



**Manitoba
Financial Services
Agency**

THE SECURITIES ACT

Section 20

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Order No. 7683

January 30, 2025

CO-ORDINATED REVIEW

DETERMINATION

VirgoCX 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

January 30, 2025

**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 VirgoCX Inc.
(the Filer)**

Decision

Background

As set out in Canadian Securities Administrators (**CSA**) Staff Notice 21-327 *Guidance on the Application of Securities Legislation to Entities Facilitating the Trading of Crypto Assets (Staff Notice 21-327)* and Joint CSA/Investment Industry Regulatory Organization of Canada (**IIROC**) Staff Notice 21-329 *Guidance for Crypto-Asset Trading Platforms: Compliance with Regulatory Requirements (Staff Notice 21-329)*, securities legislation applies to crypto asset trading platforms (**CTPs**) that facilitate or propose to facilitate the trading of instruments or contracts involving anything commonly considered a crypto asset, digital or virtual currency, or digital or virtual token (a **Crypto Asset**) because the user's contractual right to the Crypto Asset may itself constitute a security and/or a derivative (a **Crypto Contract**).

To foster innovation and respond to novel circumstances, the CSA has considered an interim, time-limited registration that would allow CTPs to operate within a regulated environment, with regulatory requirements tailored to the CTPs' operations. The overall goal of the regulatory environment is to ensure there is a balance between the need to be flexible and to 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 the category of restricted dealer in all provinces and territories of Canada. In connection with its registration as a restricted dealer, the Filer previously applied for and received exemptive relief in a decision dated May 30, 2024 (the **Prior Decision**) which varied and extended a decision dated May 30, 2022 (the **Original Decision**).

Under the terms and conditions of the Original Decision and the Prior Decision, the Filer has operated, and continues to operate, on an interim basis, a platform (the **Platform**) that permits clients resident in Canada to enter into Crypto Contracts to purchase, hold, sell, deposit, and withdraw Crypto Assets.

The exemptive relief granted under the Prior Decision expires on January 31, 2025, and required the Filer, by October 31, 2024, to submit an application to its Principal Regulator and the Autorité

des marchés financiers (**AMF**) to become registered as an investment dealer, and to submit an application to the Canadian Investment Regulatory Organization (**CIRO**), formerly IIROC, to become a dealer member.

The Filer has prepared and submitted to CIRO a membership application and has been working with CIRO to improve the submissions in its application.

The Filer has submitted an application to extend the relief in the Prior Decision in order to allow the Filer to complete the CIRO membership process while continuing to operate the Platform past January 31, 2025 on an interim basis as a restricted dealer.

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**) extending the Filer's time-limited exemption of the Filer from:

- (a) the prospectus requirements under the Legislation in respect of the Filer entering into Crypto Contracts with clients to purchase, hold, sell, deposit, and withdraw Crypto Assets (the **Prospectus Relief**); and
- (b) the requirement in section 13.3 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), 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**).

The securities regulatory authority or regulator in the Jurisdiction and each of the other jurisdictions referred to in Appendix A (collectively, 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 the Suitability Relief, the **Requested Relief**).

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

- (a) the Ontario Securities Commission is the principal regulator for the Application (the **Principal Regulator**);
- (b) in respect of the Prospectus Relief and the Suitability 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

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102, Canadian securities legislation or the Prior Decision 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:

1. The Filer is a corporation incorporated under the federal laws of Canada with its principal and head office in Toronto, Ontario.
2. The Filer operates under the business name of "VirgoCX".
3. The Filer is a wholly owned subsidiary of VirgoCX Global Holdings Inc. (**VGHI**).
4. The Filer and VGHI do not have any securities listed or quoted on an exchange or marketplace in any jurisdiction inside or outside of Canada.
5. The Filer is registered as a dealer in the category of restricted dealer with the Applicable Jurisdictions.
6. The Filer is registered as a money services business (**MSB**) under regulations made under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada)* (**Canadian AML/ATF Law**).
7. The Filer's personnel consist of software engineers, compliance professionals and client support representatives who have experience operating in a regulated financial services environment as an MSB and/or expertise in blockchain technology. All of the Filer's personnel have passed criminal records checks and new personnel joining the Filer after May 30, 2022 will have passed criminal records and credit checks. The Filer does not have any dealing representatives.
8. On May 30, 2022, the Filer was granted relief from certain prospectus, trade reporting and suitability requirements applicable to the Filer in connection with the operation of the Platform, subject to certain terms and conditions. The relief was varied and extended on May 30, 2024 until January 31, 2025 in the Prior Decision.
9. The Filer originally submitted its membership application to CIRO on May 30, 2023 and submitted amended membership applications to CIRO on December 19, 2023 and October 30, 2024.
10. The Filer's application dated October 30, 2024 demonstrated that the Filer has worked actively and diligently to address certain threshold issues that had been identified by CIRO staff in connection with the Filer's prior applications. However, on November 22, 2024, CIRO provided written notice to the Filer of certain deficiencies which require remediation before the application can be accepted by CIRO for review.

11. The Filer met with CIRO Staff to discuss the Filer's proposed approach for remediating the deficiencies, including revising the calculation of risk-adjusted capital in accordance with CIRO Form 1, strengthening the Filer's compliance function by engaging additional qualified personnel and enhancing the Filer's policies and procedures. The Filer has taken significant steps toward addressing these deficiencies, including by retaining experienced consultants in December 2024, hiring a new Chief Compliance Officer who commenced his role on January 6, 2025 and engaging in a search for additional qualified personnel.
12. Based on the timeframes agreed upon with the Filer's compliance consultants for completion of their work, and allowing for further review by the Filer's professional advisors prior to finalizing all materials, the Filer expects to re-submit its application to CIRO on February 14, 2025 (the **Updated CIRO Application**).
13. Following the filing of the Updated CIRO Application, the Filer will continue to work actively and diligently with CIRO to complete the CIRO membership process.
14. The Filer has provided and will continue to provide the Principal Regulator with regular and timely updates relating to the Filer's CIRO membership process.
15. This Decision is based on the same representations as were made by the Filer in the Prior Decision, which remain true and complete to the extent not modified by the representations in this Decision.

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, as applicable, satisfies the tests 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, as applicable.

The Decision of the Principal Regulator under the Legislation is that the Prior 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, as applicable, is granted, provided that and for so long as the Filer complies with the following terms and conditions:

- A. The Filer complies with all of the terms and conditions of the Prior Decision as if the Prior Decision had not expired on January 31, 2025, except as amended by this Decision.
- B. The Filer will only engage in business activities governed by securities legislation as described in the representations above. 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. The Filer will not offer derivatives based on Crypto Assets other than Crypto Contracts.
- C. The Filer continues to make best efforts to complete the CIRO membership process as soon as possible.

- D. Appendix B of the Prior Decision is replaced with Appendix B of this Decision.
- E. Conditions E and BB of the Prior Decision are replaced with the following: The Filer will only engage in the business of trading Crypto Assets, or Crypto Contracts in relation to Crypto Assets, that (a) are not securities or derivatives, or (b) are Value-Referenced Crypto Assets, provided that the Filer does not allow clients to buy or deposit, or enter into Crypto Contracts to buy or deposit, Value-Referenced Crypto Assets that do not satisfy the conditions set out in Appendix C of this Decision.
- F. In the event the Updated CIRO Application has not been submitted by February 28, 2025, the Filer will implement business restrictions as required by the Principal Regulator by no later than February 28, 2025.
- G. In the event the Updated CIRO Application is submitted by February 28, 2025 but CIRO does not accept the application, then the Filer will implement business restrictions as required by the Principal Regulator by no later than 14 days following the Filer's receipt of written notice from CIRO that the Updated CIRO Application is not accepted.
- H. This Decision may be amended by the Principal Regulator upon prior written notice to the Filer in accordance with applicable securities legislation.
- I. This Decision shall expire on the earlier of:
 - (a) 12 months from the date of this Decision, or
 - (b) the date on which the Filer is registered as an investment dealer and becomes a CIRO member.

In respect of the Suitability Relief:

Date: January 23, 2025

"Michelle Alexander"

Michelle Alexander
Manager, Trading and Markets
Ontario Securities Commission

In respect of the Prospectus Relief:

Date: January 23, 2025

"David Surat"

David Surat
Manager, Corporate Finance
Ontario Securities Commission

In respect of the Trade Reporting Relief:

Date: January 30, 2025

"Michelle Alexander"

Michelle Alexander
Manager, Trading and Markets
Ontario Securities Commission

OSC File# 2024/0742

APPENDIX A - LOCAL TRADE REPORTING RULES

In this Decision, “**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**); 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**).

Appendix B – Specified Crypto Assets

- Bitcoin
- Ether
- Bitcoin cash
- Litecoin
- A Value-Referenced Crypto Asset that complies with condition E of this Decision

Appendix C - Terms and Conditions for Trading Value-Referenced Crypto Assets with Clients

(1) The Filer establishes that all of the following conditions are met:

- (a) The Value-Referenced Crypto Asset references, on a one-for-one basis, the value of a single fiat currency (the "reference fiat currency").
- (b) The reference fiat currency is the Canadian dollar or United States dollar.
- (c) The Value-Referenced Crypto Asset entitles a Value-Referenced Crypto Asset holder who maintains an account with the issuer of the Value-Referenced Crypto Asset to a right of redemption, subject only to reasonable publicly disclosed conditions, on demand directly against the issuer of the Value-Referenced Crypto Asset or against the reserve of assets, for the reference fiat currency on a one-to-one basis, less only any fee that is publicly disclosed by the issuer of the Value-Referenced Crypto Asset, and payment of the redemption proceeds within a reasonable period as disclosed by the issuer of the Value-Referenced Crypto Asset.
- (d) The issuer of the Value-Referenced Crypto Asset maintains a reserve of assets that is:
 - (i) in the reference fiat currency and is comprised of any of the following:
 - 1. cash;
 - 2. investments that are evidence of indebtedness with a remaining term to maturity of 90 days or less and that are issued, or fully and unconditionally guaranteed as to principal and interest, by the government of Canada or the government of the United States;
 - 3. securities issued by one or more Money Market Funds licensed, regulated or authorized by a regulatory authority in Canada or the United States of America; or
 - 4. such other assets that the principal regulator of the Filer and the regulator or securities regulatory authority in each Canadian jurisdiction where clients of the Filer reside has consented to in writing;
 - (e) all of the assets that comprise the reserve of assets are:
 - (i) measured at fair value in accordance with Canadian GAAP for publicly accountable enterprises or U.S. GAAP at the end of each day;
 - (ii) held with a Qualified Custodian;
 - (iii) held in an account clearly designated for the benefit of the Value-Referenced Crypto Asset holders or in trust for the Value-Referenced Crypto Asset holders;

- (iv) held separate and apart from the assets of the issuer of the Value-Referenced Crypto Asset and its affiliates and from the reserve of assets of any other Crypto Asset, so that, to the best of the knowledge and belief of the Filer after taking steps that a reasonable person would consider appropriate, including consultation with experts such as legal counsel, no creditors of the issuer other than the Value-Referenced Crypto Asset holders in their capacity as Value-Referenced Crypto Asset holders, will have recourse to the reserve of assets, in particular in the event of insolvency; and
 - (v) not encumbered or pledged as collateral at any time; and
 - (f) the fair value of the reserve of assets is at least equal to the aggregate nominal value of all outstanding units of the Value-Referenced Crypto Asset at least once each day.
- (2) The issuer of the Value-Referenced Crypto Asset makes all of the following publicly available:
- (a) details of each type, class or series of the Value-Referenced Crypto Asset, including the date the Value-Referenced Crypto Asset was launched and key features and risks of the Value-Referenced Crypto Asset;
 - (b) the quantity of all outstanding units of the Value-Referenced Crypto Asset and their aggregate nominal value at least once each business day;
 - (c) the names and experience of the persons or companies involved in the issuance and management of the Value-Referenced Crypto Asset, including the issuer of the Value-Referenced Crypto Asset, any manager of the reserve of assets, including any individuals that make investment decisions in respect of the reserve of assets, and any custodian of the reserve of assets;
 - (d) the quantity of units of the Value-Referenced Crypto Asset held by the issuer of the Value-Referenced Crypto Asset or any of the persons or companies referred to in paragraph (c) and their nominal value at least once each business day;
 - (e) details of how a Value-Referenced Crypto Asset holder can redeem the Value-Referenced Crypto Asset, including any possible restrictions on redemptions such as the requirement for a Value-Referenced Crypto Asset holder to have an account with the issuer of the Value-Referenced Crypto Asset and any criteria to qualify to have an account;
 - (f) details of the rights of a Value-Referenced Crypto Asset holder against the issuer of the Value-Referenced Crypto Asset and the reserve of assets, including in the event of insolvency or winding up;
 - (g) all fees charged by the issuer of the Value-Referenced Crypto Asset for distributing, trading or redeeming the Value-Referenced Crypto Asset;

- (h) whether Value-Referenced Crypto Asset holders are entitled to any revenues generated by the reserve of assets;
- (i) details of any instances of any of the following:
 - (i) the issuer of the Value-Referenced Crypto Asset has suspended or halted redemptions for all Value-Referenced Crypto Asset holders;
 - (ii) the issuer of the Value-Referenced Crypto Asset has not been able to satisfy redemption rights at the price or in the time specified in its public policies;
- (j) within 45 days of the end of each month, an assurance report from a public accountant that is authorized to sign such a report under the laws of a jurisdiction of Canada or the United States of America, and that meets the professional standards of that jurisdiction, that complies with all of the following:
 - (i) provides reasonable assurance in respect of the assertion by management of the issuer of the Value-Referenced Crypto Asset that the issuer of the Value-Referenced Crypto Asset has met the requirements in paragraphs (1)(d)-(f) as at the last business day of the preceding month and at least one randomly selected day during the preceding month;
 - (ii) the randomly selected day referred to in subparagraph (i) is selected by the public accountant and disclosed in the assurance report;
 - (iii) for each day referred to in subparagraph (i), management's assertion includes all of the following:
 - 1. details of the composition of the reserve of assets;
 - 2. the fair value of the reserve of assets in subparagraph (1)(e)(i);
 - 3. the quantity of all outstanding units of the Value-Referenced Crypto Asset in paragraph (b);
 - (iv) the assurance report is prepared in accordance with the Handbook, International Standards on Assurance Engagements or attestation standards established by the American Institute of Certified Public Accountants;
- (k) starting with the first financial year ending after December 1, 2023, within 120 days of the issuer of the Value-Referenced Crypto Asset's financial year end, annual financial statements of the issuer of the Value-Referenced Crypto Asset that comply with all of the following:
 - (i) the annual financial statements include all of the following:
 - 1. a statement of comprehensive income, a statement of changes in equity and a statement of cash flows, each prepared for the most

recently completed financial year and the financial year immediately preceding the most recently completed financial year, if any;

2. a statement of financial position, signed by at least one director of the issuer of the Value-Referenced Crypto Asset, as at the end of the most recently completed financial year and the financial year immediately preceding the most recently completed financial year, if any;

3. notes to the financial statements;

(ii) the statements are prepared in accordance with one of the following accounting principles:

1. Canadian GAAP applicable to publicly accountable enterprises;
2. U.S. GAAP;

(iii) the statements are audited in accordance with one of the following auditing standards:

1. Canadian GAAS;
2. International Standards on Auditing;
3. U.S. PCAOB GAAS;

(iv) the statements are accompanied by an auditor's report that,

1. if (iii)(1) or (2) applies, expresses an unmodified opinion,
2. if (iii)(3) applies, expresses an unqualified opinion,
3. identifies the auditing standards used to conduct the audit, and
4. is prepared and signed by a public accountant that is authorized to sign such a report under the laws of a jurisdiction of Canada or the United States of America.

(3) The Crypto Asset Statement includes all of the following:

- (a) a prominent statement that no securities regulatory authority or regulator in Canada has evaluated or endorsed the Crypto Contracts or any of the Crypto Assets made available through the platform;
- (b) a prominent statement that the Value-Referenced Crypto Asset is not the same as and is riskier than a deposit in a bank or holding cash with the Filer;

- (c) a prominent statement that although Value-Referenced Crypto Assets may be commonly referred to as “stablecoins”, there is no guarantee that the Value-Referenced Crypto Asset will maintain a stable value when traded on secondary markets or that the reserve of assets will be adequate to satisfy all redemptions;
- (d) a prominent statement that, due to uncertainties in the application of bankruptcy and insolvency law, in the event of the insolvency of [Value-Referenced Crypto Asset issuer], there is a possibility that creditors of [Value-Referenced Crypto Asset issuer] would have rights to the reserve assets that could outrank a Value-Referenced Crypto Asset holder’s rights, or otherwise interfere with a Value-Referenced Crypto Asset holder’s ability to access the reserve of assets in the event of insolvency;
- (e) a description of the Value-Referenced Crypto Asset and its issuer;
- (f) a description of the due diligence performed by the Filer with respect to the Value-Referenced Crypto Asset;
- (g) a brief description of the information in section (2) and links to where the information in that section is publicly available;
- (h) a link to where on its website the issuer of the Value-Referenced Crypto Asset will disclose any event that has or is likely to have a significant effect on the value of the Value-Referenced Crypto Asset or on the reserve of assets.
- (i) a description of the circumstances where the secondary market trading value of the Value-Referenced Crypto Asset may deviate from par with the reference fiat currency and details of any instances where the secondary market trading value of the Value-Referenced Crypto Asset has materially deviated from par with the reference fiat currency during the last 12 months on the Filer’s platform;
- (j) a brief description of any risks to the client resulting from the trading of a Value-Referenced Crypto Asset or a Crypto Contract in respect of a Value-Referenced Crypto Asset that may not have been distributed in compliance with securities laws;
- (k) any other risks specific to the Value-Referenced Crypto Asset, including the risks arising from the fact that the Filer may not, and a client does not, have a direct redemption right with the issuer of the Value-Referenced Crypto Asset;
- (l) 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;
- (m) 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 the Decision;
- (n) the date on which the information was last updated.

- (4) If the Filer uses the term “stablecoin” or “stablecoins” in any information, communication, advertising or social media related to the Platform and targeted at or accessible by Canadian investors, the Filer will also include the following statement (or a link to the following statement when impractical to include):

“Although the term “stablecoin” is commonly used, there is no guarantee that the asset will maintain a stable value in relation to the value of the reference asset when traded on secondary markets or that the reserve of assets, if there is one, will be adequate to satisfy all redemptions.”
- (5) The issuer of the Value-Referenced Crypto Asset has filed an undertaking in substantially the same form as set out in Appendix B of CSA Notice 21-333 *Crypto Asset Trading Platforms: Terms and Conditions for Trading Value-Referenced Crypto Assets with Clients* (**CSA SN 21-333**) and the undertaking is posted on the CSA website.
- (6) To the extent the undertaking referred to in section (5) of this Appendix includes language that differs from sections (1) or (2) of this Appendix, the Filer complies with sections (1) and (2) of this Appendix as if they included the modified language from the undertaking.
- (7) The KYP Policy of the Filer requires the Filer to assess whether the Value-Referenced Crypto Asset or the issuer of the Value-Referenced Crypto Asset satisfies the criteria in sections (1), (2), (5) and (6) of this Appendix on an ongoing basis.
- (8) The Filer has policies and procedures to facilitate halting or suspending deposits or purchases of the Value-Referenced Crypto Asset, or Crypto Contracts in respect of the Value-Referenced Crypto Asset, as quickly as is commercially reasonable, if the Value-Referenced Crypto Asset no longer satisfies the criteria in sections (1), (2), (5) and (6) of this Appendix.
- (9) In this Appendix, terms have the same meanings set out in Appendix D of CSA SN 21-333.