CSA allows Fidelity Digital Asset Services to act as liquidity provider to Fidelity Clearing Canada

January 26, 2023

On January 17 and 18, 2023, the Canadian Securities Administrators (CSA) issued two decisions[1] (the Decisions) that, taken together, allow Fidelity Digital Asset Services, LLC (FDAS), a New York regulated trust company that provides custody and trade execution services for digital assets, to act as a liquidity provider to Fidelity Clearing Canada (FCC) in connection with FCC's crypto asset trading platform.

With the issuance of these Decisions, the CSA has taken another significant step to regulate all aspects of the digital asset industry in Canada, including global players, marketplaces and liquidity providers.

Background

FDAS' only Canadian client is FCC. Nevertheless, the CSA considers FDAS to be facilitating the purchase, sale and settlement of "Crypto Contracts" with FCC. In this case, the Crypto Contract is the contractual right to the crypto assets that FCC purchases from, or sells to, FDAS from time to time. As FCC's liquidity provider, FDAS applied for time-limited relief exempting it from: the requirements to be recognized as an exchange and a clearing agency or a settlement system; the requirement to comply with the marketplace rules; the prospectus requirement in respect of the Crypto Contracts; and the derivatives trade reporting requirements.

The relief, which will expire in five years, is subject to a number of conditions, including:

- FDAS will not provide it services to any Canadian client other than FCC;
- FDAS will only continue to offer its services to FCC so long as FCC is registered as an investment dealer, is an IIROC member dealer in good standing, and is in compliance with applicable securities law;
- FDAS will continue to be regulated as a New York trust company;
- FDAS will comply with specific financial viability, market integrity and conflict of interest conditions;
- FDAS will maintain certain books and records and internal controls, policies and procedures to manage operational risks; and
- FDAS will report certain specified events or information to the Ontario Securities Commission.

BLG is proud to have worked with FDAS and FCC in obtaining this novel relief. To date, no other foreign liquidity provider has obtained relief from the Canadian securities regulators to provide crypto asset trading services to Canadians.

How BLG digital assets can help

BLG is committed to helping our clients navigate the challenges and opportunities that 2023 may bring, of which there may be many. Our Digital Assets team helps clients to determine their regulatory status and to work closely with the regulators to obtain appropriate registrations or exemptions. We understand the digital asset business and we work with our clients to put into place a plan that balances investor protection concerns with the need for innovation while securing a feasible business model. We are also aware that domestic and global participants may be faced with different challenges and obstacles and need to plan accordingly.

As Canada's largest law firm, BLG serves the digital assets industry nation-wide, leveraging its national expertise in asset management, litigation and class actions, regulatory compliance, corporate finance, mergers and acquisitions, insolvency and restructuring proceedings, and many other practice groups. Given BLG's extensive experience in the industry and its national platform, our lawyers are adept at advising Canadian stakeholders in the industry based on their particular situations.

[1] The January 17, 2023 decision of the British Columbia Securities Commission, as principal regulator, will be made publicly available in due course.

By

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Expertise

Digital Assets, Registrant Regulation & Markets

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