

## **Headnote**

CSA Regulatory Sandbox – Application for time-limited relief from certain registrant obligations, prospectus requirement and trade reporting requirements – suitability relief to allow the Filer to distribute Crypto Contracts Rights and operate a platform that facilitates the buying, selling and holding of crypto assets – relief granted subject to certain conditions set out in the decision, including investment limits, account appropriateness and reporting requirements – relief is time-limited to allow the Filer to operate in a test environment and will expire upon the earlier of twenty-four (24) months or the date the filer transitions the platform to its IIROC affiliate– relief granted based on the particular facts and circumstances of the application with the objective of fostering capital raising by innovative businesses in Canada and liquidity for investors – decision should not be viewed as precedent for other filers in the jurisdictions of Canada.

## **Applicable Legislative Provisions**

*Securities Act*, R.S.O. 1990, c. S.5, as amended, s. 1(1), 53 & 74

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

National Instrument 21-101 *Marketplace Operation*, s. 1.1

National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, s. 12.1, 13.3

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

OSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting*, Part 3

August 7, 2020

**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, Saskatchewan, and Yukon**

**and**

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

**and**

**In the Matter of Wealhtsimple 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)*, 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 Rights 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 has made an application to the CSA Regulatory Sandbox, an initiative of the CSA to support fintech businesses seeking to offer innovative products, services and applications in Canada. It allows firms to test their products, services and applications throughout the Canadian market under a flexible process and on a time-limited basis.

The Filer wishes to operate, on an interim basis, a platform that permits clients resident in Canada to enter into Crypto Rights Contracts to purchase, hold and sell Bitcoin and Ether (together, the **Crypto Assets**) 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

wishes to commence operations and conduct beta testing. In the context of the CSA Regulatory Sandbox, the Filer filed an application to be registered in the category of restricted dealer and an application to be exempted from certain requirements under applicable securities legislation. 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) or in any other jurisdiction will not consider this Decision as constituting a precedent for other filers, whether in the Applicable Jurisdictions or in any other jurisdiction.

### **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 Rights Contracts with clients to purchase, hold and sell Crypto Assets (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**).

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 except Québec (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* 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 and non-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. Concurrent with this application, the Filer is seeking registration as a dealer in the category of restricted dealer with the Applicable Jurisdictions, except in Québec where it is seeking registration as a derivatives dealer and in a separate decision, exemptions from certain requirements applicable to a derivatives dealer as well as the qualification requirement under the *Derivatives Act* (Québec).
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 will not have any dealing representatives at the time of registration.

7. Neither the Filer nor ShareOwner is in default of securities legislation of any of the Applicable Jurisdictions.

*Wealthsimple Crypto*

8. The Filer will operate under the business name of "Wealthsimple Crypto". The Filer has been established to operate, on an interim basis, a proprietary and fully automated internet-based platform (the **Platform**) that will enable clients to enter into Crypto Rights Contracts with the Filer to buy, sell and hold the Crypto Assets through the Filer.
9. The Filer's role under Crypto Rights Contracts is to buy or sell Crypto Assets and to manage the custody of all purchased Crypto Assets with third parties.
10. The Filer's trading of Crypto Rights Contracts is consistent with activities described in CSA SN 21-327 and constitutes the trading of securities and/or derivatives.
11. The Filer and ShareOwner would like the Platform to be operated by ShareOwner. The Filer and ShareOwner have begun discussions with IIROC on a regulatory approach to transition the Platform to ShareOwner in the future. The Filer and ShareOwner will work actively and diligently with IIROC to transition the operation of the Platform from the Filer to ShareOwner.
12. The Filer wishes to commence operations by initially beta testing the Platform. Beta testing will involve inviting individuals, who have signed up to join the Wealthsimple Crypto waitlist, to open accounts and begin using the Platform. The Filer will gradually invite more individuals to use the Platform so long as the Filer continues to achieve internal operational metrics. The Filer will solicit feedback from early users to improve the Platform and transition from beta testing to normal operation.
13. The Filer 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 will not be a member firm of the Canadian Investor Protection Fund (**CIPF**) and the Crypto Assets custodied with third parties will not qualify for CIPF coverage. The Risk Statement (defined below) will include disclosure that there will be 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 Rights 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.

#### *Account Opening*

18. The Platform will be available to any individual who is resident in Canada, who has reached the age of majority, and who has the legal capacity to open a securities brokerage account.
19. Clients of the Filer will open a Wealthsimple Crypto account using the Wealthsimple Trade mobile app (the **App**), which is owned by Wealthsimple Technologies Inc., a wholly-owned subsidiary of WFC. Clients will use their Wealthsimple Crypto accounts to trade in Crypto Rights Contracts.
20. Clients will also use the App to open accounts with ShareOwner. Clients' cash will be held in these accounts with ShareOwner. ShareOwner will not take orders from clients to buy or sell Crypto Assets. ShareOwner's role will be 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 will only be 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.
21. The Filer will comply 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.
22. As part of the account opening process, the Filer will provide a prospective client with a separate statement of risks that clearly explains, in plain language, the Crypto Rights Contracts and Crypto Assets and the risks associated with the Crypto Rights Contracts and Crypto Assets, including the disclosure in Appendix B of this decision (the **Risk Statement**).
23. In accordance with section 14.2 of NI 31-103, the Filer will also deliver to a prospective client relationship disclosure information that includes a description of the Crypto Rights

Contracts, 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 at that location and in that manner, 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.

24. In order for a prospective client to open and operate a Wealthsimple Crypto account:

- a) 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; and
- b) the Filer will determine, prior to opening the account, whether it would be appropriate for the prospective client to use the Platform to enter into a Crypto Rights Contract in order to buy and sell Crypto Assets.

25. The Filer will have policies and procedures for updating the Risk Statement to reflect any material changes to the disclosure or include any material risks that may develop with respect to the Crypto Rights Contracts and Crypto Assets. 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.

26. The Filer will also prepare and make 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 will build upon the existing communication channels and techniques used by affiliates in the WFC group of companies.

### *Platform Operations*

27. All Crypto Rights Contracts entered into by clients to buy and sell Crypto Assets will be placed with the Filer through the App. Clients will be able to submit market buy and sell orders, either in units of the applicable Crypto Asset (i.e., BTC or ETH) or in Canadian dollars, 24 hours a day, 7 days a week.

28. The Platform is similar to those developed for order execution only online brokerages in that the client trades without other communication with, or advice from, the dealer or its personnel. In this regard, the Filer will not provide recommendations or advice to clients or conduct a trade-by-trade suitability determination for clients, but will rather perform account and product assessments, taking into account the investor's experience in investing in Crypto Assets, the investor's experience in using order execution only online brokerages, and the investor's risk tolerance. These factors will be used by the Filer to evaluate whether entering into a Crypto Rights Contract with the Filer is appropriate for a prospective client before the opening of an account. After completion of the assessments, a prospective client

will receive appropriate messaging about using the Platform to enter into a Crypto Rights Contract, which could include messaging to a prospective client that WDA believes that using the Platform to enter into a Crypto Rights Contract is not appropriate for them.

29. Over time, the Filer intends to continue to develop the Platform, in part based on user feedback from beta testing.
30. The Filer will rely 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 will also buy any Crypto Assets from the Filer that a client has purchased using the Platform and wishes to sell.
31. The Filer will evaluate the price obtained from its Liquidity Providers on an ongoing basis against global benchmarks to provide fair and reasonable pricing to its clients.
32. The Filer has verified or will verify 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.
33. The Filer has verified that each Liquidity Provider has effective policies and procedures to address concerns relating to fair price, fraud and market manipulation.
34. A Crypto Rights Contract is a bilateral contract between a client and the Filer. Accordingly, the Filer will be the counterparty to each buy or sell transaction initiated by a client. For each client transaction, the Filer will also be a counterparty to a corresponding Crypto Assets buy or sell transaction with a Liquidity Provider. The Filer will trade as a riskless principal, in that the Filer will not take any proprietary positions when trading with clients or with a Liquidity Provider.
35. After the order has been placed by a client, the Platform will obtain a price for the Crypto Asset from a Liquidity Provider, after which the Platform will incorporate a 'spread' to compensate the Filer, and will present this adjusted price to the client as the price at which the Filer is willing to transact against the client.
36. If the client finds the price agreeable, the client will accept the price and agree to the trade.
37. In a buy transaction under a Crypto Rights Contract, this will result in the client instructing WDA to request cash from the client's account with ShareOwner in order to fund the purchase. In a sell transaction under a Crypto Rights Contract, cash proceeds will be transferred by WDA to the client's account with ShareOwner.
38. The Filer will not extend margin or otherwise offer leverage to clients.
39. The Filer will confirm the transaction with the Liquidity Providers.



40. The Filer will record in its books and records the particulars of each trade.
41. The Filer will promptly, and no later than two 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 the cash to be transferred to the Liquidity Provider and Crypto Assets to be sent by the Liquidity Provider to the Filer's custodian. Where there are net sales of Crypto Assets, the Filer will arrange for Crypto Assets to be sent from the Filer's custodian to the Liquidity Provider in exchange for cash received by the Filer from the Liquidity Providers.
42. Clients will receive electronic trade confirmations and monthly statements setting out the details of the transaction history in their account with the Filer.
43. The Platform is a "closed loop" system. Clients will not be permitted to transfer into their account with the Filer any Crypto Assets they purchased outside the platform or withdraw from their account with the Filer any Crypto Assets they have purchased pursuant to their Crypto Rights Contracts with the Filer. Any Crypto Assets that may be purchased under a Crypto Rights Contract will be held by the Filer in trust for the client and by default must be sold in a trade with the Filer. Notwithstanding the foregoing, the Filer may, in certain limited circumstances and for a fee, deliver possession and/or control of the Crypto Assets purchased under a Crypto Rights Contract to another Crypto Asset trading platform or a personal crypto asset wallet at the direction of the client, subject to satisfying all applicable legal and regulatory requirements, including anti-money laundering requirements.
44. The Filer believes a closed loop system will significantly reduce the likelihood of fraud, money laundering or client error in sending or receiving Crypto Assets to incorrect wallet addresses. However, a closed loop system may also expose the client to insolvency risk (credit risk), fraud risk or proficiency risk on the part of the Filer.
45. The Filer will be compensated by the spread on trades. It does not currently charge any account opening or maintenance fees, commissions, or other charges of any kind.
46. In addition to the client risk disclosure and ongoing education initiatives described in paragraphs 22-26 above, and the account and product appropriateness exercise described in paragraph 28 above, the Filer will also 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 Rights 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*

47. The Filer will not maintain its own hot or cold wallets to hold Crypto Assets. Instead, Gemini Trust Company, LLC (**Gemini**), a third-party custodian, will act as custodian of the Crypto Assets purchased by clients through the Filer. 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” for purposes of NI 31-103 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.

48. Gemini will operate 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.
49. Gemini will hold 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.
50. 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.
51. 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.
52. A client can maintain their Crypto Rights Contract with the Filer indefinitely.
53. Neither the Filer nor Gemini will hold client cash. As set out in paragraph 20 above, each client of the Filer will open a non-registered cash brokerage account with ShareOwner for the sole purpose of holding cash that a client may use to engage in transactions on the Platform.
54. 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.

#### *Marketplace and Clearing Agency*

55. The Filer 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 *Securities Act* (Ontario) (the **Act**).
56. The Filer will not operate a “clearing agency” as defined 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 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 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:

- I. Unless otherwise exempted by a further decision of the Principal Regulator, the Filer complies with
  - a) 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 terms and conditions of the decision granted by the Autorité des marchés financiers dated August 7, 2020 in respect of relief from certain requirements of the *Derivatives Act* (Québec).
- II. WDA is registered as a restricted dealer in the Jurisdiction and the jurisdiction in which the client is resident.
- III. The Filer will work actively and diligently with IIROC to transition the operation of the Platform from the Filer to ShareOwner.
- IV. The Filer, and any representatives of the Filer, will not provide recommendations or advice to any client or prospective client on the Platform.
- V. The Filer will only engage in the business of trading Crypto Rights Contracts in relation to Crypto Assets, and performing its obligations under those contracts. The Filer will undertake no other activity.
- VI. 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" as the term is defined in securities legislation.
- VII. At all times, the Filer will hold the Crypto Assets with a custodian that meets the definition of a qualified custodian under NI 31-103.

- VIII. The Filer will take reasonable steps to verify that:
- a) the custodian has appropriate insurance to cover the loss of Crypto Assets held at the custodian; and
  - b) the custodian, 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 specified crypto assets for which it acts as custodian.
- IX. 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, or the National Futures Association, makes a determination that the Filer's custodian is not permitted by that regulatory authority to hold client Crypto Assets.
- X. 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.
- XI. 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.
- XII. Before each 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.
- XIII. The disclosure in condition XII 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.
- XIV. A copy of the Risk Statement acknowledged by a client will be made available to the client in same place as the client's other statements in the App.
- XV. The Filer will update the Risk Statement to reflect any material changes to the disclosure or include any material risks that may develop with respect to the Crypto Rights Contracts or Crypto Assets and, 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.
- XVI. 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.
- XVII. For each client, prior to opening an account, the Filer will perform an account appropriateness assessment and product-type assessment as described in paragraph 28.

- XVIII. 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 Rights Contract is not appropriate for the client, or that additional education is required.
- XIX. The Filer will ensure that the maximum amount that a client may fund, in a 12-month period, to trade pursuant to Crypto Rights Contracts, is C\$30,000.
- XX. In the jurisdictions where the Prospectus Relief is required, the first trade of a Crypto Rights Contract is deemed to be a distribution under securities legislation of that jurisdiction.
- XXI. The Filer will provide the Principal Regulator with at least 10 days' prior written notice of any:
- a) change of custodian; and
  - b) material changes to the Filer's ownership or its business operations, including its systems, or its business model.
- XXII. The Filer will notify the Principal Regulator, promptly, of any material breach or failure of 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 specified crypto asset will be considered a material breach or failure.

#### *Data Reporting*

- XXIII. 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 Rights 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 each month in the quarter;
    - 4. average value of the trades each month in the quarter;
    - 5. number of client accounts that hold over \$10,000 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 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; and

- 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.

XXIV. 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 Rights 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) cumulative realized gains/losses since account opening in CAD;
- d) unrealized gains/losses as of the report end date in CAD;
- e) quantity traded by Crypto Asset during the quarter in number of units;
- f) Crypto Asset traded by the client (BTC or ETH);
- g) quantity held of each Crypto Asset by the client as of the report end date in units;
- h) CAD equivalent aggregate value for each Crypto Asset traded by the client, calculated as the amount in (g) multiplied by the market price of the asset in (f) as of the report end date;
- i) age of account in months.

XXV. 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.

XXVI. 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 and the Crypto Assets held by the Filer's custodian, that may be requested by the Principal Regulator from time to time as reasonably necessary for the purpose of monitoring compliance with Legislation and the conditions in the Decision, in a format acceptable to the Principal Regulator.

XXVII. Upon request, the Filer will provide the Principal Regulator and the securities 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.

XXVIII. 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.

XXIX. 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.

XXX. This Decision may be amended by the Principal Regulator upon prior written notice to the Filer.

In respect of the Prospectus Relief:

|                               |                               |
|-------------------------------|-------------------------------|
| <u>“Wendy Berman”</u>         | <u>“Tim Moseley”</u>          |
| Wendy Berman                  | Tim Moseley                   |
| Vice Chair                    | Vice Chair                    |
| Ontario Securities Commission | Ontario Securities Commission |

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

|  |
|--|
| <u>“Pat Chaukos”</u>                               |
| Pat Chaukos  |
| Director, Office of Economic Growth and Innovation |
| 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**); 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 – Disclosure to be Included in Risk Statement**

### **Disclosure Statement for Crypto Assets**

This Statement is presented to you at the time of opening your account and is available to you within your documents settings in the Wealthsimple Trade App. You must acknowledge having received, read and understood this Statement in order to open and operate a Wealthsimple Crypto account. Please read this Statement in its entirety.

The Statement does not disclose all of the risks or relevant considerations of entering into a contract with Wealthsimple Digital Assets (WDA) to buy, sell and hold Crypto Assets. In light of the risks, you should undertake such transactions only if you understand the nature of the contractual relationship with WDA into which you are entering, and the extent of your exposure to the risks associated with trading in Crypto Assets. Please refer to WDA's Client Relationship Disclosure [link] for a more detailed description of this relationship. There are limited circumstances in which you can obtain possession of the Crypto Assets you have purchased (see "Closed Loop System" below). The Crypto Assets that you have purchased will be held in trust for you, in a pooled account that is in the name of WDA, at a third-party custodian independent of WDA. As such, there is a risk you will not be able to successfully obtain possession of the Crypto Assets, and a risk that the assets in this pooled account will not be sufficient to ensure that you receive the value of your interest in the Crypto Assets.

Trading in Crypto Assets may not be suitable for certain members of the public. You should carefully consider whether trading is appropriate for you in light of your knowledge, experience, financial objectives, financial resources and other relevant circumstances.

### **Introduction**

WDA believes that its customers should be aware of the risks involved in the purchase, sale and custody of Crypto Assets. Crypto Asset trading may not be appropriate for you, particularly if you use funds drawn from retirement savings, student loans, mortgages, emergency funds, or funds set aside for other purposes. The volatility and unpredictability of the price of Crypto Assets relative to fiat currency may result in significant loss over a short period of time. The following is a brief non-exhaustive summary of certain more significant factors and special risks you should take into account when deciding whether to trade Crypto Assets.

### **What are Crypto Assets?**

Crypto Assets are digital representations of value that function as a medium of exchange, a unit of account, or a store of value, but do not have legal tender status. Crypto Assets are sometimes exchanged for currencies, but they are not generally backed or supported by any government or central bank. Their value is derived by market forces of supply and demand, and they are traditionally more volatile than fiat currencies. The value of Crypto Assets may be derived from the continued willingness of market participants to exchange fiat currency for Crypto Assets, which may result in the potential for permanent and total loss of value of a particular Crypto Asset should the market for a Crypto Asset disappear entirely. Federal, provincial, territorial or

foreign governments may restrict the use and exchange of Crypto Assets, and regulation in North America is still developing.

Crypto Assets differ in their functions, structures, governance and rights. Wealthsimple permits the trading of well established Crypto Assets that function as a form of payment or means of exchange on a decentralized network, such as bitcoin and ether. These Crypto Assets have certain features that are analogous to existing commodities, such as currencies and precious metals, but are also different in many key respects, as described in this disclosure statement.

### **Risks in Trading Crypto Assets**

The following is a brief summary of some of the risks connected with trading Crypto Assets.

#### **(1) Short History Risk**

As a relatively new open source technology, it is expected that there will continue to be technical developments in blockchain technology, which could impact the value of a Crypto Asset. Due to this short history, it is not certain whether the economic value, governance or functional elements of Crypto Assets will persist over time. The Crypto Asset community has successfully navigated a considerable number of technical and political challenges since the genesis of the bitcoin blockchain, which WDA believes is a strong indicator that it will continue to engineer its way around future challenges. That said, the continuation of a vibrant Crypto Asset community is not guaranteed, and insufficient software development, contribution rates, community disputes regarding the development of the network and scaling options, or any other unforeseen challenges that the community is not able to navigate could have an adverse impact on the price of a Crypto Asset.

Open source developers of blockchain technology have signalled that they will continue to make efforts to improve the scalability and security of public blockchains like bitcoin and ethereum. For example, in respect of the ethereum blockchain, developers are planning to replace the current hash-based mining consensus mechanism of proof-of-work with a proof-of-stake mechanism. Changes may also occur to the bitcoin blockchain, for example with the continued development of scalability protocols like the Lightning Network, which operate on top of the bitcoin blockchain. The expected timing and impacts of this change are uncertain.

#### **(2) Volatility in the Price of Crypto Asset and Loss of Liquidity**

The Crypto Asset markets are sensitive to new developments, and since volumes are still maturing, any significant changes in market sentiment (by way of sensationalism in the media or otherwise) can induce large swings in volume and subsequent price changes. Crypto Asset prices on trading platforms have been volatile and subject to influence by many factors, including the levels of liquidity, public speculation on future appreciation in value, swings in investor confidence and the future growth of alternative Crypto Assets that may gain market share. In certain circumstances, it may become difficult or impossible to assess the value of your Crypto Assets.

The trading of Crypto Assets on public trading platforms has a limited history. The prices available on those platforms have, in some cases, been more volatile and subject to influence by additional factors not specific to the value of Crypto Assets, including liquidity levels and operational interruptions. Operational interruptions can limit the liquidity of Crypto Assets on the trading platform, which could result in volatile prices and reduced confidence in the Crypto Assets traded on those platforms.

Wealthsimple Crypto uses multiple brokers, which we refer to as liquidity providers, to buy and sell the Crypto Assets that we trade for you. These liquidity providers connect to multiple trading platforms in order to ensure ongoing liquidity of Crypto Assets. Use of multiple liquidity providers and multiple trading platforms is designed to reduce the liquidity risk and operational risk associated with any one trading platform. However, there is a risk that the liquidity sources accessed directly and indirectly by Wealthsimple Crypto are unable to return the best possible prices or execution quality on your behalf. This risk may be greater during periods of high market volatility or operational outages at a major trading platform.

### **(3) Potential Decrease in Global Demand for Crypto Assets**

Crypto Assets represent a new form of digital value that is still being digested by society. Their underlying value is driven by their utility as a store of value, means of exchange, or unit of account. Just as oil is priced by the supply and demand of global markets, as a function of its utility to, for instance, power machines and create plastics, so too is a Crypto Asset priced by the supply and demand of global markets for its own utility within remittances, B2B payments, time-stamping, etc. Speculators and investors using Crypto Asset as a store of value then layer on top of means of exchange users, creating further demand. If consumers stop using Crypto Assets as a means of exchange, or their adoption slows, then the price may suffer. Investors should be aware that there is no assurance that Crypto Assets will maintain their long-term value in terms of purchasing power in the future or that the acceptance of Crypto Assets for payments by mainstream retail merchants and commercial businesses will continue to grow.

While the value of bitcoin may be derived primarily from its capitalization and position as first mover, the value of ether relies far more on its underlying blockchain technology. The ethereum blockchain is intended to allow people to operate decentralized applications using blockchain technology that do not rely on the actions of a centralized intermediary. Ether, which is the primary currency of the ethereum blockchain, can then be used to compensate for the effort of others to power these decentralized applications and ensure that any transactions that occur on these applications are recorded in the blockchain. Accordingly, the long term value of ether may be tied to the success or failure of the blockchain technology and the decentralized applications built upon the ethereum blockchain.

### **(4) The Blockchains on which Crypto Assets operate may Temporarily or Permanently Fork**

Both the bitcoin and ethereum blockchain networks are powered by open source software. When a modification to that software is released by developers, and a substantial majority of miners consent to the modification, a change is implemented and the blockchain network continues

uninterrupted. However, if a change were to be introduced with less than a substantial majority consenting to the proposed modification, and the modification is not compatible with the software in operation prior to its modification, the consequence would be what is known as a “fork” (i.e. a split) of the blockchain. One blockchain would be maintained by the pre-modification software and the other by the post-modification software. The effect is that both blockchains would operate in parallel, but independently. There are examples of such forks occurring in the past on both the bitcoin and ethereum blockchain networks. In the future, such a fork could occur again, and affect the viability or value of a Crypto Asset. Wealthsimple Crypto may choose not to support any future fork of the underlying blockchain of the Crypto Assets available on our platform, in which case you may not have any rights to the new crypto assets that may be created as a result of that fork.

#### **(5) Issues with the Cryptography Underlying the Crypto-networks**

In the past, flaws in the source code for digital assets have been exposed and exploited, including flaws that disabled some functionality for users, exposed users’ personal information and/or resulted in the theft of users’ digital assets. Although the bitcoin and ethereum blockchains have demonstrated resiliency and integrity over time, the cryptography underlying either one could, in the future, prove to be flawed or ineffective. For example, developments in mathematics and/or technology, including advances in digital computing, algebraic geometry and quantum computing, could result in the cryptography of the blockchain network being vulnerable to attack. This could negatively affect the value of Crypto Assets traded with Wealthsimple Crypto.

#### **(6) Uncertainty in Regulation and Future Financial Institution Support**

The regulation of Crypto Assets continues to evolve in Canada and in foreign jurisdictions, which may restrict the use of Crypto Assets or otherwise impact the demand for Crypto Assets. There may be limitations on the ability of a securities regulator in Canada to enforce Canadian laws on foreign entities, and foreign rules that apply to Crypto Asset activities which occur in other jurisdictions may not necessarily be enforced in that jurisdiction. Furthermore, banks and other financial institutions may refuse to process funds for Crypto Asset transactions, process wire transfers to or from Crypto Asset trading platforms, Crypto Asset-related companies or service providers, or maintain accounts for persons or entities transacting in Crypto Assets.

#### **(7) Concentration Risks**

Certain addresses on the bitcoin and ethereum blockchain networks hold a significant amount of the currently outstanding bitcoin and ether, respectively. If one of these addresses were to exit their bitcoin or ether positions, it could cause volatility that may adversely affect the price.

Further, if anyone gains control over 51% of the computing power (hash rate) used by the blockchain network, they could use their majority share to double spend their Crypto Assets. If such a “51% attack” were to be successful, this would significantly erode trust in public blockchain networks like bitcoin and ethereum to store value and serve as a means of exchange, which may significantly decrease the value of Crypto Assets.

## **(8) Electronic Trading and Dependence on the Internet**

There are risks associated with using an internet-based trade execution software application including, but not limited to, the failure of hardware and software. WDA maintains an independent and secure ledger of all transactions to minimize loss, and maintains contingency plans to minimize the possibility of system failure. However, WDA does not control signal power, reception, routing via the internet, configuration of your equipment or the reliability of your connection to the internet. The result of any failure of the foregoing may be that you are unable to place an order, your order is not executed according to your instructions, or your order is not executed at all. Under certain market conditions, you may find it difficult or impossible to liquidate a position quickly at a reasonable price. This can occur, for example, when the market for a particular Crypto Asset suddenly drops, or if trading is halted due to recent news events, unusual trading activity, or changes in the underlying Crypto Asset system. The greater the volatility of a particular Crypto Asset, the greater the likelihood that problems may be encountered in executing a transaction. In addition to normal market risks, you may experience losses due to one or more of the following: system failures, hardware failures, software failures, network connectivity disruptions, and data corruption.

## **(9) Cyber Security Risk**

The nature of Crypto Assets may lead to an increased risk of fraud or cyber attack. A breach in cyber security refers to both intentional and unintentional events that may cause WDA to lose proprietary information or other information subject to privacy laws, suffer data corruption, or lose operational capacity. This in turn could cause WDA to incur regulatory penalties, reputational damage, additional compliance costs associated with corrective measures and/or financial loss. Cyber security breaches may involve unauthorized access to WDA's digital information systems (e.g. through "hacking" or malicious software coding), but may also result from outside attacks such as denial-of-service attacks (i.e. efforts to make network services unavailable to intended users). In addition, cyber security breaches of WDA's third-party service providers (e.g. the liquidity providers and custodian) can also give rise to many of the same risks associated with direct cyber security breaches. As with operational risk in general, WDA has established risk management systems designed to reduce the risks associated with cyber security.

## **(10) Closed Loop System**

When you enter into a contract with WDA to buy and sell Crypto Assets, that contract provides you with certain rights and imposes certain responsibilities; the contract, and your contractual right to the crypto assets that you may buy, hold and sell pursuant to the contract, constitute a security or derivative. In particular, the contract you sign with WDA enables you to buy, sell and hold Crypto Assets without the need for you to receive and hold your Crypto Assets in your own private wallet. We refer to this as a "closed loop" system. We believe that a closed loop system significantly reduces the likelihood of user error in sending or receiving Crypto Assets to incorrect wallet addresses. However, a closed loop system may also expose you to insolvency risk (credit risk), fraud risk or proficiency risk on the part of WDA or the custodian designated to hold your Crypto Assets.

### **(11) Lack of Investor Protection Insurance**

Crypto Assets purchased and held in an account with WDA are not protected by the Canadian Investor Protection Fund, the Canadian Deposit Insurance Corporation or any other investor protection insurance scheme.

### **(12) Commission and Other Charges**

Although WDA does not charge a commission fee, there are certain costs built into the spread offered on your purchase and sale of Crypto Assets, as disclosed to you within the Wealthsimple Trade app. Fees are based in part on the fees charged to us by our third-party liquidity providers and custodian, which are subject to change.