

Citation: 2022 BCSECCOM 498

Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*

National Instrument 21-101 *Marketplace Operation*, s. 15.1 – *Securities Act*, R.S.B.C. 1996, c. 418, s. 187 – An exempt market dealer seeking time limited exemption from marketplace and clearing agency requirements – the exempt market dealer has developed and is testing, in the context of the CSA Regulatory Sandbox and for a time-limited period, a secondary trading platform.

National Instrument 23-101 *Trading Rules*, s. 12.1 – *Securities Act*, R.S.B.C. 1996, c. 418, s. 187 – An exempt market dealer seeking time limited exemption from marketplace and clearing agency requirements – the exempt market dealer has developed and is testing, in the context of the CSA Regulatory Sandbox and for a time-limited period, a secondary trading platform.

National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces*, s. 10 – *Securities Act*, R.S.B.C. 1996, c. 418, s. 187 – An exempt market dealer seeking time limited exemption from marketplace and clearing agency requirements – the exempt market dealer has developed and is testing, in the context of the CSA Regulatory Sandbox and for a time-limited period, a secondary trading platform.

National Instrument 24-102 *Clearing Agency Requirements*, s. 6.1 – *Securities Act*, R.S.B.C. 1996, c. 418, s. 187 – An exempt market dealer seeking time limited exemption from marketplace and clearing agency requirements – the exempt market dealer has developed and is testing, in the context of the CSA Regulatory Sandbox and for a time-limited period, a secondary trading platform.

Applicable Legislative Provisions

Legislation and Instruments Cited

National Instrument 21-101, *Marketplace Operation*

National Instrument 23-101, *Trading Rules*

National Instrument 23-103, *Electronic Trading and Direct Electronic Access to Marketplaces*

National Instrument 24-102, *Clearing Agency Requirements*

Securities Act, R.S.B.C. 1996, c. 418, s. 187

December 28, 2022

In the Matter of
the Securities Legislation of
British Columbia, Saskatchewan, and
Manitoba,
(the Jurisdictions)

and

In the Matter of

the Process for Exemptive Relief Applications
in Multiple Jurisdictions

and

In the Matter of
Finhaven Capital Inc.
(the Filer)

Decision

Background

¶ 1 The Canadian Securities Administrators (the CSA) operate a regulatory sandbox to support financial technology businesses seeking to offer innovative products, services, and applications in Canada (the CSA Regulatory Sandbox). The CSA Regulatory Sandbox allows firms to obtain time-limited exemptive relief from certain requirements of securities legislation in order to test new products or services, provided that investor protection and market integrity are not compromised.

The Filer is a registered exempt market dealer that facilitates distributions of digital securities (Security Tokens) on its platform (Distribution Platform) by issuers that meet its issuer and product due diligence standards (Issuer Clients). The Filer wishes to offer a permissioned distributed ledger technology-based secondary trading platform (Secondary Trading Platform) to its investor clients, all of whom must be accredited investors (Investor Clients) who hold a digital wallet account (a FINWallet) with the Filer. The Secondary Trading Platform will enable the Filer's Investor Clients to privately negotiate secondary trades of Security Tokens acquired either on the Distribution Platform or the Secondary Trading Platform.

In the context of the CSA Regulatory Sandbox, the Filer previously submitted its business model and was granted an exemption for a limited time from certain requirements under applicable securities legislation. The Filer requires more time to test its innovative business model and has made a request to extend its exemption. This decision (the Decision) should not be viewed as a precedent for other filers in the Jurisdictions (as defined below).

The securities regulatory authority or regulator (Decision Makers) in each of British Columbia, Saskatchewan, and Manitoba (the Jurisdictions) has received an application (the Application) from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption pursuant to:

- (a) National Instrument 21-101, *Marketplace Operation* (NI 21-101), s. 15.1;
- (b) National Instrument 23-101, *Trading Rules* (NI 23-101), s. 12.1;
- (c) National Instrument 23-103, *Electronic Trading and Direct Electronic Access to Marketplaces* (NI 23-103), s. 10; and

- (d) except in Manitoba, National Instrument 24-102 *Clearing Agency Requirements* (NI 24-102), section 6.1(1).

The Filer requests that the Jurisdictions grant relief from:

- (a) NI 21-101 in whole;
- (b) NI 23-101 in whole;
- (c) NI 23-103 in whole; and
- (d) NI 24-102, in whole, except in Manitoba where relief from NI 24-102 is not required for the Filer (collectively, the Exemption Sought).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a coordinated review application) set out in National Policy 11-203 *Process for Exemptive Relief in Multiple Jurisdictions* (NP 11-203), section 3.4:

- (a) the British Columbia Securities Commission is 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.

¶ 2 **Interpretation**

Terms defined in National Instrument 14-101 *Definitions* and in the Legislation have the same meaning if used in this Decision, unless otherwise defined.

Decision

- ¶ 3 Each of the Decision Makers is satisfied the Decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted provided that:

- the representations set out in Schedule A to this Decision remain true and correct in all material respects;
- the Filer complies with the Terms and Conditions set out in Schedule B to this Decision, including Appendix A (Operating Principles relating to Clearing Activities) and Appendix B (Reporting Requirements); and
- The Filer files the required application to seek membership with the Investment Industry Regulatory Organization of Canada (IIROC), and any

materials that may be required by the securities regulatory authorities, no later than September 1, 2023.

The relief from NI 24-102 provided in this Decision expires on December 31, 2023.

The relief from NI 21-101, NI 23-101, and NI 23-103 provided in this Decision expires on the earlier of:

- (a) December 31, 2023, and
- (b) the date the Filer becomes a member of IIROC.

Brenda M. Leong
Chair and Chief Executive Officer
British Columbia Securities Commission

Schedule A
Representations

1. The Filer is a company existing under the laws of British Columbia with its head office in Vancouver, British Columbia.
2. The Filer is extra-provincially registered into Alberta, Saskatchewan, Manitoba, and Ontario.
3. The Filer has been registered as an exempt market dealer (EMD) in British Columbia, Alberta, Saskatchewan, Manitoba, and Ontario (the Jurisdictions) since February 2020. The Filer was also registered in Québec from February 2020 until October 2022. The Registration Terms and Conditions include a condition that the Filer get prior approval of the relevant securities regulatory authority or regulator in the Jurisdictions before operating a marketplace or carrying on business as a clearing agency.
4. The Filer is not in default of securities legislation in any jurisdiction in Canada.
5. The Filer is 100% owned and controlled by Finhaven Technology Inc. (FTI).
6. FTI is a company existing under the laws of British Columbia with its head office in Vancouver, British Columbia.
7. The Filer's business is restricted to carrying on the activities of an exempt market dealer as set out in section 7.1(2)(d) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* in relation to Security Tokens distributed on the Distribution Platform and the Secondary Trading Platform to Investor Clients who are accredited investors, as defined in section 1.1 of National Instrument 45-106 *Prospectus Exemptions*.
8. The Filer also limits its EMD business, and access to the Distribution Platform and the Secondary Trading Platform, to only
 - (a) accredited investors, and permitted clients who have not waived their right to a suitability assessment, who successfully complete an onboarding questionnaire, demonstrating their experience with and knowledge about prospectus exempt securities, administered by the Filer online, and
 - (b) permitted clients who have waived their right to a suitability assessment.
9. The Filer will assess the suitability of an investment by an Investor Client through an automated suitability program. The automated suitability program will be complete and operational before the Filer processes a trade on either the Distribution Platform or the Secondary Trading Platform.

10. The Filer anticipates that some Issuers will choose to allow their Security Tokens to trade on the Secondary Trading Platform, while other Issuers will not.
11. The Filer will provide Investor Clients with a chat technology allowing them to privately negotiate a trade in an Issuer's Security Tokens on the Secondary Trading Platform, if an Issuer has selected secondary trading services in its agreement with the Filer. In addition, the Filer will facilitate its Investor Clients' secondary trades of Issuers' Security Tokens when those tokens have a secondary market on the Platform. The Filer's technology, policies and procedures, Investor Client agreement, and Issuer Client agreement (for corporate finance advisory services, if any, and for accessing the Distribution Platform) are designed to facilitate and settle only trades that comply with securities laws and Issuers' constating document requirements.
12. An Issuer Client must provide a representation and warranty that it has the authority and power to issue a security in digital form, that its constating documents and the law governing its business organization accommodate securities issuances in the form of digital securities, and the Filer will program each class of Security Token to include its restrictions and conditions, including any requirement in an Issuer Client's constating documents requiring pre-approval or any other action prior to a subscription or a trade being approved.
13. The Filer's platform enables an Investor Client to directly hold Security Tokens in their own digital wallet and records ownership in a permissioned, distributed ledger.
14. The Filer's Secondary Trading Platform will provide a facility to bring together buyers and sellers of securities, and bring trade contract offers (for acceptance or rejection) of multiple buyers and sellers to the attention of Investor Clients that have indicated interest in being counterparty to a trade on the terms set out in the trade contract offer, and uses programmed, non-discretionary methods under which a trade contract offer and its acceptance or rejection interact, and Investor Clients agree to the Filer's terms for handling trade contract offers and their responses in the Investor Client Agreement.
15. The Distribution and Secondary Trading Platforms use a permissioned, distributed ledger network in which the Filer, an Issuer Client (with respect only to that Issuer Client's Security Tokens), and an independent trading monitor (Monitor) can see all trading data on the distributed ledger at all times in their capacities as nodes in the network. The trading data will be recorded in the Filer's database and will be automatically written to the distributed ledger, and the other nodes in the network can read the data.
16. The Filer will limit secondary trading activity on the Secondary Trading Platform to no more than:
 - (a) a total of 30 Issuers by the end of 2023; and

- (b) a total of 15,000 Investor-clients by the end of 2023.
17. The Filer will manage the risks associated with the Secondary Trading Platform by employing a three lines of defense structure for trading compliance, in which the Filer's staff are responsible for the first and second lines of defense, and the Filer's board of directors and independent testing and audit functions (including the Monitor) are responsible for the third line of defense; specifically, the Filer will, among other things:
- (a) publish Investor Client Information and Requirements about how trading works and what is expected of Investor Clients (as set out in the Investor Client Agreement) on its website;
 - (b) review and analyze trades on a post-trade, daily basis (trading surveillance) to test that the technology performed as expected and that trades or trading patterns that appear non-compliant with securities laws and the Filer's terms and conditions (including prohibitions on fraud, market manipulation, and activity that mimics illegal insider trading, tipping and recommending, and frontrunning – collectively, the Trading Requirements) are escalated for technological or compliance action;
 - (c) maintain effective controls, including:
 - (i) supervising and reviewing trading activity to ensure compliance with the Trading Requirements and Investor Client or Issuer Client Agreements (including any additional requirements published on the Filer's website from time to time), and with the Filer's policies and procedures;
 - (ii) conducting investigations to determine whether a trade or trading pattern breached the Trading Requirements or a term of the Investor Client Agreement;
 - (iii) escalating non-compliant trading activity and systemic trading compliance issues to the UDP and the Board of Directors, as appropriate, and
 - (iv) excluding from trading an Investor Client or an Issuer Client who has breached the Trading Requirements or their agreement with the Filer;
 - (d) have engaged an independent trading monitor that has appropriate qualifications and experience in regulatory compliance and oversight of secondary market trading (Monitor);
 - (e) require the Monitor to, among other things:

- (i) ensure the Filer is prepared for its first trade on the Secondary Trading Platform by creating and executing on a comprehensive operational readiness challenge process covering the full scope of the Filer's operations and technology,
 - (ii) independently review trading activity and the Filer's trading supervision activities, to test that the Filer's policies and procedures are effective and make recommendations on improvements, as necessary,
 - (iii) attest in monthly, quarterly, and annual reports to the Principal Regulator that the Monitor has been provided all necessary information and data to perform the Monitor's reviews,
 - (iv) provide recommendations to management throughout the engagement,
 - (v) prior to the terms and conditions expiring, create and execute on a comprehensive operational readiness challenge process to ensure readiness to operate under the marketplace and clearing agency regulation that will replace the terms and conditions,
 - (vi) independently review the Filer's conflict of interest tracking and reporting mechanism to test that the Filer's policies and procedures are effective, and
 - (vii) independently review the Filer's complaints tracking and reporting mechanism to test that the Filer's policies and procedures are effective;
- (f) take appropriate action against Investor Clients who breach their Investor Client Agreements or securities laws, by:
- (i) disabling an Investor Client's access to the Distribution Platform,
 - (ii) reprogramming access to the Secondary Trading Platform so that an Investor Client may only sell Security Tokens and only with the Filer's prior approval, and
 - (iii) requiring that an Investor Client take steps to sell its Security Tokens and request a wire transfer from the Filer of any funds to its credit, so that the Filer can close the Investor Client's FINWallet account;
- (g) have engaged the Monitor to provide the services described in section 18, below;

- (h) update its Investor Client and Issuer Client Agreements as soon as practicable after identifying an issue to reflect lessons learned over time and recommendations made by the Monitor;
 - (i) require an Issuer Client, that has selected secondary trading as a service, to keep the Filer continuously apprised of the names of its directors, officers, and employees (and adult members of their households).
18. The Filer's agreement with the Monitor is in writing and requires the Monitor to, among other things:
- (a) before trading commences on the Secondary Trading Platform, create a program for the Monitor's trading oversight services;
 - (b) oversee the Filer's efforts under section 17, above, to manage the risks associated with the Secondary Trading Platform, including secondary trading activity on the Secondary Trading Platform;
 - (c) carry out the required activities in subparagraph 17(e);
 - (d) access and review relevant systems and databases, including the permissioned distributed ledger (Finhaven Distributed Network or FDN), associated with Security Token distributions on the Distribution Platform and secondary trading on the Secondary Trading Platform;
 - (e) provide monthly, quarterly, and annual reports to the Filer and its Principal Regulator:
 - (i) summarizing the Monitor's activities and findings in the period;
 - (ii) assessing the effectiveness of the Filer's trading compliance program;
 - (iii) providing recommendations to the Filer for changes that would improve the Filer's trading compliance program effectiveness; and
 - (iv) attesting that the Monitor has been provided with all necessary information and data to perform their reviews;
 - (f) report to the Filer's Principal Regulator in a manner satisfactory to the Filer's Principal Regulator;
 - (g) keep confidential any Investor or Issuer Client information it may learn as a result of its agreement with the Filer; and
 - (h) agree to provide the services contemplated in its agreement with the Filer until December 31, 2023.

19. The Filer will manage the risks associated with the Distribution Platform by:
 - (a) publishing Issuer and Securities Token approval requirements on its website (Issuer Client Information and Requirements) and requiring its Issuer Clients to agree to be bound by those requirements in the Issuer Client Services Agreement;
 - (b) requiring an Issuer Client, that has selected secondary trading as a service, to post to its due diligence data room on the Platform:
 - (i) annual audited financial statements (within 120 days of its fiscal year end);
 - (ii) quarterly management updates (within 45 days of a quarter's end); and
 - (iii) timely material information updates;
 - (c) publishing information on its website (Issuer Client Information and Requirements) about what Issuer activities would cause an Issuer Client to lose Distribution Platform access privileges and requiring its Issuers Clients to agree to be bound by those terms in the Issuer Client Services Agreement;
 - (d) denying Distribution Platform access to an issuer that does not meet the published standards and withdrawing issuer access privileges to the Distribution Platform if an issuer breaches securities law or a material requirement in the Issuer Client Services Agreement;
 - (e) maintaining an independent Issuer and Product Due Diligence Advisory Board; and
 - (f) updating its Issuer and Securities Token approval and Distribution Platform continuing access requirements (Issuer Client Information and Requirements) to reflect lessons learned over time and recommendations made by the independent Issuer and Product Due Diligence Advisory Board as soon as practicable.
20. The Filer will disclose to Investor Clients the risks associated with holding Security Tokens in their digital wallet accounts, called FINWallets, on the Finhaven Distributed Network, together with the measures the Filer takes to mitigate those risks.
21. Only Investor Clients may trade with each other on the Secondary Trading Platform.
22. The Issuer Client Services Agreements, for issuers that select secondary trading services, and the Issuer Client Information and Requirements will set out:

- (a) fair access and non-discrimination commitments by the Filer to the Issuer Client;
- (b) standards for being accepted onto the Distribution Platform and the Filer's related review process, together with the Filer's commitment to provide written reasons for rejecting an Issuer's application and disclosure that there is no recourse for an issuer applicant that has been rejected for Platform access;
- (c) standards for Security Tokens to be approved for issuance and trading and the Filer's related review process, together with the Filer's commitment to provide written reasons for rejecting a proposal for Security Tokens to be distributed on the Distribution Platform and disclosure that there is no recourse for an issuer applicant who has been rejected for Platform access;
- (d) that an Issuer Client is responsible for ensuring that its regular communications with Investor Clients, and its offering documents, comply with applicable securities laws before being, and while, posted to the Issuer's due diligence data room on the Platform, for the benefit of Investor Clients in making their trading decisions;
- (e) the requirement that an Issuer Client will post, for Investor Clients, in its due diligence data room:
 - (i) audited annual financial reports, using accounting standards chosen by the Issuer Client in consultation with its auditors, within 120 days of its fiscal year end,
 - (ii) quarterly management updates, within 45 days of a quarter's end, and
 - (iii) timely material information updates;
- (f) the Issuer Client's responsibility to keep the Filer continuously apprised of the names of its directors, officers, and employees (and adult members of their households), so that the Filer can consider whether to grant prior approval for a proposed trade in the Issuer Client's securities to those individuals;
- (g) the Filer's responsibility to use its professional judgment to reconcile its fair dealing obligation with insiders' desire to trade, including:
 - (i) whether allowing an individual described in (f) to trade with other Investor Clients would be unfair to those other Investor Clients given that individual's position with, and knowledge of, the Issuer Client; and
 - (ii) whether denying that individual the opportunity to trade would be unfair to that Investor Client;

- (h) the Issuer Client’s additional responsibility to keep the Filer apprised of the names of additional individuals who become insiders or are, for a time, in a special relationship with the Issuer Client (as those terms are defined in securities laws);
 - (i) that the consequences for failing to comply with securities law, the Issuer Client Services Agreement, or the Issuer Client Information and requirements, may include that the Filer will:
 - (i) withdraw the privilege of distributing Security Tokens;
 - (ii) require an Issuer Client to leave the Platform entirely;
 - (iii) withhold approval for a further distribution of securities on the Distribution Platform;
 - (iv) if information required to be posted in an Issuer’s due diligence data room is not posted by the required deadline, halt secondary trading in an Issuer Client’s Security Tokens on the Secondary Trading Platform until the required information is posted (with secondary trading to resume on such a deficiency being remediated);
 - (v) advise Investor Clients that their Security Tokens will be converted to certificated securities by the issuer;
 - (vi) require an Issuer Client to cooperate with an orderly conversion of Security Tokens to certificated securities and the orderly exit of the Issuer Client from the Platform;
 - (vii) report the Issuer Client’s activity to relevant legal authorities, including securities regulatory authorities, and the Filer becoming obliged to comply with an order issued by a relevant legal authority; and
 - (j) that the Filer is subject to the Registration Terms and Conditions and the Platform Terms and Conditions and a link to each.
23. The Issuer Client Information will be published on the Filer’s website.
24. The Issuer Client Services Agreement requires that an Issuer comply with applicable securities laws.
25. The Investor Client Agreement and the Investor Client Information and Requirements set out:
- (a) that the trading hours for the Secondary Trading Platform are between 0900 to 1600 (Pacific time) on business days, as published on the Filer’s website;

- (b) the procedure for applying for and standards for approving FINWallet applications;
- (c) the Filer's commitment to providing written reasons for account opening (i.e. access) decisions, and that there is no appeal from the Filer's decision whether to approve or refuse an application;
- (d) the ongoing requirement for an Investor Client to qualify as an accredited investor and potentially provide third party documents that independently provide evidence of that status;
- (e) the ongoing requirement that the Filer is responsible for determining suitability and that every trade, except a trade for a permitted client that has waived the right to a suitability assessment, is subject to an automated suitability algorithm that will prevent a trade that brings an Investor Clients' investments on the Distribution Platform and Secondary Trading Platform above 10% of the Investor Clients' net assets or 20% of the Investor Clients' net financial assets (as those terms are defined in National Instrument 45-106 *Prospectus Exemptions*);
- (f) procedures for funding purchases and for withdrawing funds held by an Investor Client in its account;
- (g) the procedure for purchasing Security Tokens on the Distribution Platform;
- (h) the procedure for posting and responding to a Request for Quotes (RFQ) and for posting and responding to a Trade Contract Offer on the Secondary Trading Platform;
- (i) information about how the Filer protects an Investor Client's anonymity during RFQ and Trade Contract formation processes;
- (j) the automated procedure for locking funds and Security Tokens to ensure matched trades can settle;
- (k) the procedure for transferring and delivering Security Tokens and funds when a trade is settled;
- (l) the Filer's fee charged to an Investor Client for trading and the Filer's commitment to provide advance notice of a fee change to Investor Clients and to the relevant securities regulatory authorities or regulator;
- (m) that an Investor Client must comply with the Trading Requirements;
- (n) when an Issuer Client has selected secondary trading services, the prohibition on that Issuer Client's directors, officers, and employees (or adult members of

their households) trading their issuer's Security Tokens without prior written approval from the Filer;

- (o) confirmation that an Investor Client's access to the Distribution Platform and Secondary Trading Platform does not affect that Investor Client's access to any other marketplace;
 - (p) that the potential consequences for an Investor Client breach of a material term of the Investor Client Agreement or the Trading Requirements may include:
 - (i) disabling access by the Filer to the Distribution Platform and reprogramming access to the Secondary Trading Platform so that the FINWallet account can be closed;
 - (ii) restricting an Investor Client who no longer qualifies as an accredited investor to liquidating FINWallet assets; and
 - (iii) reporting an Investor Client's activity on the Distribution Platform, the Secondary Trading Platform, or in moving funds in and out of a FINWallet account to the appropriate law enforcement authorities, including the securities regulatory authorities or regulators with jurisdiction over that Investor Client's trading and the Filer's operation of the Platform;
 - (q) the Filer's conflicts policies and procedures, including a link to the relationship disclosure information statement delivered to an Investor Client at the outset of the relationship and when updated;
 - (r) the Filer's referral arrangements disclosure (included in the relationship disclosure information statement, above), delivered to an Investor Client at the outset of the relationship with the Filer and before an Investor Client trade involving a referral arrangement is carried out; and
 - (s) that the Filer is subject to the Registration Terms and Conditions and the Platform Terms and Conditions and a link to each.
26. The Investor Client Information and Requirements, including the Trading Requirements, will be published on the Filer's website.
27. The Investor Client Agreement requires that the Investor Client comply with applicable securities laws.
28. The Filer has identified and mitigated systems and technology risks and, in particular:
- (a) has adequate internal technology controls over systems that support distribution, trading, and clearing services;

- (b) has adequate information technology general controls, including (without limitation) controls for information technology systems operations, security, change management, problem management, network support, and systems software support;
- (c) has adequate security controls to prevent, detect, and effectively respond to security threats and cyber-attack on its systems that support distribution, trading, and clearing services;
- (d) has adequate business continuity and disaster recovery plans to provide uninterrupted provision of key distribution, trading, and clearing services;
- (e) in accordance with prudent business practice, and on a reasonably frequent basis (at least annually) it:
 - (i) makes reasonable current and future systems capacity estimates,
 - (ii) conducts capacity stress tests to determine the ability of its distribution, trading, and clearing systems to process transactions in an accurate, timely, and efficient manner,
 - (iii) tests its business continuity and disaster recovery plans, and
 - (iv) reviews system vulnerability and its cloud-hosted environment to mitigate internal and external cyber threats;
- (f) continuously monitors and maintains internal controls over its systems;
- (g) anticipates trade contract and RFQ volumes through to the end of 2023 will be less than 10% of the Secondary Trading Platform's total capacity to facilitate RFQ chat traffic and secondary trading;
- (h) continuously monitors the integrity of the Platform (24 hours per day, seven days a week), providing immediate notification alerts of unavailability and errors - failed applications are automatically restarted to ensure continuous service and to ensure all components continue to operate and remain secure;
- (i) monitors opportunities for improvements in cyber-security policies, procedure, and internal controls and will implement relevant improvements promptly; and
- (j) does not connect to any other marketplace nor is the Secondary Trading Platform affected by another marketplace.

29. The Filer has policies, procedures, and internal controls covering:

- (a) operational risk;
 - (b) custody risk, including segregation of Investor Client Security Tokens and funds from the Filer's property; and
 - (c) liquidity risk.
30. The Filer must provide to its Principal Regulator, under its EMD Registration, information about changes to its:
- (a) governance;
 - (b) marketplace operations;
 - (c) outsourcing arrangements;
 - (d) systems;
 - (e) custody;
 - (f) types of securities traded;
 - (g) how access to trading is provided; and
 - (h) fees.
31. The Filer has procedures and policies to ensure it can provide accurate and reliable settlement services to Investor Clients trading on the Secondary Trading Platform, including:
- (a) the Secondary Trading Platform links transfers of Security Tokens to fund transfers in a way that achieves delivery versus payment; and
 - (b) the final settlement of trades on the Secondary Trading Platform occurs as soon as possible and, in the case of a trade that requires the Issuer's prior approval or the Filer's pre-approval before it can settle, no later than the third day after the trade contract has been digitally signed by both the seller and the buyer.
32. The Filer has established accounting practices, internal controls, and safekeeping and segregation procedures intended to protect Investor Clients' assets.
33. The Filer estimates that the cost of an Independent Systems Review by a qualified third party would represent a significant portion of the Filer's projected 2023 revenues.

Schedule B
Terms and Conditions

1. The Filer complies with applicable securities legislation.
2. The Filer notifies the Principal Regulator immediately upon becoming aware that any of the representations in Schedule A are no longer true and accurate or if the Filer becomes unable to fulfil any of these terms and conditions.
3. The Filer must not enter into any contract, agreement, or arrangement that may limit its ability to comply with applicable securities legislation or these conditions.
4. The Filer makes best efforts to notify the Principal Regulator at least 10 business days in advance of any change in the beneficial ownership of the Filer that results in a new beneficial owner holding 10% or more of the outstanding securities.
5. The Filer operates the Secondary Trading Platform in accordance with the operating principles in Appendix A (Operating Principles relating to Clearing Activity).
6. The Filer operates the Secondary Trading Platform in a manner that does not interfere with fair and orderly markets.
7. The Filer must not list or trade any Security Tokens on any exchange, cryptocurrency exchange, or organized market except the Distribution Platform and Secondary Trading Platform unless such listing and trading is approved in advance by the Jurisdictions and done in accordance with applicable securities legislation.
8. The Filer deals fairly, honestly, and in good faith with Investor Clients.
9. The Filer establishes, maintains, and applies policies and procedures that establish a system of controls and supervision sufficient to manage the risks associated with its business in accordance with prudent business practices, including with respect to the Filer's use of permissioned, distributed ledger technology, cybersecurity, and conflicts of interest between the Filer and the users of the Secondary Trading Platform.
10. The Filer reports to the Principal Regulator, in a manner satisfactory to the Executive Director, and in accordance with the reporting requirements in Appendix B (Reporting Requirements).
11. The Filer provides to the Principal Regulator, in a format acceptable to staff of the Principal Regulator, details of Investor Client complaints and how they were addressed, within 10 days of the Filer receiving any such complaints, in relation to the Secondary Trading Platform.

12. The Filer engages the Monitor to provide the services described in section 18 of Schedule A, in a form of agreement acceptable to the Principal Regulator or its staff, that enables the Monitor to report directly to the Principal Regulator information specified in the agreement between the Filer and the Monitor, including information relating to:
 - (a) recommendations for improvement made by the Monitor to the Filer;
 - (b) investigations to determine whether a trade or a pattern of trading may have breached securities laws, the Investor Client or Issuer Client Agreements, or the Trading Requirements;
 - (c) post-trade reviews on a monthly, quarterly, or annual basis that assess the effectiveness of the Filer's trading oversight and compliance program; and
 - (d) testing of the Filer's systems.
13. The Filer provides on demand, to the Principal Regulator or its staff, any report prepared by a third-party auditor of the Filer's operations, including the Filer's:
 - (a) information technology systems;
 - (b) cybersecurity controls; or
 - (c) programming code.
14. The Filer establishes, maintains, and requires compliance with policies and procedures that identify and manage any conflicts of interest or potential conflicts of interest, real or perceived, arising from the operation of the Secondary Trading Platform or the services it provides including:
 - (a) conflicts of interest or potential conflicts of interest that arise from the Filer's management or oversight of the Secondary Trading Platform operations,
 - (b) conflicts of interest or potential conflicts of interest that arise from any interactions between the Filer and Investor Clients trading on the Secondary Trading Platform where the Filer may be exercising discretion that involves or affects the Investor Clients either directly or indirectly, and
 - (c) conflicts of interest or potential conflicts of interest that arise between the Filer's activities related to Issuer Clients that distribute Security Tokens and are receiving secondary trading services and the Filer's activities related to the Secondary Trading Platform.
15. The Filer annually reviews compliance with the policies and procedures described in section 14 above and documents each review, any deficiencies that were identified, and how those deficiencies were remedied.

16. The Filer provides, on an annual basis, to the Monitor and the Principal Regulator or its staff, all information related to the reviews described in section 15 above.
17. The Filer discloses the policies and procedures described in section 14 above to Investor Clients.
18. The Filer maintains sufficient financial resources for the proper performance of its functions.
19. The Filer notifies the Principal Regulator or its staff immediately upon becoming aware that the Filer does not or may not have sufficient financial and other resources to perform its functions in a manner that is consistent with these terms and conditions.
20. The Filer maintains, in accordance with prudent business practice, reasonable controls to ensure availability, capacity, integrity, and security of its technology systems.
21. The Filer promptly notifies the Principal Regulator or its staff of any:
 - (a) suspected violations of securities legislation;
 - (b) conduct that may be contrary to the public interest; and
 - (c) systems or cybersecurity incidentof which the Filer becomes aware.
22. The Filer amends its policies, from time to time, or at the request of the Principal Regulator or its staff, to reflect any changes to the requirements of securities legislation.
23. The Filer has in place appropriate arrangements, including reconciliation, for clearing and settlement of the Security Tokens through the Secondary Trading Platform.
24. The Filer ensures the Principal Regulator or its staff can promptly access the information and records that the Filer is required to create, maintain, collect or keep under securities legislation or that it otherwise creates, maintains, collects or keeps in the course of its business.
25. The Filer promptly provides to the Principal Regulator, at its request or the request of its staff:
 - (a) data, information, and analyses relating to the Secondary Trading Platform in the custody or control of the Filer or any of its affiliated entities; and
 - (b) electronic or any other form of access to the Secondary Trading Platform.

26. The Filer requires issuers of Security Tokens to comply with the Filer's policies and procedures applicable to Issuer Clients, as published in the Issuer Client Information and Requirements on the Filer's website from time to time, and with applicable securities legislation.
27. The Filer requires users of the Secondary Trading Platform to comply with the Investor Client Agreement and applicable securities legislation.
28. The Filer, its directors, officers, and employees must not, directly or indirectly, engage in proprietary trading, including market making, on the Secondary Trading Platform, nor offer to Investor Clients a guarantee of a two-sided market.
29. The Filer provides:
 - (a) 45 days advance notice to the Principal Regulator or its staff of significant changes proposed to the Filer's operations, including entering into any agreement to outsource material functions of the Secondary Trading Platform to a third party, or a change in Monitor, or an amendment to the agreement between the Filer and the Monitor;
 - (b) notice to the Principal Regulator or its staff of any non-significant changes to the Filer's operations that are not being reported to the Commission in the Filer's capacity as an EMD, within 30 days of implementing such change; and
 - (c) advance notice to the Principal Regulator or its staff of any change that the Filer intends to make to the fees charged by the Filer to Investor Clients, and if that fee change is approved by the Principal Regulator or its staff, the Filer must provide advance notice of that fee change to Investor Clients 30-days prior to implementing such change.
30. The Filer must not:
 - (a) retain or replace the Monitor,
 - (b) finalize the agreement between the Filer and the Monitor, or
 - (c) amend the agreement between the Filer and the Monitor,

if the Principal Regulator or its staff have expressed to the Filer any objection to retaining or replacing the Monitor, finalizing the agreement, or amending the agreement with the Monitor.
31. The Filer must record the ownership of all Security Tokens on the books of Issuer Clients and on the permissioned distributed ledger only in the name of the applicable Investor Client.

32. If the Filer ceases operations or plans to cease operations, the Filer must promptly notify each Issuer Client of its obligation, under the Issuer Client Agreement with the Filer, to convert all Security Tokens to paper security certificates and to deliver those paper security certificates to its investors according to their instructions.

Appendix A

Operating Principles Relating to Clearing Activity

1. Financial Resources –
 - (a) The Filer must demonstrate on an ongoing basis that it has adequate financial, operational, and managerial resources to operate the Secondary Trading Platform.
 - (b) The Filer must minimize and strictly control the credit and liquidity risk arising from the use of commercial bank money.
2. Risk Management –
 - (a) The Filer must maintain the ability to manage the risks associated with its clearing activities on the Secondary Trading Platform, including through the use of appropriate tools and procedures.
 - (b) The Filer must maintain a well-founded, clear, transparent, and enforceable legal basis for each material aspect of its activities in all relevant jurisdictions.
 - (c) The Filer must maintain governance arrangements that are clear and transparent, promote the safety and efficiency of the Filer, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders.
 - (d) The Filer must maintain a sound risk-management framework for comprehensively managing legal, credit, liquidity, operational, and other risks.
 - (e) The Filer must clearly state to Investor Clients its obligations with respect to the delivery of Security Tokens, and identify, monitor, and manage the risks associated with those deliveries.
3. Settlement Procedures –
 - (a) The Filer must:
 - (i) maintain the ability to complete settlements on a timely basis under varying circumstances;
 - (ii) identify, monitor, and manage risks associated with the settlement of transactions, including by conditioning the final settlement of one obligation (securities delivery) upon the final settlement of the other (funds transfer);

- (iii) maintain an adequate record of the flow of funds associated with each transaction cleared on the Secondary Trading Platform;
 - (iv) use or accommodate relevant internationally accepted communication procedures and standards in order to facilitate efficient payment, clearing, settlement, and recording; and
 - (v) aim to be efficient and effective in meeting the requirements of its participants and the markets it serves.
- 4. Treatment of Funds –
 - (a) The Filer must:
 - (i) maintain standards and procedures designed to protect and ensure the safety of the funds of Investor Clients trading on the Secondary Trading Platform;
 - (ii) ensure that the Filer’s own investments are in instruments with minimal credit, market, and liquidity risks.
- 5. System Safeguards –
 - (a) The Filer must:
 - (i) ensure that its systems function properly and have adequate capacity and security;
 - (ii) have appropriate rules and procedures to help ensure the integrity of Securities Token issued and minimize and manage the risks associated with the safekeeping and transfer of Security Tokens;
 - (iii) maintain emergency procedures and a plan for disaster recovery, which aims for timely recovery of operations and fulfilment of its obligations, including in the event of a wide-scale or major disruption; and
 - (iv) ensure that its systems, including back-up facilities, are annually tested by the Monitor, sufficient to ensure timely processing, clearing, and settlement of transactions on the Secondary Trading Platform.
- 6. Reporting –
 - (a) The Filer must:

- (i) provide to the Principal Regulator all information necessary for the Principal Regulator to conduct its oversight function of the Filer with respect to its clearing activities; and
- (ii) have clear and comprehensive rules and procedures that provide sufficient information to enable Investor Clients and Issuer Clients to have an accurate understanding of the risks, fees, and other material costs they incur by participating in the Platform, and must publish those rules and key procedures as the Investor Client Information and Requirements and the Issuer Client Information and Requirements on the Filer's website.

7. Recordkeeping –

- (a) The Filer must maintain records of all its activities in a form and manner acceptable to the Principal Regulator. The Filer must also maintain a record of allegations or complaints it receives.

Appendix B

Reporting Requirements Relating to the Distribution Platform and the Secondary Trading Platform

The Filer must report to the Principal Regulator or its staff as follows:

1. immediately upon the occurrence of, or upon becoming aware of the existence of:
 - (a) any event or circumstance or situation that renders, or is likely to render, the Filer unable to comply with applicable securities legislation or these terms and conditions;
 - (b) any default by the Filer that affects its financial resources or its ability to meet its obligations as a clearing agency, including the particulars of the default and the resolution proposed. The Filer must also provide the Principal Regulator or its staff with information regarding the impact of the default on the adequacy of the Filer's financial resources;
 - (c) any order, sanction, or directive received from, or imposed by, a regulatory or government body on the Filer;
 - (d) any investigations of the Filer by a regulatory or government body;
 - (e) any criminal or quasi-criminal charges brought against the Filer, its parent, or any of the officers or directors of the Filer or its parent; and
 - (f) any civil suits brought against the Filer, its parent, or any of the officers or directors of the Filer or its parent, that would likely have a significant impact on the Secondary Trading Platform.
2. The Filer must maintain a record of any security incident, promptly notify the Principal Regulator of any security incident, and provide timely updates on the status of the incident and the Filer's response to it, the resumption of service, and the results of the Filer's internal review of the security incident.

The Filer must contract with the Monitor for the Monitor to report to the Principal Regulator or its staff as follows:

3. 10 days following the end of each month in which there has been trading activity on the Secondary Trading Platform, the Monitor will deliver reports including:
 - (a) the Monitor's observations and conclusions about trading activity compliance with securities laws, the Investor Client Agreement, and the Investor Client Information and Requirements, as well as operational issues during the

month, and cumulative trading since commencement of the Secondary Trading Platform, including:

- (i) any trading halts, the rationale for the halts, and the status of any resulting investigation and, if concluded, its outcome;
 - (ii) any post-trading investigations undertaken, including status and conclusion;
 - (iii) an overall assessment of market integrity and compliance with the Investor Client Agreement and applicable securities laws that month and cumulatively; and
 - (iv) an overall assessment of the Filer's oversight of secondary trading activity and its effectiveness in that role.
4. Every six months subsequent to the Secondary Trading Platform commencing operations (for clarity, by July 31st, generally covering the period from January 1 to June 30, except the first report which is to cover the period from commencement of secondary trading to June 30, 2023, and January 31st covering the period July 1 to December 31) the Monitor will deliver:
- (a) a report detailing the review conducted by the Monitor to ensure the adequacy of system safeguards, and assessing the Filer's risks and controls relating to its clearing activities in relation to the Secondary Trading Platform;
 - (b) a summary of staffing changes at the Filer during the period; and
 - (c) any additional information that the Monitor considers important.
5. Before the commencement of trading on the Secondary Trading Platform, the Monitor will deliver a copy of the trading oversight program that the Monitor will use to review and report on the Filer's trading surveillance and trading compliance program for activity on the Secondary Trading Platform.