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**Subject: RESPONSE TO CSA STAFF NOTICE 21-333 CRYPTO ASSET TRADING
PLATFORMS: TERMS AND CONDITIONS FOR TRADING VALUE-REFERENCED
CRYPTO ASSETS WITH CLIENTS¹**

This Response by [organization] addresses the CSA Staff Notice 21-333: Crypto Asset Trading Platforms, published by the Canadian Securities Administrators (CSA) on October 5, 2023. Terms not defined herein are as per CSA SN 21-333.

In summary, as stated in CSA SN 21-333, *inter alia*:

- PRUs are required for trading Fiat Backed Crypto Assets (FCBAs) on a platform;
- The issuer of the FBCA must submit an acceptable undertaking to the CSA, as of December 1, 2023 (not preclusive);
- To avoid a ban as of the October 31, 2024 deadline, a CTP must establish that, among others, as cited in Appendix A:
 - The FBCA references on a one-for-one basis, the value of the single fiat currency;
 - The reference fiat currency is either CAD or USD;
 - The FBCA entitles a holder to a right of redemption on demand against issuer or against reserve of assets;
 - The issuer must maintain a reserve of assets; and
- To avoid a ban as of the October 31, 2024 deadline, the issuer of the FBCA must establish that, among others, as cited in Appendix A:
 - Details of each type, class or series of FBCA;
 - Quantity of outstanding units;
 - Names and experience of persons associated with the FBCA;

¹ The Canadian Blockchain Consortium's Centre of Excellence would like to thank Tamie Dolny, Chair of the Policy & Advocacy Committee, for her assistance drafting this Response.

- Quantity of units held by issuer; and
- Details on, *inter alia*, redemption, rights against issuer in the case of insolvency, fees charged by issuer for trading, entitlement for revenues, halting of redemption scenarios, assurance report from public accountants, and annual financial statements of the issuer.

This Response is shared with referenced regulators in line with CSA's invitation for submissions. For inquiries, please contact Koleya Karrington, Executive Director of the Canadian Blockchain Consortium via koleya@koleya.ca.

The Canadian Blockchain Consortium contends that stablecoins, including all forms of FBCAs, such as tokenized bank deposits, require a distinct regulatory framework in Canada to maintain their usability and efficiency for transactional purposes. These assets combine features of both securities and payment instruments, making them unique and challenging to fit into existing securities regulations effectively.

While existing staff notices provide some guidance, a more comprehensive framework, developed in collaboration with Canadian policymakers and the crypto industry, is needed. The Department of Finance and/or the Bank of Canada should sponsor this framework.

Comparison with Existing Regulatory Structures:

The Ontario Securities Commission was formed in 1932 as a new Crown agency to administer both the Ontario *Securities Act* and the *Commodity Futures Act*. The separation of securities and commodities is acknowledged legislatively through the existence of separate acts. A third Act, designed to clarify and combine existing Staff Notices by the CSA (and other relevant regulatory documents, if necessary), as applied to crypto-assets generally, would be instrumental in assisting Canadian crypto industry participants in understanding the regulation of various forms of cryptoassets and how they intersect with existing securities and/or commodities laws.

The Canadian Blockchain Consortium accordingly encourages the CSA to reconsider our previously submitted conceptual framework for stablecoins. This draft proposal to Canadian regulators advocates for statutory reforms favorable to the cryptoasset industry.²

Recommendations:

- Extend the deadlines in CSA SN 21-333 to 2025 to allow for research and development of a new regulatory framework.
- Engage in public consultation to gather feedback from the Canadian crypto industry on whether CTPs should allow clients to buy or deposit FBCAs (or to enter into crypto contracts to buy or deposit FBCAs)
- Work collaboratively with industry to recognize the distinction between complex crypto-assets and existing payment instruments to understand how they function and impact Canadian investors

The Canadian Blockchain Consortium is concerned that CSA SN 21-333 is overbroad and may trigger a freeze in FBCA use by Canadian crypto industry participants. The Canadian Blockchain Consortium reiterates the point taken by the Web3 Council that gift cards and prepaid payment instruments are not regulated by the CSA or conflated with securities, despite retailers' lack of underlying assets or complex reward point programs. The unique approach taken by the CSA in comparison to other leading jurisdictions (such as the European Union and the Bank of England) suggests that the CSA should engage in public

² Please refer to both: <https://www.canadablockchain.ca/wp-content/uploads/2024/01/Consultation-Submission-OSFI-and-BCBS.pdf> and <https://www.canadablockchain.ca/wp-content/uploads/2023/08/Intervention-Response-Compiled-Final-Copy.pdf>.

consultation to better understand whether CSA SN 21-333's sharper regulation, compared to other regulatory frameworks, may harm the Canadian crypto industry at large.

Draft Conceptual Framework:

The Canadian Blockchain Consortium has developed a Draft Conceptual Framework for Value-Referenced Cryptoassets (Stablecoins), dated November 1, 2023 which is appended to the end of this Response.³ It provides a broad overview of principles, guidelines and requirements to govern VRCAs within the Canadian financial landscape. As a majority of VRCAs are not acquired with the anticipation of appreciation in value, the "evidence of indebtedness" for categorization as a security is likely not met. In addition, the conflict between federal law (payments) and provincial law may complicate the existing regulation of VRCAs, which emphasizes the need for a Draft Conceptual Framework.

New classification and categorization that is proposed in the Draft Conceptual Framework includes the following points, among others:

- As it relates to FBCAs:
 - Differences in the value-stabilizing mechanisms used for fully reserve asset-backed FBCAs and tokenized bank liabilities, and associated differences in risks posed to holders, ought to be acknowledged in the regulatory framework;
 - FBCA issuance, redemption and stabilization of value should be introduced as new regulated activities;
 - In the majority of situations, any FBCAs issued by banks would be excluded from additional reserve backing/prudential requirements due to bank requirements under the *Bank Act*;
 - Additional requirements may be imposed on tokenized bank liabilities as necessary;
 - Proposed new requirements (including reserve and collateral requirements) relating to maintaining a high degree of value stability of SCS, disclosure and insolvency measures ought to be applied to non-bank FBCA issuers and certain bank issuers;
 - Proposed governance structure for FBCA arrangements ought to be applied, including role, responsibility and accountability mechanism establishment;
 - Proposed consumer protection and disclosure obligations ought to be applied, including the nature and enforceability of redemption rights, the process for redemption and the user's responsibilities in relation to the use of a stablecoin;

The Draft Conceptual Framework also contains further subset rules and recommendations for various forms of crypto-assets, including algorithmic and commodity-reference crypto-assets. The Draft Conceptual Framework remains in draft form, awaiting further input from regulators.

The Canadian Blockchain Consortium urges the CSA to reconsider the breadth of CSA SN 21-333 and engage in public consultation before enforcing its deadlines. We are committed to collaborating with the CSA to develop a regulatory framework that balances innovation and investor protection.

For further inquires, please contact Koleya Karringten via koleya@koleya.ca.

Yours Truly,

Koleya Karringten
Executive Director, Canadian Blockchain Consortium

³ Where terms conflict herein between CSA SN 21-333 and the Draft Conceptual Framework, capitalized definitions are used as per the Draft Conceptual Framework.