

Headnote

Application for time-limited relief from suitability requirement, prospectus requirement, and trade reporting requirements – relief to allow the Filer to distribute Crypto Contracts 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, disclosure and reporting requirements – relief is time-limited to allow the Filer to operate while seeking registration as an investment dealer and membership with IIROC – relief will expire upon two (2) years – relief granted based on the particular facts and circumstances of the application with the objective of fostering innovative businesses in Canada – decision should not be viewed as precedent for other filers.

Applicable Legislative Provisions

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

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

Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting*, Part 3

Citation: Re VirgoCX Inc., 2022 ABASC 60

Date: 20220530

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 Virgo CX Inc.
(the **Filer**)

Decision

Background

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

To foster innovation and respond to novel circumstances, the CSA has considered an interim, time-limited registration that would allow CTPs to operate within a regulated environment, with regulatory requirements tailored to the CTP's operations. The overall goal of the regulatory framework is to ensure there is a balance between the need to be flexible and facilitate innovation in the Canadian capital markets, while upholding the regulatory mandate of promoting investor protection and fair and efficient capital markets.

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

Relief Requested

The securities regulatory authority or regulator in the Jurisdiction has received an application from the Filer (the **Passport Application**) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) exempting the Filer from:

- (a) the prospectus requirements of the Legislation in respect of the Filer entering into Crypto Contracts with clients (**Clients**, and each a **Client**) to purchase, hold and sell Crypto Assets (as defined below) (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**) that, before it opens an account, takes investment action for a client, or makes a recommendation or exercises discretion to take investment action, to determine on a reasonable basis that the action is suitable for the Client (the **Suitability Relief**, together with the Prospectus Relief, the **Passport Relief**).

The securities regulatory authority or regulator in the Jurisdiction and each of the other jurisdictions referred to in Appendix A (the **Jurisdictions**) (the **Coordinated Review Decision Makers**) have received an application from the Filer for a decision under the securities legislation of the Jurisdictions exempting the Filer from certain reporting requirements under the Local Trade Reporting Rules (as defined in Appendix A) (the **Trade Reporting Relief**).

The Passport Relief and the Trade Reporting Relief are referred to collectively as 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 Passport Relief, the Filer has provided notice that, in the jurisdictions where required, subsection 4.7(1) of Multilateral Instrument 11-102

Passport System (**MI 11-102**) is intended to be relied upon in each of the other provinces and territories of Canada (the **Non-Principal Jurisdictions**, and, together with the Jurisdiction, the **Applicable Jurisdictions**), and

- (c) the decision in respect of the Trade Reporting Relief is the decision of the Principal Regulator and evidences the decision of each Coordinated Review Decision Maker.

Interpretation

For the purposes of this Decision, 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 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 in any jurisdiction inside or outside of Canada.
5. The Filer’s personnel consist of software engineers, compliance professionals and client support representatives who each have experience operating in a regulated environment as a money services business (**MSB**) and expertise in blockchain technology. All of the Filer’s personnel have passed, and new personnel will have passed, criminal records and credit checks.
6. The Filer is not in default of securities legislation of any jurisdiction in Canada, except in respect of the Filer’s trading of Crypto Contracts prior to the date of this Decision.

VirgoCX Platform

7. The Filer operates a proprietary and automated internet-based platform for the trading of crypto assets in Canada (the **VirgoCX Platform**) that enables Clients of the Filer to buy, sell, hold, deposit and withdraw crypto assets such as bitcoin, ether, and anything commonly considered a crypto asset, digital or virtual currency, or digital or virtual token that are not themselves securities or derivatives (each a **Crypto Asset**, collectively the **Crypto Assets**) through the Filer.
8. The Filer’s role under the Crypto Contracts is to buy or sell Crypto Assets and to provide custody services for all Crypto Assets held in accounts on the VirgoCX Platform.
9. The VirgoCX Platform is governed by terms of service (the **VirgoCX TOS**).

10. Under the VirgoCX TOS, the Filer maintains certain controls over Client Crypto Assets to ensure compliance with applicable law and provide secure custody of the Client assets.
11. The Filer's trading of Crypto Contracts is consistent with activities described in Staff Notice 21-327 and constitutes the trading of securities and/or derivatives.
12. The Filer does not have any authority to act on a discretionary basis on behalf of Clients and will not offer or provide discretionary investment management services relating to Crypto Assets.
13. The Filer is registered as a MSB under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) (**Canadian AML/ATF Law**).
14. The Filer is not a member firm of the Canadian Investor Protection Fund (**CIPF**) and Client Crypto Assets do not qualify for CIPF coverage. The Risk Statement (as defined below) includes disclosure that there is no CIPF coverage for the Crypto Assets and Clients must acknowledge that they have received, read and understood the Risk Statement before opening an account with the Filer.
15. Upon the Filer's registration as a restricted dealer, the Filer will make available to Clients the services of the Ombudsman for Banking Services and Investments to resolve complaints made by Clients.

OTC Trading

16. VirgoCX Direct Inc., an affiliate of the Filer, operates an over-the-counter (**OTC**) trading desk for orders of a minimum size of C\$30,000. The OTC trading desk allows clients to purchase or sell Crypto Assets from VirgoCX Direct Inc. VirgoCX Direct Inc. immediately delivers, as described in Staff Notice 21-327, any purchased Crypto Assets to the purchaser at a blockchain wallet address specified by the purchaser which is not under the ownership, possession, or control of VirgoCX Direct Inc or the Filer.

Crypto Assets Available Through the Platform

17. The Filer has established and applies policies and procedures to review Crypto Assets and to determine whether to allow Clients on the VirgoCX Platform to enter into Crypto Contracts to buy and sell the Crypto Asset on the VirgoCX Platform (**KYP Policy**). Such review includes, but is not limited to, publicly-available information concerning:
 - (a) the creation, governance, usage and design of the Crypto Asset, including the source code, security and roadmap for growth in the developer community and, if applicable, the background of the developer(s) that created the Crypto Asset;
 - (b) the supply, demand, maturity, utility and liquidity of the Crypto Asset;
 - (c) material technical risks associated with the Crypto Asset, including any code defects, security breaches and other threats concerning the Crypto Asset and its

supporting blockchain (such as the susceptibility to hacking and impact of forking), or the practices and protocols that apply to them; and

- (d) legal and regulatory risks associated with the Crypto Asset, including any pending, potential, or prior civil, regulatory, criminal, or enforcement action relating to the issuance, distribution, or use of the Crypto Asset.
18. The Filer only offers and only allows Clients to enter into Crypto Contracts to buy and sell Crypto Assets that are not each themselves a security and/or a derivative.
19. The Filer does not allow Clients to enter into a Crypto Contract to buy and sell Crypto Assets unless the Filer has taken steps to:
- (a) assess the relevant aspects of the Crypto Asset pursuant to the KYP Policy and, as described in representation 17, to determine whether it is appropriate for its Clients,
 - (b) approve the Crypto Asset, and Crypto Contracts to buy and sell such Crypto Asset, to be made available to Clients, and
 - (c) monitor the Crypto Asset for significant changes and review its approval under (b) where a significant change occurs.
20. The Filer is not engaged, and will not engage, in trades that are part of, or designed to facilitate, the creation, issuance or distribution of Crypto Assets by the developer(s) of the Crypto Asset or affiliates or associates of such persons.
21. As set out in the Filer's KYP Policy, the Filer determines whether a Crypto Asset available to be bought and sold through a Crypto Contract is a security and/or derivative and is being offered in compliance with securities and derivatives laws, which include but are not limited to:
- (a) consideration of statements made by any regulators or securities regulatory authorities of Canada, other regulators of the International Organization of Securities Commissions jurisdictions, or the regulator with the most significant connection to a Crypto Asset about whether the Crypto Asset, or generally about whether the type of Crypto Asset, is a security and/or derivative; and
 - (b) if the Filer determines it to be necessary, obtaining legal advice as to whether the Crypto Asset is a security and/or derivative under securities legislation of any Canadian jurisdiction.

22. The Filer monitors ongoing developments related to Crypto Assets available on its Platform that may cause a Crypto Asset's status as a security and/or derivative or the assessment conducted by the Filer pursuant to its KYP Policy and as described in representations 17 to 21 to change.
23. The Filer acknowledges that any determination made by the Filer, including those set out in representations 17 to 21 of this Decision, does not prejudice the ability of any of the regulators or securities regulatory authorities of any province or territory of Canada to determine that a Crypto Asset that a Client may enter into a Crypto Contract to buy and sell is a security and/or derivative.
24. As set out in the Filer's KYP Policy, the Filer applies policies and procedures to promptly stop the trading of any Crypto Asset available on the VirgoCX Platform and to allow Clients to liquidate their positions in Crypto Contracts with underlying Crypto Assets that the Filer ceases to make available on the VirgoCX Platform.

Account Opening

25. Each Client must open an account (a **Client Account**) using the Filer's website or mobile application to access the VirgoCX Platform. Client Accounts are governed by the **VirgoCX TOS** that are accepted by Clients at the time of account opening.
26. The Filer has adopted eligibility criteria for the onboarding of all Clients. All Clients on the VirgoCX Platform must: (a) successfully complete the Filer's know-your-client (**KYC**) process which satisfies the identity verification requirements applicable to reporting entities under Canadian AML/ATF Law, and (b) hold an account with a Canadian financial institution. Each Canadian Client who is an individual, and each individual who is authorized to give instructions for a Canadian Client that is a legal entity, must be: (c) a Canadian citizen or permanent resident; and (d) 18 years or older.
27. The Filer does not provide recommendations or advice to Clients or conduct a trade-by-trade suitability determination for Clients, but rather performs product assessments pursuant to the KYP Policy and account assessments taking into account the following factors (the **Account Appropriateness Factors**):
 - (a) the Client's experience and knowledge in investing in Crypto Assets;
 - (b) the Client's financial assets and income;
 - (c) the Client's risk tolerance; and
 - (d) the Crypto Assets approved to be made available to a Client by entering into Crypto Contracts on the VirgoCX Platform.
28. The Account Appropriateness Factors are used by the Filer to evaluate whether entering into Crypto Contracts with the Filer is appropriate for a prospective Client before the opening of a Client Account.

29. The Filer has adopted and will apply policies and procedures to conduct an assessment to establish appropriate limits on the losses that a Client that is not a permitted client (as defined in NI 31-103) can incur, what limits will apply to such Client based on the Account Appropriateness Factors (the **Client Limit**), and what steps the Filer will take when the Client approaches or exceeds their Client Limit. After completion of the assessment, the Filer will implement controls to monitor and apply the Client Limits.
30. After completion of the account-level appropriateness assessment, a prospective Client receives appropriate messaging about using the VirgoCX Platform to enter into Crypto Contracts, which, in circumstances where the Filer has evaluated that entering into Crypto Contracts with the Filer is not appropriate for the Client, will include prominent messaging to the Client that this is the case and that the Client will not be permitted to open an account with the Filer.
31. Additionally, the Filer monitors and will continue to monitor Client Accounts after opening to identify activity inconsistent with the Client's account and product assessment. If warranted, the Client may receive further messaging about the VirgoCX Platform and the Crypto Assets, specific risk warnings and/or receive direct outreach from the Filer about their activity. The Filer monitors compliance with the Client Limits established in representation 29. If warranted, the Client will receive messaging when their account is approaching its Client Limit and receive instructions on how to implement a stop loss order to prevent further losses.
32. As part of the account opening process:
 - (a) the Filer collects KYC information to verify the identity of the Client in accordance with Canadian AML/ATF Law;
 - (b) the Filer provides a prospective Client with a statement of risks (the **Risk Statement**) that clearly explains the following in plain language:
 - (i) the Crypto Contracts;
 - (ii) the risks associated with the Crypto Contracts;
 - (iii) prominently, a statement that no securities regulatory authority has expressed an opinion about the Crypto Contracts or any of the Crypto Assets made available through the VirgoCX Platform, including any opinion that the Crypto Assets themselves are not securities and/or derivatives;
 - (iv) the due diligence performed by the Filer before making a Crypto Asset available through the VirgoCX Platform, including the due diligence steps taken by the Filer to assess whether the Crypto Asset is a security and/or derivative under the securities legislation of each of the jurisdictions of Canada and the securities and derivatives laws of the foreign jurisdiction with which the Crypto Asset has the most significant connection, and the

- (v) risks if the Filer has incorrectly determined that the Crypto Asset is not a security and/or derivative;
 - (vi) that the Filer has prepared a plain language description of each Crypto Asset made available through the VirgoCX Platform, with instructions as to where on the VirgoCX Platform the Client may obtain the descriptions (each, a **Crypto Asset Statement**);
 - (vii) the Filer's policies for halting, suspending and withdrawing a Crypto Asset from trading on the VirgoCX Platform, including criteria that would be considered by the Filer, options available to Clients holding such a Crypto Asset, any notification periods and any risks to Clients;
 - (viii) the location and manner in which Crypto Assets are held for the Client, the risks and benefits to the client of the Crypto Assets being held in that manner;
 - (ix) 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;
 - (x) the Filer is not a member of CIPF and the Crypto Assets held by the Filer (directly or indirectly through third parties) will not qualify for CIPF protection;
 - (xi) a statement that the statutory rights in section 130.1 of the Act, and, if applicable, similar statutory rights under securities legislation of the other Applicable Jurisdictions, do not apply in respect of the Risk Statement or a Crypto Asset Statement to the extent a Crypto Contract is distributed under the Prospectus Relief in this Decision; and
 - (xii) the date on which the information was last updated.
33. In order for a prospective Client to open and operate an account with the Filer, the Filer will obtain an electronic acknowledgement from the prospective Client confirming that the prospective Client has received, read and understood the Risk Statement. Such acknowledgement will be prominent and separate from other acknowledgements provided by the prospective Client as part of the account opening process.
34. A copy of the Risk Statement acknowledged by a Client will be made available to the Client in the same place as the Client's other statements on the VirgoCX Platform.
35. The Filer has policies and procedures for updating the Risk Statement and each Crypto Asset Statement to reflect any material changes to the disclosure or include any material risks that may develop with respect to the Crypto Contracts, Crypto Assets generally, or a specific Crypto Asset, as the case may be. In the event the Risk Statement is updated, existing Clients of the Filer will be promptly notified and provided with a copy of the

36. updated Risk Statement. In the event a Crypto Asset Statement is updated, existing Clients of the Filer will be promptly notified through website and in-App disclosures, with links provided to the updated Crypto Asset Statement.
37. For Clients with pre-existing accounts with the Filer at the time of this Decision, the Filer will:
 - (a) conduct the account appropriateness assessment and establish the appropriate Client Limit for the Client as set out in representations 27 to 30 above, and
 - (b) deliver to the Client the Risk Statement and will require the Client to provide electronic acknowledgement of having received, read and understood the revised Risk Statement, at the earlier of (i) before placing their next trade or deposit of Crypto Assets and (ii) the next time they log in to their account with the Filer. The Risk Statement must be prominent and separate from other disclosures given to the Client at that time, and the acknowledgement must be separate from other acknowledgements by the Client at that time
38. Before a Client enters a Crypto Contract to buy a Crypto Asset, the Filer will provide instructions for the Client to read the Crypto Asset Statement for the Crypto Asset, which will include a link to the Crypto Asset Statement on the Filer's website or App.
39. Each Crypto Asset Statement will include:
 - (a) a prominent statement that no securities regulatory authority in Canada has expressed an opinion about the Crypto Contracts or any of the Crypto Assets made available through the VirgoCX Platform, including an opinion that the Crypto Assets are not themselves securities and/or derivatives,
 - (b) a description of the Crypto Asset, including the background of the team that first created the Crypto Asset, if applicable,
 - (c) a description of the due diligence performed by the Filer with respect to the Crypto Asset,
 - (d) any risks specific to the Crypto Asset,
 - (e) a direction to the Client to review the Risk Statement for additional discussion of general risks associated with the Crypto Contracts and Crypto Assets made available through the VirgoCX Platform,
 - (f) a statement that the statutory rights in section 130.1 of the Act, and, if applicable, similar statutory rights under securities legislation of other Applicable Jurisdictions, do not apply in respect of the Crypto Asset Statement to the extent a Crypto Contract is distributed under the Prospectus Relief in this Decision, and
 - (g) the date on which the information was last updated.

40. The Filer will also periodically prepare and make available to its clients, educational materials and other informational updates about trading on the VirgoCX Platform and the ongoing development of Crypto Assets and Crypto Asset trading markets.

Operation of the VirgoCX Platform

41. The VirgoCX Platform operates 24 hours a day, seven days a week.
42. Clients on the VirgoCX Platform enter orders to buy or sell Crypto Assets through the Filer.
43. A Crypto Contract is a bilateral contract between a Client and the Filer. Accordingly, the Filer is the counterparty to all trades entered by Clients on the VirgoCX Platform. For each Client transaction, the Filer will also be a counterparty to a corresponding Crypto Asset buy or sell transaction with a crypto asset trading firm or marketplace (**Liquidity Provider**).
44. The Filer relies upon multiple Liquidity Providers to act as sellers of Crypto Assets that may be purchased by the Filer for its Clients. Liquidity Providers may also buy any Crypto Assets from the Filer that the Filer purchases from its Clients on the VirgoCX Platform and wishes to sell.
45. The Filer evaluates and will continue to evaluate the price obtained from its Liquidity Providers on an ongoing basis against global benchmarks to confirm that it is providing fair and reasonable pricing to its Clients.
46. The Filer has taken or will take reasonable steps to 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.
47. The Filer has verified that each Liquidity Provider has effective policies and procedures to address concerns relating to fair price, fraud and market manipulation.
48. The Filer charges trading commissions on purchases of Crypto Assets at rates disclosed on the VirgoCX Platform under “Fees” and incorporated by reference into the VirgoCX TOS. The total commission payable in respect of a transaction is disclosed to the Client prior to confirmation of the order.
49. All fees and commissions earned by the Filer are clearly disclosed on the VirgoCX Platform, and the Filer’s Clients can check the quoted prices for Crypto Assets on the VirgoCX Platform against the prices available on other crypto asset trading platforms.
50. The VirgoCX Platform continuously obtains prices for the Crypto Assets made available for trading from a Liquidity Provider, after which the VirgoCX Platform incorporates a ‘spread’ to compensate the Filer to determine the price to offer to Clients. The Filer then presents on a continuous basis this adjusted price to Clients as the price at which the Filer is willing to transact against a Client

51. If the Client finds the price agreeable, the Client may enter a market order to transact against the displayed price. Otherwise, the Client may enter a “limit order” at a price where the client would be willing to trade and if the price offered by the VirgoCX Platform at a future time meets the price entered by the Client, then the Client’s order will automatically be executed.
52. The Filer does not, and will not, offer margin, credit or other forms of leverage to Clients in connection with trading of Crypto Assets on the VirgoCX Platform and will not offer derivatives based on Crypto Assets to Clients other than Crypto Contracts.
53. The Filer records in its books and records the particulars of each trade.
54. The Filer promptly ensures that the increase or decrease in Crypto Assets in the Client’s account resulting from the trade is reflected in the Crypto Asset balances held in custody on the VirgoCX Platform, as described below under “Custody of Crypto Assets”. To the extent necessary to fulfil its settlement obligations to Clients, the Filer may trade with its Liquidity Providers on a net basis. Where there are net purchases of Crypto Assets over and above what is held in the Filer’s inventory, the Filer arranges for the cash to be transferred to the Liquidity Providers and Crypto Assets to be sent by the Liquidity Providers to the Filer. Where there are net sales of Crypto Assets over and above what the Filer wants to hold in inventory, the Filer may sell Crypto Assets to its Liquidity Providers.
55. Trading pairs available on the VirgoCX Platform include Crypto Asset-for-fiat and Crypto Asset-for-Crypto Asset.
56. Clients have access to a complete record of all transactions in their Client Account, including all transfers in of fiat or Crypto Assets, all purchases, sales and withdrawals, and the relevant prices, commissions and withdrawal fees charged in respect of such transactions.
57. Clients can fund their account by transferring in fiat currency or Crypto Assets. Clients can transfer in fiat currency by Interac e-transfer or bank wire, with the minimum and maximum amount for each transfer type set out under “Fees” on the VirgoCX Platform. At this time, the Filer does not charge Clients a deposit fee when transferring fiat currency or Crypto Assets into their Client Account.
58. Clients are charged a withdrawal fee when transferring Crypto Assets out of their Client Account to a blockchain address specified by the Client. The withdrawal fee varies by Crypto Asset and is disclosed on the VirgoCX Platform under “Fees”. Part of the withdrawal fee covers fees charged by the Filer’s payment processor to process the withdrawal transaction. The total withdrawal fee payable in respect of a withdrawal is disclosed to the Client prior to confirmation of the withdrawal.
59. Prior to transferring Crypto Assets out of a Client Account, the Filer conducts secondary verification of the blockchain address and screens the blockchain address specified by the transferring Client using blockchain forensics software.

Custody of Crypto Assets

60. The Filer holds Crypto Assets for the benefit of Clients separate and apart from its own assets and from the assets of any custodial service provider. The Filer is not permitted to pledge, re-hypothecate or otherwise use any Crypto Assets owned by its Clients. The Filer has and will retain the services of third-party custodians to hold not less than 80% of the total value of Crypto Assets held on behalf of Clients. The Filer primarily uses Coinbase Custody Trust Company LLC as custodian (the **Custodian**) and will use other custodians as necessary after reasonable due diligence. Up to 20% of the Filer's total Client Crypto Assets may be held online in: (i) hot wallets secured by Fireblocks Inc. (**Fireblocks**); and (ii) hot wallets secured by the Filer's proprietary software (**Proprietary Hot Wallets**). A maximum of 5% of the Filer's total Client Crypto Assets may be held in the Proprietary Hot Wallets.
61. The Custodian is registered as a limited purpose trust company with the New York Department of Financial Services (**NYDFS**). The Custodian has completed a Service Organization Controls (SOC) report under the SOC 2 – Type 1 and SOC 2 – Type 2 standards from a leading global audit firm. The Filer has conducted due diligence on the Custodian, including reviewing a copy of the SOC 2 – Type 2 audit reports prepared by the Custodian's auditors and has not identified any material concerns.
62. The Custodian holds all Crypto Assets for Clients of the Filer in an omnibus account in the name of the Filer and separate and distinct from the assets of the Filer, the Filer's affiliates and all of the Custodian's other Clients.
63. Coinbase Global Inc., the parent company of the Custodian, maintains US\$320 million of insurance (per-incident and overall) which covers losses of assets held by the Custodian, on behalf of its Clients due to third-party hacks, copying or theft of private keys, insider theft or dishonest acts by the Custodian employees or executives and loss of keys. The Filer has assessed the Custodian's insurance policy and has determined, based on information that is publicly available and on information provided by the Custodian and considering the scope of the Custodian's business, that the amount of insurance is appropriate.
64. The Custodian has established and applies policies and procedures that manage and mitigate the custodial risks, including, but not limited to, an effective system of controls and supervision to safeguard the Crypto Assets for which it acts as custodian and to mitigate security breaches and cyber incidents.
65. The Filer has assessed the risks and benefits of using the Custodian and, has determined that in comparison to a Canadian custodian (as that term is defined in NI 31-103) it is more beneficial to use the Custodian, a U.S. custodian, to hold Client Crypto Assets than a Canadian custodian.
66. The Filer has established, and will maintain and apply, policies and procedures that are reasonably designed to ensure the Custodian's records related to Crypto Assets that the Custodian holds in trust for Clients of the Filer are accurate and complete.

67. The Filer licenses software from Fireblocks which includes a crypto asset wallet that stores private and public keys and interacts with various blockchains to send and receive crypto assets and monitor balances. Fireblocks uses secure multiparty computation to share signing responsibility for a particular blockchain address among multiple independent persons.
68. The Filer operates the Proprietary Hot Wallets using software developed by the Filer which stores private and public keys and interacts with various blockchains to send and receive crypto assets and monitor balances. The Proprietary Hot Wallets are programmed to operate automatically within specified maximum value thresholds, and any programming changes or manual transactions require the approval of multiple individuals from the Filer's senior management team.
69. Fireblocks has obtained a SOC report under the SOC 2 – Type 2 standard from a leading global audit firm. The Filer has reviewed a copy of the SOC 2 – Type 2 audit report prepared by the auditors of Fireblocks, and has not identified any material concerns.
70. The Filer has licensed software from Digital Assets Services Limited (trading as Coincover) (**Coincover**) to provide additional security for keys to Crypto Assets held by the Filer using Fireblocks, including key pair creation, key pair storage, device access recovery and account access recovery. Coincover is based in the United Kingdom and is regulated by the U.K. Financial Conduct Authority.
71. Backup key material for the Filer's hot wallets secured using Fireblocks is secured by Coincover and 100% covered against loss or theft by a leading global insurance provider. The Filer has also obtained a guarantee through Coincover for the loss of Crypto Assets held in its Fireblocks hot wallets.
72. The Filer is proficient and experienced in holding Crypto Assets and has established and applied policies and procedures that manage and mitigate custodial risks, including but not limited to, an effective system of controls and supervision to safeguard the Crypto Assets. The Filer also maintains appropriate policies and procedures related to IT security, cyber-resilience, disaster recovery capabilities and business continuity plans.
73. The third-party insurance obtained by the Filer includes coverage for the Crypto Assets held by the Filer in cold storage in the event of loss or theft in accordance with the terms of the insurance policy in question.
74. Fireblocks has insurance coverage in the amount of US\$30 million in aggregate which, in the event of theft of Crypto Assets from hot wallets secured by Fireblocks, will be distributed among applicable Fireblocks customers, which could include the Filer, pursuant to an insurance settlement agreement.
75. In addition, backup key material for the Filer's Fireblocks hot wallets is secured by Coincover and 100% covered against loss or theft by a leading global insurance provider.

76. The Filer will supplement the insurance coverage and guarantee available through its services providers for the loss of Crypto Assets held in its hot wallets, by setting aside cash that will be held in an account at a Canadian financial institution, separate from the Filer's operational accounts and Filer's Client Accounts, in an amount agreed upon with its Principal Regulator. Depending on the circumstances, either funds from the guarantee or the bank account would be available in the event of loss of Crypto Assets held in the Filer's hot wallets secured by Fireblocks. In the event of a loss of Crypto Assets held in the Proprietary Hot Wallets, funds from the bank account will be available.

Marketplace and Clearing Agency

77. 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 Act.
78. The Filer will not operate a "clearing agency" or a "clearing house".

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 of its jurisdiction is that the Trade Reporting Relief is granted, provided that:

- A. Unless otherwise exempted by a further decision of the Principal Regulator and, if required under securities legislation, the regulator or securities regulatory authority of any other Jurisdiction, the Filer complies with all of the terms, conditions, restrictions and requirements applicable to a registered dealer under securities legislation, including the Legislation, and any other terms, conditions, restrictions or requirements imposed by a securities regulatory authority or regulator on the Filer.
- B. The Filer is registered as a restricted dealer or investment dealer in the Jurisdiction and the jurisdiction in which the Client is resident.
- C. The Filer, and any representatives of the Filer, will not provide recommendations or advice to any Client or prospective Client.
- D. The Filer will only engage in the business of trading Crypto Contracts in relation to Crypto Assets, and performing its obligations under those contracts. The Filer does not offer derivatives based on Crypto Assets to Clients other than the Crypto Contracts. The Filer will seek the appropriate approvals from the Principal Regulator and, if required under securities legislation, the regulator or securities regulatory authority of any other Applicable Jurisdiction, prior to undertaking any other activity governed by securities legislation.

- E. The Filer will not operate a "marketplace" as the term is defined in National Instrument 21-101 *Marketplace Operation* and in Ontario, in subsection 1(1) of the Act or a "clearing agency" or "clearing house" as the terms are defined or referred to in securities legislation.
- F. At all times, the Filer will hold not less than 80% of the total value of all Crypto Assets held on behalf of Clients with a custodian that meets the definition of a "qualified custodian" under NI 31-103, unless the Filer has obtained the prior written approval of the Principal Regulator to hold a different percentage with a "qualified custodian".
- G. Before the Filer holds Crypto Assets with a custodian referred to in condition F, the Filer will take reasonable steps to verify that the custodian:
 - (a) has appropriate insurance to cover the loss of Crypto Assets held at the custodian,
 - (b) has established and applies written policies and procedures that manage and mitigate the custodial risks, including, but not limited to, an effective system of controls and supervision to safeguard the Crypto Assets for which it acts as custodian, and
 - (c) has obtained a SOC 2 – Type 2 report within the last 12 months, unless the Filer has obtained the prior written approval of the Principal Regulator to alternatively verify that the custodian has obtained a SOC 1 – Type 1 or Type 2 report or a SOC 2 – Type 1 report within the last 12 months.
- H. The Filer will promptly notify the Principal Regulator if the U.S. Securities and Exchange Commission, the U.S. Commodity Futures Trading Commission, the Financial Industry Regulatory Authority, the National Futures Association or the New York State Department of Financial Services makes a determination that the Custodian is not permitted by that regulatory authority to hold Client Crypto Assets.
- I. For the Crypto Assets held by the Filer, the Filer:
 - (a) will hold the Crypto Assets for its Clients separate and distinct from the assets of the Filer;
 - (b) will ensure there is appropriate insurance for the loss of Crypto Assets held by the Filer; and
 - (c) will have established and apply written policies and procedures that manage and mitigate the custodial risks, including, but not limited to, an effective system of controls and supervision to safeguard the Crypto Assets for which it acts as custodian.
- J. The Filer will only use a Liquidity Provider that it has verified is registered and/or licensed, to the extent required in its home jurisdiction, to execute trades in the Crypto Assets and is not in default of securities legislation in any of the Applicable Jurisdictions, and will promptly stop using a Liquidity Provider if (i) the Filer is made aware that the Liquidity

Provider is, or (ii) a court, regulator or securities regulatory authority in any jurisdiction of Canada has determined it to be, not in compliance with securities legislation.

- K. 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.
- L. Before each prospective Client opens an account, the Filer will deliver to the Client a Risk Statement and will require the Client to provide electronic acknowledgement of having received, read and understood the Risk Statement.
- M. For each Client with a pre-existing account at the date of this Decision, the Filer will deliver to the Client a Risk Statement and will require the Client to provide electronic acknowledgement of having received, read and understood the Risk Statement at the earlier of (a) before placing their next trade or deposit of Crypto Assets on the VirgoCX Platform and (b) the next time they log in to their account with the Filer.
- N. The Risk Statement delivered in conditions L and M to new Clients or Clients with pre-existing accounts on the date of this Decision will be prominent and separate from other disclosures given to the Client at the time the Risk Statement is delivered, and the acknowledgement will be separate from other acknowledgements by the Client at that time.
- O. A copy of the Risk Statement acknowledged by a Client will be made available to the Client in the same place as the Client's other statements on the VirgoCX Platform.
- P. Before a Client enters into a Crypto Contract to buy a Crypto Asset, the Filer will provide instructions for the Client to read the Crypto Asset Statement for the Crypto Asset, which will include a link to the relevant Crypto Asset Statement on the Filer's website and in-Apps and includes the information set out in representation 38.
- Q. The Filer will promptly update the Risk Statement and each Crypto Asset Statement to reflect any material changes to the disclosure or include any material risks that may develop with respect to the Crypto Contracts and/or Crypto Assets and,
 - (a) in the event of any update to the Risk Statement, will promptly notify each existing Client of the update and deliver to them a copy of the updated Risk Statement, and
 - (b) in the event of any update to a Crypto Asset Statement, will promptly notify Clients through electronic disclosures on the VirgoCX Platform, including in the VirgoCX Mobile App, with links provided to the updated Crypto Asset Statement.
- R. Prior to the Filer delivering a Risk Statement to a Client, the Filer will deliver, or will have previously delivered, a copy of the Risk Statement delivered to the client to the Principal Regulator.
- S. For each Client, the Filer will perform an account appropriateness assessment as described in representations 27 to 30 prior to opening an account, on an ongoing basis at least annually.

- T. For each Client with a pre-existing account at the date of this Decision, the Filer will perform an account appropriateness assessment, as described in representations 27 to 30, the next time the Client uses their account. The Client will not be permitted to trade until the completion of the account appropriateness assessment and a determination that the account is appropriate.
- U. The Filer will monitor Client activity and contact Clients to discuss their trading behaviour if it indicates a lack of knowledge or understanding of Crypto Asset trading, in an effort to identify and deter behaviours that may indicate that trading a Crypto Contract is not appropriate for the Client, or that additional education is required.
- V. The Filer will ensure that the maximum amount of Crypto Assets, excluding Specified Crypto Assets (as set out in Appendix B to this Decision), that a Client, except those Clients resident in Alberta, British Columbia, Manitoba and Québec, may enter into Crypto Contracts to purchase and sell on the VirgoCX Platform (calculated on a net basis and is an amount not less than \$0) in the preceding 12 months does not exceed a net acquisition cost of \$30,000.
- W. The Filer has established and will apply and monitor the Client Limits as set out in representation 29.
- X. In the jurisdictions where the Prospectus Relief is required, the first trade of a Crypto Contract is deemed to be a distribution under securities legislation of that jurisdiction.
- Y. The Filer will provide the Principal Regulator with at least 10 days' prior written notice of any:
 - (a) change of or use of a new custodian; and
 - (b) material changes to the Filer's ownership, its business operations, including its systems, or its business model.
- Z. The Filer will notify the Principal Regulator, promptly, of any material breach or failure of its or its custodian's system of controls or supervision, and what steps have been taken by the Filer or its custodian, as the case may be, to address each such breach or failure. The loss of any amount of Crypto Assets will be considered a material breach or failure.
- AA. The Filer will only trade Crypto Contracts based on Crypto Assets that are not in and of themselves securities or derivatives.
- BB. The Filer will evaluate Crypto Assets as set out in its KYP Policy and described in representations 17 to 22.
- CC. The Filer will not trade Crypto Assets or Crypto Contracts based on Crypto Assets with a customer in the Jurisdiction, without the prior written consent of the regulator or securities regulatory authority of the Jurisdiction, where the Crypto Asset was issued by or on behalf of a person or company that is or has in the last five years been the subject of an order, judgment, decree, sanction, fine, or administrative penalty imposed by, or has entered into

a settlement agreement with, a government or government agency, administrative agency, self-regulatory organization, administrative tribunal or court in Canada or in a Specified Foreign Jurisdiction in relation to a claim based in whole or in part on fraud, theft, deceit, aiding and abetting or otherwise facilitating criminal activity, misrepresentation, violation of AML laws, conspiracy, breach of trust, breach of fiduciary duty, insider trading, market manipulation, unregistered trading, illegal distributions, failure to disclose material facts or changes, or allegations of similar or analogous conduct; for the purposes of this condition, the term “Specified Foreign Jurisdiction” means any of the following: Australia, Brazil, any member country of the European Union, Hong Kong, Japan, Republic of Korea, New Zealand, Singapore, Switzerland, United Kingdom of Great Britain and Northern Ireland, and United States of America.

- DD. Except to allow Clients to liquidate their positions in those Crypto Contracts or transfer such Crypto Assets to a blockchain address specified by the Client, the Filer will promptly stop trading Crypto Contracts where the underlying is a Crypto Asset if (i) the Filer determines it to be, (ii) a court, regulator or securities regulatory authority in any jurisdiction of Canada or the foreign jurisdiction with which the Crypto Asset has the most significant connection determines it to be, or (iii) the Filer is made aware or is informed that the Crypto Asset is viewed by a regulator or securities regulatory authority to be, a security and/or derivative.

Data Reporting

- EE. The Filer will provide the following information to the Principal Regulator, and to the securities regulatory authority or regulator in each of the Non-Principal Jurisdictions with respect to Clients in those jurisdictions individually, within 30 days of the end of each March, June, September and December:
- (a) aggregate reporting of activity conducted pursuant to Crypto Contracts that will include the following:
 - (i) number of Client Accounts opened each month in the quarter;
 - (ii) number of Client Accounts closed each month in the quarter;
 - (iii) number of trades in each month of the quarter;
 - (iv) average value of the trades in each month of the quarter;
 - (v) number of Client Accounts with a net acquisition cost greater than \$30,000 of Crypto Assets at the end of each month in the quarter;
 - (vi) number of Client Accounts with no trades during the quarter;
 - (vii) number of Client Accounts that have not been funded at the end of each month in the quarter; and

- (viii) number of Client Accounts that hold a positive amount of Crypto Assets at the end of each month in the quarter;
 - (b) the details of any Client complaints received by the Filer during the calendar quarter and how such complaints were addressed;
 - (c) the details of any fraudulent activity or cybersecurity incidents on the VirgoCX Platform during the calendar quarter, any resulting harms and effects on Clients, and the corrective measures taken by the Filer to remediate such activity or incident and prevent similar activities or incidents from occurring in the future;
 - (d) the amount of Crypto Assets held in Proprietary Hot Wallets and in all other hot wallets as of the end of the quarter;
 - (e) the amount of the guarantee described in representation 75 as of the end of the quarter;
 - (f) the name of the financial institution and the amount of money held at the end of the quarter in an account with the financial institution, separate from the Filer's operation accounts and Filer's Client accounts, to supplement any insurance policy or guarantee relating to the Filer's hot wallets; and
 - (g) the details of the transaction volume per Liquidity Provider, per Crypto Asset during the quarter.
- FF. The Filer will deliver to the regulator or the securities regulatory authority in each of the Applicable Jurisdictions, in a form and format acceptable to the regulator or the securities regulatory authority, a report that includes the following anonymized account-level data for activity conducted pursuant to a Crypto Contract for each Client within 30 days of the end of each March, June, September and December:
- (a) unique account number and unique client identifier, as applicable;
 - (b) jurisdiction where the Client is located;
 - (c) the date the account was opened;
 - (d) the amount of fiat held at the beginning of the reporting period and at the end of the reporting period;
 - (e) cumulative realized gains/losses since account opening in CAD;
 - (f) unrealized gains/losses as of the report end date in CAD;
 - (g) quantity traded, deposited and withdrawn by Crypto Asset during the quarter in number of units;
 - (h) Crypto Asset traded by the Client;

- (i) quantity held of each Crypto Asset by the Client as of the report end date in units;
 - (j) CAD equivalent aggregate value for each Crypto Asset traded by the Client, calculated as the amount in (i) multiplied by the market price of the asset in (h) as of the report end date;
 - (k) age of account in months; and
 - (l) the Client Limit recommended by the Filer on each account.
- GG. Within 7 calendar days from the end of each month, the Filer will deliver to the regulator or securities regulatory authority in each of the Applicable Jurisdictions, a report of all accounts for which the Client Limits established pursuant to representation 29 were exceeded during that month.
- HH. The Filer will deliver to the Principal Regulator, within 30 days of the end of each March, June, September and December, either:
 - (a) blackline copies of changes made to the policies and procedures on the operations of its wallets that were previously delivered to the Principal Regulator; or
 - (b) a nil report stating no changes have been made to its policies and procedures on the operations of its wallets in the quarter.
- II. In addition to any other reporting required by Legislation, the Filer will provide, on a timely basis, any report, data, document or information to the Principal Regulator, including any information about the Filer's custodian(s) and the Crypto Assets held by the Filer's custodian(s), that may be requested by the Principal Regulator from time to time as reasonably necessary for the purpose of monitoring compliance with the Legislation and the conditions in the Decision, in a format acceptable to the Principal Regulator.
- JJ. Upon request, the Filer will provide the Principal Regulator and the regulators or securities regulatory authorities of each of the Non-Principal Jurisdictions with aggregated and/or anonymized data concerning Client demographics and activity on the VirgoCX Platform that may be useful to advance the development of the Canadian regulatory framework for trading crypto assets.
- KK. 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 VirgoCX Platform.
- LL. The Filer will, if it intends to operate the VirgoCX Platform in Ontario and Québec after the expiry of the Decision, take the following steps:
 - (a) submit an application to the OSC and the Autorité des marchés financiers (**AMF**) to become registered as an investment dealer no later than 12 months after the date of the Decision;

- (b) submit an application with the IIROC to become a dealer member no later than 12 months after the date of the Decision; and
- (c) work actively and diligently with the OSC and IIROC to transition the VirgoCX Platform to investment dealer registration and obtain IIROC membership.

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

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

In respect of the Prospectus Relief:

“Erin O’Donovan”

Erin O’Donovan
Manager (Acting), Corporate Finance
Ontario Securities Commission

In respect of the Suitability Relief:

“Debra Foubert”

Debra Foubert
Director, Compliance and Registrant Regulation
Ontario Securities Commission

In respect of the Trade Reporting Relief:

“Kevin Fine”

Kevin Fine
Director, Derivatives
Ontario Securities Commission

APPENDIX A – LOCAL TRADE REPORTING RULES

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

- Part 3, Data Reporting of Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (**OSC Rule 91-507**), and the power to grant exemption orders set out in Section 42 of OSC Rule 91-507;
- Part 3, Data Reporting of Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (**MSC Rule 91-507**), and the power to grant exemption orders set out in Section 42 of MSC Rule 91-507; and
- Part 3, Data Reporting of Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan, and Yukon (**MI 96-101**), and the power to grant exemption orders set out in Section 43 of MI 96-101.

APPENDIX B – SPECIFIED CRYPTO ASSETS

Bitcoin

Ether

Bitcoin Cash

Litecoin