

**In the Matter of the Securities Legislation of British Columbia, New Brunswick,  
Nova Scotia, and Saskatchewan (the Jurisdictions)**

**And**

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

**And**

**In the Matter of  
Fidelity Digital Asset Services, LLC  
(the Filer)**

**Decision**

**Background**

¶ 1 As set out in CSA Staff Notice 21-327 *Guidance on the Application of Securities Legislation to Entities Facilitating the Trading of Crypto Assets (SN 21-327)*, securities legislation applies to crypto trading platforms (**CTPs**) that facilitate the trading of instruments or contracts involving crypto assets because the user's contractual right to the crypto asset may itself constitute a derivative in the Jurisdictions (**Crypto Contract**).

To foster innovation and respond to novel circumstances, the CSA has considered time-limited relief from certain securities law requirements 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 Canadian Securities Administrators (CSA) take the position that the relevant service offered by the Filer includes the trading and settlement of trades of Crypto Contracts granting specific rights to bitcoin, ether and anything commonly considered a crypto asset, digital or virtual currency, or digital or virtual token, that itself are not a security or derivative (collectively the **Crypto Assets**) with Fidelity Clearing Canada ULC (**FCC**), an entity in the Fidelity group of companies.

Because the CSA considers the Filer to be facilitating the purchase, sale and settlement of Crypto Contracts with FCC for Canadian securities law purposes, the Filer filed an application to be exempted from certain requirements under securities legislation in the Jurisdictions.

Crypto Contracts are derivatives in each of the Jurisdictions. The Filer will be carrying on business as an exchange in each Jurisdictions through the operation of the FDAS Service (as defined below).

This Decision provides the Filer with exemptive relief with respect to carrying on business in the Jurisdictions as an exchange with respect to Crypto Contracts and 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**

¶ 2 The securities regulatory authority or securities regulator in each of the Jurisdictions (the **Decision Makers**) may make an order under the securities legislation of the Jurisdiction (the **Legislation**) exempting the Filer from

- (a) the requirement to be recognized as an exchange under the Legislation listed in Schedule A (the **Recognition Relief**);
- (b) the following marketplace requirements (the **Marketplace Relief**):
  - (i) National Instrument 21-101 – *Marketplace Operation* (**NI 21-101**),
  - (ii) National Instrument 23-101 – *Trading Rules* (**NI 23-101**), and
  - (iii) National Instrument 23-103 – *Electronic Trading and Direct Electronic Access to Marketplaces* (**NI 23-103**)

Together the Recognition Relief and the Marketplace Relief are referred to as “the **Requested Relief**”.

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

- (a) the British Columbia Securities Commission is the principal regulator (the **Principal Regulator**) for this application, and
- (b) the decision is the decision of the Principal Regulator and evidences the decision of each decision maker in the other Jurisdictions.

In addition to the Requested Relief, the Filer is seeking relief from other provisions in securities legislation, including:

- (a) in British Columbia, the requirement to be recognized as a clearing agency and from the National Instrument 24-102 – *Clearing Agency Requirements*, and
- (b) in each of the Jurisdictions, Part 3 of Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting*.

## Interpretation

- ¶ 3 Terms defined in National Instrument 14-101 *Definitions* and National Instrument 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* have the same meaning if used in this Decision, unless otherwise defined.

In addition to the terms defined above, the following terms shall have the following meanings:

**FDAS Matching Service** means, for the purpose of this Decision, only that portion of the FDAS Service that involves the execution of purchase or sale transactions relating to Crypto Contracts with FCC based on the Filer's internal matching engine, and does not include the portion of the FDAS Service that involves purchase or sale transactions relating to Crypto Assets that are executed by the Filer based on prices received from external counterparties through the Filer's smart order router.

**FDAS Service** means, for the purpose of this Decision, the trades of Crypto Contracts with FCC upon the receipt by the Filer of an order from FCC, and the reconciliation and settlement of trades of Crypto Contracts and delivery of Crypto Assets that are related such Crypto Contracts into or out of FCC's custodial account(s) at the Filer through corresponding adjustments made by the Filer to the cash and/or Crypto Asset balances in the Filer custodial account(s) pursuant to the terms of the custodial services agreement between the Filer and FCC.

## Representations

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

### *The Filer*

1. The Filer is a limited liability trust company organized under New York law authorized pursuant to Section 102-a of the *New York Banking Law*. The Filer provides custody and trade execution services for digital assets. As a New York State-chartered trust company, the Filer is regulated by the New York State Department of Financial Services. In addition, The Filer is registered as a "money services business" with Financial Crimes Enforcement Network, a bureau of the U.S. Department of the Treasury. The Filer is not registered in any capacity in Canada.
2. The Filer is part of the Fidelity group of companies known as Fidelity Investments. FCC, which is also a part of the Fidelity group of companies, is, and will be, the Filer's only Canadian client. FCC is a Dealer Member of the Investment Industry Regulatory Organization of Canada (IIROC).
3. The Filer is currently operating in Canada as described in this Decision. Except in relation to the matters relating to the Requested Relief, the Filer is not in default of securities legislation of any of the Jurisdictions.
4. The United States has a comprehensive financial services regime that the Filer is subject to. The New York State Department of Financial Services requires the Filer to satisfy, among other things, certain prescribed financial and capital requirements.

### *The Filer's Business*

5. The FDAS Matching Service involves the operation, by the Filer, of a non-displayed order book that facilitates the matching of client orders. Order matching is conducted on a price-time priority basis. Orders with the highest (buy) or lowest (sell) price are prioritized over orders with a lower (buy) or higher (sell) price. Orders are then ranked on the system by arrival time. Orders matched through the FDAS Matching Service are assigned a trade price of the mid-point of prices that are derived from reference prices from external marketplaces, subject to the constraints of the applicable order type. FCC does not know the execution price of an order before the order is executed. If an order is not matched through the FDAS Matching Service, it will be routed away to the Filer's approved counterparties in the manner described below.
6. FCC, an investment dealer registered in each of the Jurisdictions and a dealer member of IIROC, is the Filer's sole Canadian client. The Filer will not otherwise carry on business in Canada and will not advertise or otherwise market its services or business in Canada. Any other person in Canada that wishes to use the FDAS Service must do so through the services offered by FCC.
7. Under the FDAS Service, all orders and executions occur through the Filer. The Filer is the counterparty to each FCC order submitted through the FDAS Service. The bilateral contract or arrangement between FCC and the Filer in connection with a buy or sell transaction and FCC's contractual right relating to the Crypto Asset is referred to as a Crypto Contract.

### *FDAS Service*

8. The routing algorithm used by the Filer prioritizes orders by price in order to attempt to provide FCC and the Filer's other clients with the best price for orders available from the FDAS Matching Service and, if an order is not matched through the FDAS Matching Service, the Filer's network of approved counterparties. For this purpose, "best price" means the highest available price for sell orders and the lowest available price for buy orders. If an order is not matched through the FDAS Matching Service, the FDAS Service requests the best prices that are available from the Filer's approved counterparties. The order handling process chooses the best price from among the prices quoted by these approved counterparties within a narrow range, and executes the order at that price as the execution price, subject to the requirements of the applicable order type. For trades executed with FCC, the Filer does not mark-up or mark-down quotes received from approved counterparties.
9. If an order is not executed after it is routed away, it remains eligible either to be matched through the FDAS Matching Service or to be executed through the Filer's approved counterparties until the client cancels the order or the order is cancelled systematically at the end of the day. The manner in which an initially unfilled order is handled depends upon the order type.

10. Reference data is provided by the Filer to FCC and its other clients on a proprietary user interface. This reference data shows purchase and sale prices for trades on certain digital asset trading venues. This indicative pricing is not reflective of the liquidity available through the FDAS Matching Service or its approved counterparties, or of the Filer's client trades executed through the FDAS Service, and is not to be relied upon by FCC as the expected execution price for any order.
11. The Filer provides information to each client regarding the status of the client's orders and resulting trades. Together with the reference data provided, as referred to in the preceding paragraph, the Filer provides sufficient information to facilitate the trading decisions of FCC, and compliance by FCC with its best execution obligations under IIROC rules, which, for greater certainty, require fair pricing. The Filer also provides information to FCC to allow it to understand how its orders are handled and executed, how trades are priced and any associated fees applied by the Filer in the context of a trade.
12. The Filer clears and settles trades between FCC and the Filer in the manner described below and by recording appropriate transfers between the Filer's wallets and the Filer's bank account.
13. Under the FDAS Service, all trades involving an order placed by FCC are settled only between U.S. dollars and Crypto Contracts, and the full value of each transaction is exchanged, less any fees. Proceeds from "buy" or "sell" orders are made available to FCC after the Filer's operational processes are complete. When a "buy" order is executed, the notional U.S. dollar value of the transaction is debited from FCC's U.S. dollar cash custody account with the Filer, and the Crypto Assets relating to the Crypto Contract traded are reflected in FCC's balance on the Filer's custody dashboard. When a "sell" order is executed, the amount of Crypto Assets to which FCC has an interest are debited from its balance in FCC's custody account with the Filer, and the U.S. dollars to be received by FCC are reflected in the Filer's custody dashboard. Once the Filer's trade settlement processes are completed, the Crypto Assets relating to the Crypto Contractor the U.S. dollar proceeds of the transaction are available to FCC.
14. The FDAS Service does not enable short selling, as the FDAS Service does not implement a sell order unless the client holds the requisite Crypto Assets with the Filer.
15. The Filer has established and will maintain and apply effective policies and procedures to prevent fraud and market manipulation in connection with the FDAS Service, including through policies and procedures to monitor for and investigate potential instances of abusive trading. Certain features of the FDAS Service also help to limit the opportunities for fraud or market manipulation. These features include:
  - (a) limiting the use of the FDAS Service to approved clients;
  - (b) only allowing orders to be entered by authorized users;
  - (c) not displaying orders entered on the FDAS Matching Service to other clients;

- (d) using the pricing mechanics described in paragraph 5 to price trades via the FDAS Matching Service;
- (e) hiding trade details for transactions executed between the Filer and a client from all of its other clients and from public view; and
- (f) prohibiting the crossing of trades between accounts of the same client.

In addition, the Filer does not provide economic incentives to counterparties to attract order flow.

16. The Filer has also established and maintains policies that address and escalate complaints, that govern the cancellation, variation and correction of trades executed through the FDAS Service and that address the maintenance of books, records and other documents relating to the transactions executed between the Filer and FCC, including, but not limited to, records of all orders and trades, including the product, price, volume, time when the order is entered, matched, cancelled or rejected, any reference pricing used to assign prices to trades resulting from the FDAS Matching Service, and the identifier of the FCC authorized user that entered the order.
17. Conflicts of interest are minimized, as the components of the FDAS Service do not permit for any level of differentiation between clients. This means that all of the Filer's clients, including FCC and the Filer's affiliates, that use the FDAS Service, are treated the same. Further, the Filer does not provide any economic or other incentive to FCC or to the Filer's affiliates to use the FDAS Service (including to attract order flow), and all fees are transparent to the client. The Filer also does not trade against its clients through the FDAS Service for speculative purposes.
18. Staff in each of the Jurisdictions have informed the Filer that they are of the view that the Filer is carrying on business as an exchange in the Jurisdictions.
19. The Filer submits that the application of the Marketplace Rules is not warranted. Further, the terms and conditions to be imposed in this Decision on the Filer and by the FCC Decisions on FCC, the only Canadian client of the Filer, are adequate to address key risks.
20. The matching of orders entered by FCC using the FDAS Matching Service, as part of the FDAS Service, results in a bilateral Crypto Contract between FCC and the persons or companies that entered the matching order, but is a bilateral Crypto Contract between FCC and the Filer for the purposes of settlement. Marketplace Relief is necessary because the FDAS Matching Services constitutes an exchange in the Jurisdictions and NI 21-101 was not drafted for crypto asset marketplace platforms, and certain requirements are not applicable in this context. The regulators have recognized, in Joint CSA/IIROC Staff Notice 21-329 Guidance for Crypto-Asset Trading Platforms: Compliance with Regulatory Requirements, that the existing requirements of securities legislation may be tailored through terms and conditions and through discretionary exemptive relief, which allows CTPs to operate with appropriate regulatory oversight.

21. The terms and conditions attached to this Decision, as well as the requirements applicable to FCC as a dealer and marketplace member of IIROC, provide appropriate investor protection safeguards. The Marketplace Relief is limited and reflects the balance between needing to be flexible in order to foster innovation in the Canadian capital markets and promoting investor protection and fair and efficient capital markets.
22. Each trade executed by FCC through the FDAS Service will be cleared and settled by the Filer.

### **Decision**

- ¶ 5 Each of the Principal Regulator and the Decision Makers are satisfied that the Decision meets the test set out in the Legislation for the relevant regulator or securities regulatory authority to make the Decision.

The Decision of the Principal Regulator and Decision Makers under the Legislation is that the Requested Relief is granted, provided that:

#### Limitations on dealings with Canadian clients

- A. The Filer will not provide the FDAS Service to any Canadian client other than FCC.
- B. The Filer will only continue to offer the FDAS Service to FCC so long as FCC is registered as an investment dealer, is an IIROC member dealer in good standing, and is in compliance with applicable securities law.
- C. The Filer will require FCC to provide prompt notification to the Filer if it is no longer registered as an investment dealer in any of the Jurisdictions, is no longer an IIROC member dealer in good standing, or is not in compliance with applicable securities law.

#### Limitations on trading by Filer

- D. The Filer will not submit orders to the FDAS Service on a proprietary basis, other than in connection with offsetting trades relating to client orders that are executed on a riskless principal basis, or as it otherwise deems appropriate for the delivery of its services. For clarity, at no time shall the Filer trade against its clients through the FDAS Service for speculative purposes.

#### Regulatory status and compliance with applicable law

- E. The Filer will continue to be regulated as a New York State-chartered trust company by the New York State Department of Financial Services and registered as a “money services business” with the Financial Crimes Enforcement Network, a bureau of the U.S. Department of the Treasury, and will comply with all applicable requirements.
- F. The Filer will promptly notify the Ontario Securities Commission (the **OSC**) if the New York State Department of Financial Services makes a determination that the Filer is not

permitted by that regulatory authority to continue to offer the FDAS Service being provided to FCC.

- G. The Filer will promptly notify the OSC if it is required by the U.S. Securities and Exchange Commission, the U.S. Commodity Futures Trading Commission, the Financial Industry Regulatory Authority, or the National Futures Association to transition to or be regulated under a regulatory framework overseen by any one of those financial or other regulators.
- H. The Filer will comply with applicable securities law.

#### Market integrity

- I. The Filer will take reasonable steps to ensure that the operation of the FDAS Service does not interfere with fair and orderly markets.
- J. The Filer will maintain and ensure compliance with effective policies and procedures to prevent fraud and market manipulation in connection with the FDAS Service, including policies and procedures to monitor for and investigate potential instances of abusive trading.
- K. The Filer will maintain and ensure compliance with reasonable policies addressing and escalating complaints and governing the cancellation, variation or correction of trades executed through the FDAS Service.

#### Conflicts of interest

- L. The Filer will establish, maintain and ensure compliance with effective policies and procedures to manage any conflict of interest arising from the FDAS Service in a manner that ensures that none of its affiliates receives an unreasonable advantage in their use of the FDAS Service to the detriment of FCC or FCC's use of the FDAS Service.

#### Transparency of operations and of order and trade information

- M. The Filer will provide FCC with information reasonably necessary to enable it to understand the FDAS Service, including how orders are handled and interact, how trades are priced and any associated fees or spreads.
- N. The Filer will provide FCC with sufficient and relevant information regarding market pricing (for example, current pricing from relevant indices) and trade information to facilitate the trading decisions of FCC, and compliance by FCC with its best execution obligations under IIROC rules.

#### Confidentiality of users' order and trade information

- O. The Filer will maintain appropriate and sufficient controls to protect the confidentiality of FCC's order and trade information, subject to FCC consenting to the disclosure or such

information and/or disclosure to any of the applicable Canadian securities regulatory authorities as required by applicable securities laws.

#### Books and records

- P. The Filer will keep books, records and other documents reasonably necessary for the proper recording of its business and to demonstrate compliance with applicable securities laws and the conditions of this Decision, including, but not limited to, records of all orders and trades, including the product, price, volume, time when the order is entered, matched, cancelled or rejected, any reference pricing used to assign prices to trades resulting from the FDAS Matching Service, and the identifier of any FCC authorized user that entered the order, for all transactions that the Filer executes with FCC and any related transactions undertaken by the Filer in facilitating the execution with FCC.
- Q. The Filer will maintain the books, records and other documents referred to in paragraph 16 in electronic form and promptly provide them in the format and at the time requested pursuant to applicable securities laws. Such books, records and other documents will be maintained by the Filer for a minimum of seven years.

#### Systems and internal controls

- R. The Filer will maintain effective internal controls to manage operational risks, including risks related to systems that support the FDAS Service, including internal controls to ensure that its systems function properly and have adequate capacity and security.
- S. The Filer will maintain effective procedures and processes to ensure the provision of accurate and reliable settlement services in connection with trades executed through the FDAS Service.
- T. The Filer will establish, maintain and apply effective risk management policies and procedures and internal controls in place to minimize the risk that settlement will not take place as expected.
- U. The Filer will maintain effective information technology controls, and conduct regular reviews and testing of such controls, to support the FDAS Service, including controls relating to operations, information security, cyber resilience, change management, problem management, network support and system software support.
- V. The Filer will establish, maintain and apply policies and procedures that appropriately govern the selection and oversight of service providers to which key services or systems supporting the FDAS Service have been outsourced. Policies and procedures will include:
  - a. steps for appropriate due diligence in selecting a provider,
  - b. requirements relating to:
    - i. a written contract,
    - ii. access to appropriate books and records relating to the service provided,

- iii. conflicts management,
    - iv. appropriate internal controls relating to, among other things, information security and cyber resilience; and
  - c. a process for monitoring performance and adherence to the contract.
- W. The Filer will maintain, update and test a business continuity plan, including emergency procedures, and a plan for disaster recovery that provides for the timely recovery of operations and fulfilment of its obligations with respect to the FDAS Service, including in the event of a wide-scale or major disruption.

#### Reporting

- X. The Filer will provide at least 45 days advance notice to the OSC for any significant changes to the information filed in the Application and any supporting documents to the extent that such changes materially change the FDAS Service as described to the OSC.
- Y. The Filer will provide FCC with notice as soon as practicable if any new regulation or change to an existing regulation is proposed that will materially impact the FDAS Service provided to FCC.
- Z. In addition to any other reporting required herein and subject to the application of solicitor-client privilege, the Filer will provide to the OSC, on a timely basis, any report, data, document or information about the FDAS Service provided to FCC, that may be requested by the OSC from time to time. Unless otherwise prohibited under applicable law, the Filer will share with the OSC information relating to regulatory and enforcement matters that will materially impact the FDAS Service provided to FCC.

#### Trade Reporting Data

- AA. In connection with the Filer's obligations under the Local Trade Reporting Rules, the Filer has agreed with FCC that FCC will be delegated the responsibility to report, or will be the reporting counterparty, under the Local Trade Reporting Rules, as applicable, which obligations can be satisfied by FCC providing the same type and frequency of reporting as required under condition (y) of the FCC Decisions.

#### Submission to jurisdiction

- BB. With respect to a proceeding brought by a securities regulatory authority in a province or territory arising out of, related to, concerning or in any other manner connected with the securities regulatory authority's regulation and oversight of the activities of the Filer in the applicable province or territory, the Filer will submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals in, and (ii) an administrative proceeding in, the applicable province or territory.

CC. The Filer will file with each Decision Maker a valid and binding appointment of an agent for service in the Decision Maker's province or territory upon whom the applicable securities regulatory authority may serve a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of or relating to or concerning the applicable securities regulatory authority's regulation and oversight of the Filer's activities in the province or territory.

Amendments and expiry

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

EE. This Decision shall expire five years from the date of this Decision.

Date: January 17, 2023

Brenda Leong  
Chair and CEO  
British Columbia Securities Commission

## Schedule A

<b>Exempting Regulators</b>	<b>Sections in Legislation: (a) Exemptive Relief Sought (b) Exempting provisions</b>
British Columbia Securities Commission	(a) Section 25 (b) Section 33(1)
Financial and Consumer Affairs Authority of Saskatchewan	(a) Section 21.1 (b) Section 147.41
Financial and Consumer Services Commission (New-Brunswick)	(a) Section 36 (b) Section 44.02(1) (a)
Nova Scotia Securities Commission	(a) Section 30J (b) Section 151A