

## PUBLICATION

### CSA Staff Notice 21-329 Guidance for Crypto-Asset Trading Platforms: Compliance with Regulatory Requirements

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#### BACKGROUND

On March 29, 2021, the Canadian Securities Administrators (“CSA”) and Investment Industry Regulatory Organization of Canada (“IIROC”) released a joint notice, CSA Staff Notice 21-329 *Guidance for Crypto-Asset Trading Platforms: Compliance with Regulatory Requirements*, which is intended to provide an overview of existing regulatory requirements and guidance on how securities legislation applies to Crypto Asset Trading Platforms (“CTP”) that facilitate or propose to facilitate the trading of: Crypto assets that are securities (“Security Tokens”), or, instruments or contracts involving crypto assets (“Crypto Contracts”).

The main goal of the Notice is to provide guidance on how the existing requirements of securities legislation apply to CTPs who trade Security Tokens or Crypto Contracts, and how the legislation may be tailored in order to foster innovation while maintaining the regulatory scheme to promote investor protection and fair and efficient capital markets.

The requirements that are applicable to each CTP will depend on how it operates and what activities it undertakes. This Notice focused on CTPs that:

- i. Operate in a manner similar to marketplaces (“Marketplace Platforms”), and
- ii. Are in the business of trading Security Tokens or Crypto Contracts that are not marketplaces (“Dealer Platforms”).

These categories are not mutually exclusive, and a CTP may perform practices that make it fall within both categories. Further, it is noted that the industry is still developing, and a wide variety of CTP models are emerging and requires flexibility in the application of requirements.

#### DEALER vs MARKETPLACE PLATFORMS

##### Dealer Platforms

There are two main characteristics that suggest that a CTP is a Dealer Platform:

1. It only facilitates the primary distribution of Security Tokens, and
2. It is the counterparty to each trade in Security Tokens and/or Crypto Contracts, and client orders do not otherwise interact with one another on the CTP.

Other activities may include: onboarding of retail clients on the CTP; acting as agent for clients for trades in Security Tokens and/or Crypto Contracts; and offering custody of assets, either directly or indirectly through a third-party provider.

### Marketplace Platforms

A CTP is a Marketplace Platform if it is in the business of trading in securities and/or derivatives, and may include:

- Providing a market or facility for bringing together multiple buyers and sellers or parties to trade in Security Tokens and/or Crypto Contracts;
- Bringing together orders of Security Tokens and/or Crypto Contracts of multiple buyers and sellers or parties of the contracts; and
- Uses established, non-discretionary methods under which orders for Security Tokens and/or Crypto Contracts interact with each other and the buyers and sellers or parties entering the orders agree to the term of the trade.

## REGISTRATION & REGULATORY REQUIREMENTS

### Dealer Platforms Registration

The appropriate registration for a Dealer Platform will depend on the activities that it undertakes. There will also be IIROC Rules and securities legislation requirements that may need to be tailored in the CTP's application for registration, depending on the CTP's business model. Generally:

- i. If the Dealer Platform only facilitates distributions of Security Tokens in reliance on prospectus exemptions and does not offer margin or leverage, then registration should be undertaken as an exempt market dealer or restricted dealer.
- ii. If the Dealer Platform trades Crypto Contracts or trades or solicits trades for individual retail investors, then CTPs should register as an investment dealer or be an IIROC member.

Dealer Platforms that trade Crypto Contracts may need discretionary relief from prospectus requirements to facilitate the Crypto Contracts, or from the reporting requirements. If so, submissions for discretionary relief should accompany the registration application and include how key risks to investors and the integrity of the capital markets will be addressed.

### Regulatory Requirements for Marketplace Platforms

A Marketplace Platform will operate under the oversight of the CSA and a self-regulatory entity, currently IIROC. These organizations recognize that there will be flexibility regarding how the requirements apply, and that they may need to be tailored to an individual CTP and that CTP's may be granted discretionary exemptions where the CTP can comply with policy intents in alternate ways.

Where a Marketplace Platform also participates in activities similar to those performed by Dealer Platforms, it would be subject to the appropriate dealer requirements as discussed above. Further, the activities may need to be conducted through a separate entity or separated through ethical walls, as appropriate.

### Marketplace Platform as an Exchange

Where a Marketplace Platform trades Security Tokens and regulates issuers of those securities, regulates and disciplines its trading participants, or otherwise operates as an exchange, the Marketplace Platform would be expected to seek recognition as a securities exchange.

### Interim Approaches

The Notice acknowledges that in some cases, CTPs may wish to conduct a pilot to test a novel business idea or a proposed new market. As such, they have developed an “Interim Approach” to allow CTPs to continue to operate during such a period.

The requirements vary based on province, but the interim period is generally expected to be two years. During that period, steps must be taken to transition into a long-term regulatory framework. Further, during the period, the governing body will be granted limited membership with terms and conditions that account for the new aspects of the entity’s operations.

Dealer Platforms that trades Crypto Contracts may operate by seeking registration as restricted dealers, provided the platform does not offer leverage or margin trading.

Marketplace Platforms may seek registration as an exempt market dealer or restricted dealer, as appropriate, provided that it is not offering leverage or margin and is not an exchange.

In Ontario, platforms have until April 19, 2021, to take steps to become registered.

If you have any questions in regard to the Notice and how it may apply to your circumstances, please contact us. The writer gratefully acknowledges the efforts of [Torri Woods](#) in the publication of this article.