

Canadian regulators level the playing field for crypto trading platforms

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On August 15, 2022, the Canadian Securities Administrators (CSA) announced that they expect unregistered crypto trading platforms that continue to operate in Canada to provide a pre-registration undertaking to their principal regulator while their application for restricted dealer or investment dealer registration and associated exemptive relief is being reviewed. Earlier in August, CSA members accepted such pre-registration undertakings from Crypto.com and Coinsquare Capital Markets. The new undertaking requirement is consistent with previous CSA guidance.

What you need to know

- Despite the market interest generated by these pre-registration undertakings, the acceptance of such undertakings does not signal a departure from the guidance outlined previously in Joint Staff Notice [21-329 - Guidance for Crypto-Asset Trading Platforms: Compliance with Regulatory Requirements¹](#).
- The CSA appears to be leveling the playing field by requiring platforms that have applied for restricted dealer or investment dealer registration and associated exemptive relief to operate within a regulatory framework that is consistent with the requirements of the exemptive relief granted to crypto trading platforms under Staff Notice 21-329.
- However, the terms of the recent pre-registration undertakings permit their recipients to offer margin, credit or other forms of leverage to a part of their client base—a distinction from the terms and conditions of exemptive relief granted to crypto trading platforms under Staff Notice 21-329.
- In an August 2022 [press release](#), CSA members indicated that unregistered crypto trading platforms that are not prepared to file an undertaking or do not abide by the terms of an undertaking may be subject to enforcement action.

Pre-registration undertakings and Staff Notice 21-329

Staff Notice 21-329, issued in March 2021, provided guidance on the application of securities laws to crypto trading platforms. Under the interim regulatory approach, a crypto trading platform operator may operate on an interim basis by seeking registration as a restricted dealer, subject to terms and conditions tailored to their business model and exemptions from certain requirements. During the interim period, which is generally two years, operators are expected to seek investment dealer registration and IIROC dealer membership.

Nine crypto trading platforms have registered as restricted dealers or investment dealers and been granted exemptive relief under the interim approach described in Staff Notice 21-329. Many other crypto trading platforms have initiated dialogue with their respective Canadian principal securities regulators to bring their operations into compliance with securities laws.

The recent acceptance of pre-registration undertakings from Crypto.com and Coinsquare Capital Markets does not signal a departure from the CSA's earlier guidance. The terms and conditions applicable to such platforms are largely similar to, and consistent with, the terms and conditions of the exemptive relief granted to crypto trading platforms under the interim approach in Staff Notice 21-329.

How the new undertakings are similar

The terms and conditions of the pre-registration undertakings and exemptive relief granted to crypto trading platforms both include restrictions on:

- platforms not supporting the trading of crypto assets that are securities or derivatives;
- the provision of recommendations or investment advice to clients; and
- annual client investment limits with respect to certain types of crypto assets.

From an operational perspective, the similarities between accepted pre-registration undertakings and exemptive relief granted to crypto trading platforms include, among others:

- know-your-client (KYC) processes;
- account-appropriate factors to assess clients' experience, knowledge and risk tolerance;
- monitoring of client activities including loss limits; and
- insurance coverage in the event of loss or theft.

Moreover, the quarterly and annual reporting requirements within the pre-registration undertakings and exemptive relief granted to crypto trading platforms are substantially similar when compared to one another.

One important difference in the new undertakings


Although the pre-registration undertakings are consistent with the terms and conditions of the exemptive relief granted to crypto trading platforms under the interim framework in Staff Notice 21-329, we noticed one not-so-small difference.

None of the nine crypto trading platforms that have been granted exemptive relief extend margin or otherwise offer leverage to clients. However, the pre-registration undertakings granted to Crypto.com and Coinsquare Capital Markets permit them to offer margin, credit and other forms of leverage, albeit only to a subset of their clients that are considered "permitted clients" (generally, institutional or ultra-high net worth investors).

Interestingly, following the CSA announcement and the acceptance of the pre-registration undertakings of Crypto.com and Coinsquare Capital Markets, the Alberta Securities Commission (ASC) released Blanket Order 24-506², which noted that certain crypto trading platforms may be considered "clearing agencies" by the ASC, based on their functions and service offerings. The Blanket Order provides exemptive relief from the clearing agency registration requirement, but requires crypto trading platforms that rely on the Blanket Order to comply with their exemptive relief, and to not offer to their clients trading on margin or leverage.

These recent developments reflect a constructive and continuing engagement between the crypto trading platforms and the regulators, where innovation, client service and investor protection considerations are being thoughtfully addressed and the possibility of further developments for the regulatory approach to these platforms and their service

offerings contemplated.

FOOTNOTE 

To discuss these issues, please contact the author(s).

This publication is a general discussion of certain legal and related developments and should not be relied upon as legal advice. If you require legal advice, we would be pleased to discuss the issues in this publication with you, in the context of your particular circumstances.

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