitvo Platform, including the due diligence performed 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 Bitvo Platform, with instructions as to where on the Bitvo 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 Bitvo 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 and 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) that the Filer is not a member of CIPF and the Crypto Assets held by the Filer (directly or indirectly through third parties) will not qualify for CIPF protection;
 - (x) a statement that the statutory rights in s. 204(1) of the *Securities Act* (Alberta) (the **Act**), and if applicable, similar statutory rights under securities legislation of the other Jurisdictions, do not apply in respect of the Risk Statement or a Crypto Asset Statement to the extent a Crypto Contract is distributed under the Prospectus Relief in this Decision; and

- (xi) the date on which the information was last updated.
31. 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.
 32. 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 promptly notified through website and mobile application disclosures, with links provided to the updated Crypto Asset Statement.
 33. For clients with pre-existing Client Accounts with the Filer at the time of this Decision, the Filer will:
 - (a) conduct the account appropriateness assessment and establish the appropriate loss limit for the client as set out in representations 25 to 28 above, and
 - (b) deliver to the client the Risk Statement and will require the client to provide electronic acknowledgement of having received, read and understood the 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 Client Account. 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.
 34. 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 Bitvo Platform.
 35. Before a client enters 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 or mobile application.
 36. 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 Bitvo 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 developer(s) that 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 Bitvo Platform;
- (f) a statement that the statutory rights in s. 204(1) of the Act, and if applicable, similar statutory rights under securities legislation of the other 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.

Operation of the Bitvo Platform

37. Trading pairs available on the Bitvo Platform include Crypto Asset-for-fiat and Crypto Asset-for-Crypto Asset.
38. The Bitvo Platform operates 24 hours a day, seven days a week.
39. The Filer does not, and will not, offer margin or other forms of leverage to clients in connection with trading of Crypto Assets on the Bitvo Platform and will not offer derivatives based on Crypto Assets to clients, other than Crypto Contracts.
40. 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.
41. The Filer relies upon multiple CTPs (**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 Bitvo Platform and wishes to sell.
42. A Crypto Contract is a bilateral contract between a client and the Filer. Accordingly, the Filer is the counterparty to all trades entered by clients on the Bitvo Platform. For each client transaction, the Filer will also be a counterparty on a corresponding Crypto Asset buy or sell transaction with a Liquidity Provider.
43. 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.
44. 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 any of the Jurisdictions.

45. The Filer has verified that each Liquidity Provider has effective policies and procedures to address concerns relating to fair price, fraud and market manipulation.
46. The Filer does not charge fees for depositing Crypto Assets and fiat currency to the Bitvo Platform. The Filer charges 1% for withdrawals and earns a spread, as discussed below, on trades.
47. All fees earned by the Filer are clearly disclosed on the Bitvo Platform.
48. The Filer obtains buy and sell prices for Crypto Assets from its Liquidity Providers, after which the Filer incorporates a "spread" to compensate the Filer, and presents these adjusted prices as open buy and sell orders on the Bitvo Platform (**Bitvo Offers**). Bitvo Offers are automatically generated using a simple algorithm operated by the Filer based on prices available from the Filer's Liquidity Providers.
49. The only orders available for clients to trade against on the Bitvo Platform are Bitvo Offers. The Filer will disclose to clients that all buy and sell orders on the Bitvo Platform are the Filer's orders.
50. Clients can enter orders to the Bitvo Platform in two ways: (i) the Buy & Sell Menu allows a client to enter a market order which specifies the desired trading pair and quantity; (ii) Advanced Trading allows a client to enter more advanced order types, including a limit order or market order.
51. When a client enters a market order using the Buy & Sell Menu or Advanced Trading, the Filer presents an average price calculated based on available Bitvo Offers required to fill the client order and the prices of such Bitvo Offers. If the client finds the price agreeable, the client will then agree to the entry of an order to the Bitvo Platform to execute against the available Bitvo Offers.
52. When a client enters a limit order using Advanced Trading, the limit order is partially or completely filled if there is one or more Bitvo Offers at or better than the price of the limit order. If there are no Bitvo Offers at or better than the price of the limit order, the limit order remains open in the Client Account until it is modified or cancelled by the client or filled by one or more Bitvo Offers entered subsequently. If a limit order is partially filled, the rest of the order remains open in the Client Account. Open limit orders entered by clients are neither displayed on the Bitvo Platform nor are they available to trade against other client orders.
53. After each trade entered into with a client, the Filer executes an offsetting trade against the applicable Liquidity Provider.
54. The Filer will be compensated by the spread on trades and a fee charged for Crypto Asset withdrawals.
55. The Filer will record in its books and records the particulars of each trade.

56. The Filer will promptly, and no later than two business days after the trade, settle transactions with the Liquidity Providers on a net basis. Where there are net purchases of Crypto Assets, the Filer will arrange for cash to be transferred to the Liquidity Provider and Crypto Assets to be sent by the Liquidity Provider to the Filer. Where there are net sales of Crypto Assets, the Filer will arrange for Crypto Assets to be sent from the Filer to the Liquidity Provider in exchange for cash received by the Filer from the Liquidity Provider.
57. Clients can fund their Client Account by transferring in fiat currency or Crypto Assets. Clients can transfer in fiat currency by Interac e-transfer, cash, debit or bank wire, with the maximum amount for each transfer type set out on the Bitvo Platform.
58. Clients are charged a withdrawal fee when transferring Crypto Assets out of their Client Account to a blockchain address specified by the client. The withdrawal fee is a flat fee for all Crypto Assets and fiat withdrawals and is disclosed on the Bitvo Platform under "Fees". The total withdrawal fee payable in respect of a withdrawal is disclosed to the client prior to confirmation of the withdrawal.
59. Prior to transferring Crypto Assets out of a Client Account, the Filer conducts secondary verification of the blockchain address and screens the blockchain address specified by the transferring client using blockchain forensics software.
60. Clients can transfer fiat currency out of their Client Accounts by e-transfer, electronic funds transfer, Bitvo Visa, prepaid debit or bank wire, subject to a withdrawal fee disclosed on the Bitvo Platform under "Fees" and incorporated by reference into the User Agreement. Part of the withdrawal fee covers fees charged by the Filer's payment processor to process the withdrawal transaction. The total withdrawal fee payable in respect of a fiat currency withdrawal is disclosed to the client prior to confirmation of the withdrawal.
61. Clients have access to a complete record of all transactions in their Client Account, including all transfers in of fiat or Crypto Assets, all purchases, sales and withdrawals, and the relevant prices, commissions and withdrawal fees charged in respect of such transactions.

Custody of Crypto Assets

62. The Filer holds Crypto Assets for the benefit of clients separate and apart from its own assets. When the Filer holds Crypto Assets for the benefit of clients with a custodial services provider, such Crypto Assets are held separate and apart from the assets of the custodial services provider. The Filer is not permitted to pledge, re-hypothecate or otherwise use any Crypto Assets owned by its clients.
63. The Filer holds at least 80% of the total value of Client Assets in a cold storage custody account (the **Custody Account**) provided by BitGo Trust Company (the **Custodian**) and the remainder in online "hot" wallets secured by software licensed from BitGo Inc., the parent company of the Custodian. The Custodian is licensed as a trust company with the South Dakota Division of Banking. The Custodian is a qualified custodian as defined in section 1.1 of NI 31-103.

64. The Custodian has completed Service Organization Controls (SOC) reports under the SOC 1 – Type 1 and SOC 1 – Type 2 standards from a leading global audit firm. The Filer has conducted due diligence on the Custodian, including reviewing a copy of the SOC 1 – Type 1 and SOC 1 – Type 2 audit reports prepared by the Custodian's auditors, and has not identified any material concerns. The Filer has also reviewed the SOC 2 – Type 2 audit report prepared by BitGo Inc.'s auditors regarding BitGo Inc.'s multi-signature wallet services system (i.e., hot wallets) offered by BitGo Inc., and has not identified any material concerns. The Custodian has advised the Filer that it relies on technology licensed from BitGo Inc., which technology was audited pursuant to the SOC 2 – Type 2 audit report prepared by BitGo Inc.'s auditors.
65. The Custodian 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 the Custodian's other clients.
66. The Custodian maintains US\$100 million of crime/specie insurance for crypto assets held in the Custodian's cold storage system. The coverage covers losses of assets held by the Custodian on behalf of its customers due to third party hacks, copying or theft of private keys, insider theft, or dishonest acts by the Custodian employees or executives and loss of keys. The Filer has assessed the Custodian's insurance policy and has determined, based on information that is publicly available and on information provided by the Custodian and considering the scope of the Custodian's business, that the amount of insurance is appropriate.
67. The Custodian 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 and to mitigate security breaches and cyber incidents.
68. The Custodian has established and applies written disaster recovery and business continuity plans.
69. The Filer has established, and will maintain and apply, policies and procedures that are reasonably designed to ensure the Custodian's records related to Crypto Assets that the Custodian holds in trust for clients of the Filer are accurate and complete.
70. The Filer has assessed the risks and benefits of using the Custodian 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 the Custodian, a U.S. custodian, to hold client assets than a Canadian custodian.
71. 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 information technology - security, cyber-resilience, disaster recovery capabilities and a business continuity plan.

72. In respect of Crypto Assets held in its hot wallets, the Filer will set aside cash that will be held in an account at a Canadian financial institution, separate from the Filer's operational accounts and the Filer's client accounts, in an amount agreed upon with its Principal Regulator. Funds from that bank account would be available to clients in the event of loss of Crypto Assets held in the Filer's hot wallet.

Marketplace and Clearing Agency

73. The Filer will not operate a "marketplace" as that term is defined in National Instrument 21-101 *Marketplace Operation* (NI 21-101) and in Ontario, subsection 1(1) of the *Securities Act* (Ontario).
74. The Filer will not operate a "clearing agency" or a "clearing house" as those 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 offering Crypto Contracts, as described in this Decision.

Decision

The Dual Exemption Decision Makers are satisfied that the Decision satisfies the test set out in the Legislation for the Dual Exemption Decision Makers 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 Dual Exemption Decision Makers under the Legislation is that the Dual Relief is granted, and the Decision of each Coordinated Review Decision Maker under the securities legislation of its jurisdiction is that the Trade Reporting Relief is granted, provided that:

- A. Unless otherwise exempted by a further decision of the Principal Regulator and, if required under securities legislation, the regulatory or securities regulatory authority of any other Jurisdiction, 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 or investment dealer in the Jurisdictions.
- C. The Filer, and any representatives of the Filer, will not provide recommendations or advice to any client or prospective client on the Bitvo Platform.
- D. The Filer will only engage in the business of trading Crypto Contracts in relation to Crypto Assets, and performing its obligations under those contracts and will not offer derivatives based on Crypto Assets to clients other than Crypto 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 Jurisdiction, prior to undertaking any other activity governed by securities legislation.

- E. The Filer will not operate a "marketplace" as the term is defined in NI 21-101 and in Ontario, in subsection 1(1) of the *Securities Act*, (Ontario) or a "clearing agency" or "clearing house" as the terms are defined or referred to in securities legislation.
- F. 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".
- G. Before the Filer holds Crypto Assets with a custodian referred to in condition F, 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; and
 - (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 or a SOC 2 Type 1 report within the last 12 months.
- H. The Filer will promptly notify the Principal Regulator if the U.S. Securities and Exchange Commission, the U.S. Commodity Futures Trading Commission, the Financial Industry Regulatory Authority, the National Futures Association or the South Dakota Division of Banking makes a determination that the Custodian is not permitted by that regulatory authority to hold Client Assets.
- I. 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 Jurisdictions, and will promptly stop using a Liquidity Provider if (a) the Filer is made aware that the Liquidity Provider is, or (b) a court, regulator or securities regulatory authority in any of the Jurisdictions has determined it to be, not in compliance with securities legislation.
- J. 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.
- K. 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 to cover the loss of Crypto Assets; and

- (c) will have established and apply written policies and procedures that manage and mitigate the custodial risk, including, but not limited to, an effective system of controls and supervision to safeguard the Crypto Assets for which it acts as custodian.
- L. 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.
- M. For each client with a pre-existing account at the date of this Decision, 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 at the earlier of (a) before placing their next trade or deposit of Crypto Assets on the Bitvo Platform and (b) the next time they log in to their account with the Filer.
- N. The Risk Statement delivered in conditions L and M to new clients and clients with pre-existing accounts on the date of this Decision 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.
- O. 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 Bitvo Platform.
- P. 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 or mobile application.
- Q. 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 electronic disclosures on the Bitvo Platform, with links provided to the updated Crypto Asset Statement.
- R. 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, and a blackline of the changes, to the Principal Regulator.
- S. For each client, the Filer will perform an appropriateness assessment as described in representations 25 to 28 prior to opening an account, on an ongoing basis and at least annually.

- T. For each client with a pre-existing account at the date of this Decision, the Filer will perform an account appropriateness assessment, as described in representations 25 to 28, the next time the client uses their account. The client will not be permitted to trade until the completion of the account appropriateness assessment and a determination that the account is appropriate.
- U. 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.
- V. The Filer will ensure that the maximum amount of Crypto Assets, excluding Specified Crypto Assets (as set out in Appendix B to this Decision), that a client, except those clients resident in Alberta, British Columbia, Manitoba and Québec, may enter into Crypto Contracts to purchase and sell on the Bitvo 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.
- W. The Filer will apply and monitor the limits on the losses a client may incur as set out in representation 26.
- X. 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.
- Y. 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.
- Z. 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 or its custodian, as the case may be, to address each such breach or failure. The loss of any amount of Crypto Assets will be considered a material breach or failure.
- AA. The Filer will evaluate Crypto Assets as set out in its KYP Policy and as described in representation 17.
- BB. The Filer will only trade Crypto Contracts based on Crypto Assets that are not in and of themselves securities or derivatives.
- CC. Except to allow clients to liquidate their positions in those Crypto Contracts or transfer the underlying Crypto Assets to a blockchain address specified by the client, the Filer will promptly stop trading Crypto Contracts if (a) the Filer determines the underlying Crypto Asset to be a security and/or derivative, (b) a court, regulator or securities regulatory authority in any Jurisdiction or the foreign jurisdiction with which the Crypto Asset has the

most significant connection determines the underlying Crypto Asset to be a security and/or derivative, or (c) the Filer is made aware or is informed that the underlying Crypto Asset is viewed by a regulator or securities regulatory authority to be a security and/or derivative.

- DD. The Filer will not trade Crypto Assets or Crypto Contracts based on Crypto Assets with a customer in any Jurisdiction, without the prior written consent of the regulator or securities regulatory authority of that Jurisdiction, where the Crypto Asset was issued by or on behalf of a person or company that is or has in the last five years been the subject of an order, judgment, decree, sanction, or administrative penalty imposed by, or has entered into a settlement agreement with, a government or government agency, administrative agency, self-regulatory organization or court in Canada or in a Specified Foreign Jurisdiction in relation to a claim based in whole or in part on fraud, theft, deceit, aiding and abetting or otherwise facilitating criminal activity, misrepresentation, violation of AML laws, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes, or allegations of similar conduct; for the purposes of this condition, the term "Specified Foreign Jurisdiction" means any of the following: Australia, Brazil, any member country of the European Union, Hong Kong, Japan, Republic of Korea, New Zealand, Singapore, Switzerland, United Kingdom of Great Britain and Northern Ireland, and United States of America.

Data reporting

- EE. The Filer will provide the following information to the Principal Regulator, and to the securities regulatory authority or regulator in each of the other Jurisdictions with respect to clients in those jurisdictions, 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:
 - i. number of Client Accounts opened each month in the quarter;
 - ii. number of Client Accounts closed each month in the quarter;
 - iii. number of trades in each month of the quarter;
 - iv. average value of the trades in each month of the quarter;
 - v. 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;
 - vi. number of Client Accounts with no trades during the quarter;
 - vii. number of Client Accounts that have not been funded at the end of each month in the quarter; and
 - viii. number of Client Accounts that hold a positive amount of Crypto Assets at 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 Bitvo 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;
- (d) the amount of Crypto Assets held in hot wallets as of the end of the quarter;
- (e) the name of the financial institution and the amount of money held at the end of the quarter in an account with the financial institution, separate from the Filer's operational accounts and Filer's client accounts, relating to the Filer's hot wallets; and
- (f) the details of the transaction volume per Liquidity Provider, per Crypto Asset during the quarter.

FF. The Filer will deliver to the regulator or the securities regulatory authority in each of the 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 by the Filer 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;
- (i) quantity held of each Crypto Asset as of the report end date in units;
- (j) CAD equivalent aggregate value for each Crypto Asset, 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; and

- (l) the loss limit established by the Filer on each account.
- GG. The Filer will deliver its 2021 annual audited financial statements in accordance with subsection 12.10(2) of NI 31-103 by June 30, 2022.
- 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 Jurisdictions, a report of all accounts for which the loss limits established pursuant to representation 26 were exceeded during that month.
- II. The Filer will deliver to the Principal Regulator 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.
- JJ. In addition to any other reporting required by the 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 this Decision, in a format acceptable to the Principal Regulator.
- KK. Upon request, the Filer will provide the Principal Regulator and the regulators or securities regulatory authorities of each of the other Jurisdictions with aggregated and/or anonymized data concerning client demographics and activity on the Bitvo Platform that may be useful to advance the development of the Canadian regulatory framework for trading crypto assets.
- LL. 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 Bitvo Platform.

Time limited relief

- MM. The Filer will, if it intends to operate the Bitvo Platform in Ontario and Québec after the expiry of this Decision, take the following steps:
 - (a) submit an application to the Principal Regulator, the Ontario Securities Commission (**OSC**) and the Autorité des marchés financiers (**AMF**) to become registered as an investment dealer no later than 12 months after the date of this Decision;
 - (b) submit an application with IIROC to become a dealer member no later than 12 months after the date of this Decision;

- (c) work actively and diligently with the Principal Regulator, the OSC, the AMF and IIROC to transition the Bitvo Platform to investment dealer registration and obtain IIROC membership.

NN. This Decision shall expire upon the date that is two years from the date of this Decision.

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:

<u>"original signed by"</u>	<u>"original signed by"</u>
Tom Cotter	Kari Horn
Commissioner	Commissioner
Alberta Securities Commission	Alberta Securities Commission

In respect of the Suitability Relief, the Audited Financial Statements Relief and the Trade Reporting Relief:

"original signed by"
Lynn Tsutsumi

Director, Market Regulation
Alberta Securities Commission

**APPENDIX A
LEGISLATION**

Trade Reporting Relief

In this Decision, "**Local Trade Reporting Rules**" 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**), and the power to grant exemption orders set out in Section 42 of 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**), and the power to grant exemption orders set out in Section 42 of MSC Rule 91-507; and
- (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**), and the power to grant exemption orders set out in Section 43 of MI 96-101.

**APPENDIX B
SPECIFIED CRYPTO ASSETS**

Bitcoin
Ether
Bitcoin Cash
Litecoin