

December 19, 2024

**In the Matter of the Securities Legislation of British Columbia, Quebec, 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
Ndax Canada 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* (**SN 21-329**) and Canadian Securities Administrators (**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 an instrument or contract involving a Crypto Asset (as defined below) because the User's contractual right to the Crypto Asset constitutes a derivative or a security in the Jurisdictions (**Crypto Contract**).

The Filer operates a proprietary and fully-automated internet-based order-execution only platform, operating as a Marketplace Platform (as described in Staff Notice 21-329 *Guidance for Crypto-Asset Trading Platforms: Compliance with Regulatory Requirements*) (the **Ndax Platform**), that supports the entry of orders by persons that have trading access (each a **User**) to trade bitcoin, ethereum and other products considered to be a crypto asset, digital or virtual currency, or digital or virtual token that are not themselves securities or derivatives and Value-Referenced Crypto Assets (as defined in the CSA Decision Document (as that term is defined below)) (each a **Crypto Asset**, collectively the **Crypto Assets**).

A Crypto Contract is traded by Users through a trading account with the Filer whereby the User does not receive immediate delivery and control over a Crypto Asset, but rather, has a Crypto Contract with the Filer that references a Crypto Asset. Prior to the date of this Decision (the **Decision**), the Filer operated under a pre-registration undertaking dated March 24, 2023, in favour of the Principal Regulator (as defined below) and the other members of the CSA. The Filer is or will be registered in the category of investment dealer under applicable securities legislation and is or will be a member of the Canadian Investment Regulatory Organization (**CIRO**).

Because the CSA considers the Filer to be facilitating trades of Crypto Contracts for Canadian securities legislation purposes, the Filer filed an application to be exempted from certain requirements under securities legislation in the Jurisdictions, including the requirement to be recognized as a clearing agency or a settlement system, as applicable.

Crypto Contracts are derivatives or securities in each of the Jurisdictions. The Filer will be carrying on business as an exchange or an alternative trading system and a clearing agency or a settlement system, as applicable in each of the Jurisdictions through the operation of the Ndax Platform.

This Decision provides the Filer with exemptive relief with respect to carrying on business in the Jurisdictions as a clearing agency or a settlement system, as applicable, 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 Jurisdictions will not consider this Decision as constituting a precedent for other filers.

Relief Requested

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

- (a) the requirement to be recognized as a clearing agency or settlement system, as applicable, under the Legislation listed in Schedule A (the **Clearing Recognition Relief**); and
- (b) the clearing agency requirements in National Instrument 24-102 – *Clearing Agency Requirements* (**NI 24-102**) (the **24-102 Relief**).

Together, the Clearing Recognition Relief and the 24-102 Relief are referred to as the **Requested Relief**.

The Filer has concurrently applied for exemptive relief from the requirement to be recognized as an exchange, and the requirements of National Instrument 21-101 – *Marketplace Operation*, National Instrument 23-101 – *Trading Rules*, and National Instrument 23-103 – *Electronic Trading and Direct Electronic Access to Marketplaces*. The exemption to be recognized as an exchange will be provided in a separate order.

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 (collectively the **Decision Makers**).

Interpretation

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.

For the purposes of this decision (the **Decision**) and except as set out below, all capitalized terms used have the same meaning given to them in the CSA Decision Document:

- (a) “**CSA Decision Document**” means the decision dated December 19, 2024, issued by the securities regulatory authorities of each jurisdiction of Canada, as applicable, exempting the Filer from the prospectus requirement in the securities legislation of each jurisdiction, from the derivative trade reporting requirements in certain of the jurisdictions and from certain marketplace requirements in certain of the jurisdictions.

Representations

In addition to all of the facts represented by the Filer in the CSA Decision Document, this Decision is based on the following facts:

1. The Filer is a corporation incorporated under the laws of the province of Alberta with its head office in Calgary, Alberta.
2. The Filer operates under the business name “Ndax”.
3. The Filer is a registered dealer in the category of investment dealer with, among others, the Jurisdictions and is a member of CIRO.
4. The Filer operates in Canada as described in the CSA Decision Document. 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.

Exchange

5. The Ndax Platform brings together orders, entered by or on behalf of Users, to trade Crypto Contracts using established, non-discretionary methods under which orders interact with each other. The Ndax Platform is an exchange in the Jurisdictions that is exempted from the requirement to be recognized. The Ndax Platform is an alternative trading system in jurisdictions of Canada other than the Jurisdictions, except for the jurisdiction of Quebec.
6. The Ndax Platform provides Users with the ability to enter an order that, if matched with another order, results in the execution of a transaction. Each transaction results in a Crypto Contract between the Users whose order were matched and is a derivative or a security under securities legislation in each Jurisdiction.
7. Users will be required to sign an agreement with the Filer (**the Ndax User Agreement**) that requires the User to comply with the Filer’s requirements or conditions relating to trading and the clearing and settlement of transactions executed on the Ndax Platform. The Ndax User Agreement also documents the rights and obligations of the Filer and User under a Crypto Contract. This Ndax User Agreement is accepted by each User at the time the User opens an account with the Filer, as the operator of the Ndax Platform.

Clearing Agency, Clearing House and Settlement System

8. The Filer is responsible for the clearing and settlement of each Crypto Contract. Following the execution of each transaction that results in a Crypto Contract, the Filer will be responsible for ensuring that each party to the Crypto Contract can exercise their rights in accordance with the terms of the Ndax User Agreement.
9. As a result of: (i) enabling the substitution of the credit of the person for the credit of a party to a derivative or a security through a novation or otherwise; and (ii) arranging for or providing, on a multilateral basis, the settlement or netting of obligations resulting from a derivative or a trade in a derivative, the Filer will carry on business as a clearing agency in the province of British Columbia.
10. The Filer will apply policies and procedures designed to ensure that it has appropriate controls to mitigate risks relating to its clearing and settlement activities, including, but not limited to, controls that ensure that the Filer will fulfill its obligations under Crypto Contracts.

11. The Filer has retained the services of one or more independent third-parties to hold assets, including Crypto Assets and fiat currency, to which a User has an interest under the terms of the Ndax User Agreement. These assets are held in trust for the benefit of Users in accordance with the representations and conditions set out in the CSA Decision Document.

Books and Records

12. The Filer keeps books and records and other documents to accurately record its business activities, and financial affairs and client transactions, and to demonstrate the Filer's compliance with applicable requirements of securities legislation, including but not limited to:
 - (a) records of all transactions and the clearing and settlement rights of Users pursuant to these transactions,
 - (b) the clearing and settlement of transactions and Crypto Contracts.

Decision

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:

Regulatory status and compliance with applicable law

- A. The Filer will only continue to offer the Ndax Platform so long as the Filer is registered as an investment dealer, is a CISO member dealer in good standing, and is in compliance with applicable securities legislation.
- B. The Filer will provide prompt notification to the Principal Regulator if it is no longer registered as an investment dealer in any of the Jurisdictions, is no longer a CISO member dealer in good standing, or is not in compliance with applicable securities legislation.
- C. The Filer will continue to be registered as a "money services business" under regulations made under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) and will comply with all applicable requirements.
- D. The Filer will comply with applicable securities legislation.

Books and records

- E. The Filer will keep books, records and other documents reasonably necessary for the proper recording of their businesses and to demonstrate compliance with the Legislation and the conditions of this Decision, including, but not limited to, records of:
 - (a) all opened and filled orders and trades, including the product, quotes, executed price, volume, time when the order is entered, matched, cancelled or rejected, and the identifier of any authorized user that entered the order, and
 - (b) all assets held on behalf of Users, including Crypto Assets and fiat currency. The books, records or other documents should include information relating to amount

and location the assets held, and amount of deposits or withdrawals of Users' assets.

- F. The Filer will maintain the aforementioned books, records and other documents in electronic form and promptly provide them in the format and at the time requested by the Principal Regulator pursuant to the Legislation. Such books, records and other documents will be maintained by the Filer for a minimum of seven years.

Systems and internal controls

- G. For any clearing or settlement activity conducted by the Filer, the Filer will:
- (a) maintain adequate procedures and processes to ensure the provision of accurate and reliable settlement services for User's, including settlement services in connection with Crypto Assets and fiat currency;
 - (b) maintain appropriate risk management policies and procedures and internal controls to minimize the risk that settlement will not take place as expected;
 - (c) limit the provision of clearing and settlement services to Crypto Assets and fiat currency which underlie the Crypto Contracts traded on the Ndax Platform; and
 - (d) limit the provision of clearing and settlement services to Users of the Filer.
- H. 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 Ndax Platform, including in the event of a wide-scale or major disruption.

Reporting

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

Amendments and expiry

- L. This Decision may be amended by the Principal Regulator upon prior written notice to the Filer in accordance with applicable securities legislation.
- M. This Decision shall expire five years from the date of this Decision.

Date: December 19, 2024

A handwritten signature in black ink, appearing to be 'B. Leong', with a stylized, cursive flourish.

Brenda M. Leong, Chair
British Columbia Securities Commission

Schedule A

Clearing Recognition Relief

Exempting Regulators	Sections in Legislation: (a) Clearing Recognition Relief Sought (b) Exempting provisions
British Columbia Securities Commission	(a) Section 25 of the <i>Securities Act</i> (British Columbia) (b) Section 33(1) of the <i>Securities Act</i> (British Columbia)
Autorité des marchés financiers	(a) Section 169 of the <i>Securities Act</i> (Québec) (b) Section 263 of the <i>Securities Act</i> (Québec)
Financial and Consumer Affairs Authority of Saskatchewan	(a) Section 21.1 of the <i>Securities Act</i> (Saskatchewan) (b) Section 147.41 of the <i>Securities Act</i> (Saskatchewan)