

October 7, 2022

**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
Coinsquare Capital Markets Ltd.
(the Filer)**

Decision

Background

¶ 1 As set out in Joint CSA/IROC Staff Notice 21-329 Guidance for Crypto-Asset Trading Platforms: Compliance with Regulatory Requirements (SN 21-329) and 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 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 derivative in the Jurisdictions (**Crypto Contract**).

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

The Filer operates a proprietary and fully automated CTP. The CTP allows clients to solicit quotes from and trade in crypto assets with the Filer as principal (the **Dealer Platform**) and also enables client crypto asset orders and Filer principal orders to interact on the Filer's marketplace platform (the **Marketplace Platform**). Under the Crypto Contracts, clients have specified rights relating to a crypto asset such as Bitcoin, Ether and anything commonly considered to be 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**).

The Filer filed an application to be registered in the category of investment dealer and approved as a dealer and marketplace member with the Investment Industry Regulatory Organization of Canada

(IIROC) and for approval to operate an alternative trading system as a registered investment dealer. On XXXXX, XXXX, the Filer obtained an exemption from certain requirements under applicable securities legislation including certain marketplace requirements in jurisdictions where the Filer is carrying on business as an “alternative trading system” as that term is defined in National Instrument 21-101 *Marketplace Operation* (NI 21-101) (the **Existing Order**).

Crypto Contracts are derivatives in the Jurisdictions. Because the definition of “alternative trading system” in NI 21-101 refers solely to securities but not to derivatives, the Marketplace Platform is not an alternative trading system in the Jurisdictions. Instead, the Filer will be carrying on business as an exchange in each Jurisdiction through the operation of the Marketplace Platform.

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 Maker**) 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 Appendix A (the **Recognition Relief**);
 - (b) the following marketplace requirements (the **Marketplace Relief**):
 - (i) paragraph 12.3(1)(a) of NI 21-101;
 - (ii) paragraph 13.1 of NI 21-101.

Together the Recognition Relief and the Marketplace Relief will be 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 other Decision Maker.

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.

Representations

- ¶ 4 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 registered as a money services business under regulations made under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada).
 3. The Filer does not have any securities listed or quoted on an exchange or marketplace in any jurisdiction inside or outside of Canada.
 4. The Filer has applied to be a registered dealer in the category of investment dealer and a member of IIROC.
 5. The Filer has applied for exemptive relief from certain marketplace requirements as an alternative trading system (ATS) in every jurisdiction except British Columbia, Saskatchewan, New Brunswick and Nova Scotia.
 6. The Filer's books and records, financial controls and compliance systems (including its policies and procedures) are in compliance with IIROC requirements.
 7. The Filer's personnel consist, and will consist, of software engineers, compliance professionals and finance professionals who have experience operating in a regulated financial services environment and expertise in blockchain technology. All of the Filer's key personnel have passed, and new personnel will have passed, criminal records and credit checks.
 8. The Filer is not in default of securities legislation of any jurisdictions of Canada.

Coinsquare's Business

9. The Filer operates under the business name of "Coinsquare".
10. The Platform uses a proprietary and fully automated, internet-based system that enables clients to trade Crypto Contracts through the Filer utilizing both the Dealer Platform and the Marketplace Platform (each a **Platform**).
11. To use the Platforms, each client must open an account (**Client Account**) using the Filer's Website or a mobile application. Client Accounts are governed by a user agreement (**Client Account Agreement**) that is accepted by clients at the time of account opening. The Client

Account Agreement governs all activities in Client Accounts, including with respect to the terms of all Crypto Contracts and Crypto Assets held by the Filer to fulfill its obligations under Crypto Contracts (**Client Assets**).

12. Under the Client Account Agreement, the Filer maintains certain controls over Client Accounts to ensure compliance with applicable law and with the by-laws, rules, regulations and policies of IIROC (**IIROC Rules**), and to provide secure custody of their Client Accounts.
13. The Filer enters into Crypto Contracts with clients to facilitate trading which is consistent with activities described in SN 21-327 and constitutes the trading of securities and/or derivatives.
14. The Filer will display, on its Marketplace Platform, client orders for Crypto Assets and its own orders as principal as described under “Marketplace Platform Operations” below.

Marketplace Platform Operations

15. The Marketplace Platform brings together orders to trade Crypto Contracts using established, non-discretionary methods under which orders interact with each other, and the buyers and sellers agree to the terms of the trade. In the Jurisdictions, the Marketplace Platform constitutes an exchange.
16. When a client enters orders through CS Pro (formerly known as “Advanced Trade”), those orders will be entered onto the two-sided order book (the **Order Book**) for the purpose of executing trades on the Marketplace Platform, subject to appropriate risk management and pre-trade controls.
17. In respect of CS Pro, client orders are entered into the Order Book and executed on the Marketplace Platform by CCML as a marketplace subscriber and are matched with other orders in the Order Book which include other client orders, the Filer’s principal orders (which are also displayed in the Order Book as resting orders), or orders placed by other marketplace subscribers. Marketplace subscribers will consist of the Filer, other IIROC Dealer Members and approved large institutional buy-side firms (the **Subscribers**). Relying on aggregated external pricing data from third-party liquidity providers, the Filer enters principal orders in the Order Book in order to provide liquidity around the prevailing market trading price. The Filer’s orders are handled in the same manner as client orders entered on the Marketplace Platform with no preference given or advantage to the handling of the Filer’s orders, and no advance knowledge of the client orders in the Order Book.
18. The Marketplace Platform provides a two-sided, electronic auction market with a visible central limit order book that matches orders at “top of book” in strict price/time priority. The Marketplace Platform will not support market orders, contingent orders, dark orders, or indications of interest. At launch, the Marketplace Platform will not support short sale orders.
19. The Marketplace Platform will offer an application programming interface (API) for Subscribers and/or market data vendors to retrieve depth-of-book order data and data on completed trades.

20. The following designations or markers will be applied to orders, as appropriate: trading participant number, marketplace number, account type: Order-Execution-Only Client / Non-Client / Principal; client Identifier (i.e., Legal Entity Identifier or client account number, as applicable) and time in force: GTC (good till cancelled / FOK (fill or kill) / IOC (immediate execution or cancel).
21. The Filer charges a transaction fee for every trade on the Marketplace Platform using a maker/taker fee model which is disclosed on the Filer's website.
22. The Filer will require clients to agree to the Marketplace Platform's access requirements which will be available on the Website and will include the following:
 - (a) trading hours of the Marketplace Platform;
 - (b) the fees charged to a client on the Marketplace Platform;
 - (c) requirement that the client must comply with any restrictions on use of the Marketplace Platform, including complying with trading requirements applicable to IIROC members such as IIROC's Universal Market Integrity Rules and all applicable laws;
 - (d) the possible consequences of any unauthorized use or non-compliance; and
 - (e) the Filer's conflict of interest policies and procedures.
23. The Filer establishes, maintains and ensures compliance with policies and procedures that identify and manage conflicts of interest arising from the operation of the Marketplace Platform and its related services, including conflicts between the interests of its owners, its commercial interests and the responsibilities and sound functioning of the Marketplace Platform and related services.
24. The Filer's policies and procedures to identify and manage conflicts of interest address those that arise from the trading activities of the Filer as principal on the Marketplace Platform, as described above. The Filer believes that potential conflicts of interest arising from the operation of the Marketplace Platform are adequately addressed through conflict of interest policies including through appropriate disclosure to its clients and the controls implemented within the operational model of the Marketplace Platform.
25. In the absence of unpredicted technological issues or unusual market conditions, all Crypto Contracts entered into by clients will be placed with the Filer through the Apps or its Website. Clients will be able to submit orders, either in units of the applicable underlying Crypto Asset or in fiat currency, 24 hours a day, 7 days a week. Clients will be able to deposit and withdraw Crypto Assets and fiat currency, 24 hours a day, 7 days a week (or where applicable, for fiat currency during banking hours).

Settlement of trades on the Marketplace Platform

26. The matching of orders on CS Pro results in a bilateral Crypto Contract between the persons or companies that entered the orders but is a bilateral Crypto Contract between the client and the Filer for the purposes of settlement.
27. All Crypto Contracts are settled directly between the Filer and each party to the trade when the matching takes place on the Platform with respect to CS Pro orders since the Filer has verified that assets are available prior to order entry.

Marketplace and Clearing Agency

28. The Filer will operate a “marketplace” as that term is defined in National Instrument 21-101 *Marketplace Operation*.
29. Marketplace Relief is necessary because the Marketplace Platform 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 SN 21-329, 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.
30. The terms and conditions attached to this Decision, as well as the Filer’s requirements 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.
31. The Filer will not operate as “clearing agency” or a “clearing house” as the terms are defined or referred to securities legislation, except in jurisdictions where the filer is recognized or exempted from recognition as a “clearing agency” or “clearing house”.

Decision

- ¶ 5 Each of the Principal Regulator and the Decision Makers is satisfied that the Decision meets the test set out in the Legislation for the 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:

- (a) The Filer is registered as an investment dealer in the Jurisdictions and the jurisdiction in which the client is resident and is a member of IIROC.
- (b) The Filer will only engage in the business of trading Crypto Contracts in relation to Crypto Assets and performing its obligations under those contracts and will not offer derivatives based on Crypto Assets other than Crypto Contracts. The Filer will seek the appropriate approvals from IIROC and/or 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.

- (c) 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.
- (d) When the Filer trades with its clients on a principal basis, the Filer will abide by policies it has adopted with a view to providing fair and reasonable prices to its clients.
- (e) The Filer will notify IIROC and 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 to address each such breach or failure. The loss of any amount of Crypto Assets will be considered a material breach or failure.
- (f) The Filer will only trade Crypto Contracts based on Crypto Assets that are not in and of themselves securities or derivatives.
- (g) The Filer will not trade Crypto Assets or Crypto Contracts based on Crypto Assets with a client in a 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 anti-money laundering 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.
- (h) 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 on the Platform where the underlying is a Crypto Asset that (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.
- (i) The Filer will provide the following information to the Principal Regulator, and to the securities regulatory authority or regulator in each of the Jurisdictions with respect to clients in those jurisdictions individually, within 30 days of the end of each March, June, September and December aggregate reporting of activity conducted on the Platform pursuant to Crypto Contracts consisting of the following:

- A) number of Client Accounts opened each month in the quarter;
 - B) number of Client Accounts closed each month in the quarter;
 - C) number of trades in each month of the quarter;
 - D) average value of the trades in each month of the quarter;
 - E) 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;
 - F) number of Client Accounts with no trades during the quarter;
 - G) number of Client Accounts that have not been funded at the end of each month in the quarter; and
 - H) number of Client Accounts that hold a positive amount of Crypto Assets at the end of each month in the quarter;
- (j) 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, by IIROC or by the Principal Regulator arising from the operation of the Platform.
- (k) in each jurisdiction except British Columbia, the Filer will not operate a “clearing agency” as the term is defined in securities legislation. For any clearing or settlement activity conducted by the Filer incidental to the Filer engaging in the business of a Crypto Asset dealer and marketplace, the Filer will:
- (i) maintain adequate procedures and processes to ensure the provision of accurate and reliable settlement services in connection with Crypto Assets; and
 - (ii) maintain appropriate risk management policies and procedures and internal controls to minimize the risk that settlement will not take place as expected.
- (l) This Decision may be amended by the Principal Regulator upon prior written notice to the Filer in accordance with applicable securities legislation.

Date: October 7, 2022

“Brenda M. Leong”

Brenda M. Leong
Chair

Schedule A

Exempting Regulators	Sections in Legislation: (a) Exemptive Relief Sought (b) Exempting provisions
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