

GUIDANCE NOTE •/2018

Interpretation and Application of Special Listing Facility for Digital Assets Rule Series 9000 of the Rules of International Securities Market

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INTRODUCTION

This Guidance Note is made and published by the **Barbados Stock Exchange** (the “Exchange”) pursuant to **Rule 4.02.1** of the Rules of the Barbados Stock Exchange Inc.

The purpose of this Guidance Note is to provide information and confirmation with respect to the application and interpretation of the rules published in respect of the admission for listing of Digital Assets on the International Securities Market (the “ISM”) in accordance with the **Special Listing Facility for Digital Assets Rule Series 9000** of the Rules of the International Securities Market of the Barbados Stock Exchange (the “Special Facility”).

APPLICATION OF THIS GUIDANCE NOTE

This Guidance Note applies to the exercise of the powers by the Exchange in connection with the admission to listing of securities listed on the ISM.

All capitalised terms used and not defined herein shall have the meaning assigned in the Rules of the International Securities Market of the Barbados Stock Exchange.

This Guidance Note also applies, with any necessary modifications, to application and interpretation of the rules of the Special Facility by any officer or other person to whom the authority of the Exchange is delegated.

PURPOSE OF SERIES 9000 RULES

The Exchange notes that the Special Facility is intended to incorporate a flexible and responsible framework for the listing of Digital Assets, to be applied in a manner which is responsive to the development of the emerging sector of Digital Assets, the provision of listing facilities therefor and the facilitation in trading thereof.

The Special Facility is intended to provide a mechanism for the listing of Digital Assets on a Recognised Platform. The Special Facility is intended to ensure that the trading in Digital Assets on a Recognised Platform is conducted in a transparent manner, consistent with the regulatory approach adopted by the Financial Services Commission and applicable rules of law in Barbados or elsewhere, and the appropriate industry standards as applied from time to time.

This Guidance Note is issued as guidance to persons seeking to obtain the accredited listing on a recognised exchange of Digital Assets to be traded and exchanged on a Recognised Platform.

The Exchange recognises that the trading and exchange of Digital Assets does not require trading on a trading platform provided by the ISM, as trading and clearing facilities may be executed on another Recognised Platform for such Digital Assets.

In the event that any listed Digital Assets are intended to be traded on a trading platform provided by the ISM, pending the issue of further Rules or Guidance Notes, the Exchange shall facilitate the trading and clearance of the listed Digital Assets by contractual trading arrangements intended to operate in conjunction with the specific rules in the Special Facility.

USE OF TERMS

The Exchange recognises that the range of Digital Assets are variously described as cryptocurrencies, tokens, or crypto-assets in popular nomenclature.

The Exchange has preferred the term Digital Assets, and has defined that term in the Special Facility to include the full range of commercial assets, which represent *a cryptographically secured digital representation of a set of rights provided on a digital platform issued or created (or to be issued or created), for commercial exploitation or reward, and which are exchanged and traded or cleared on a network of inter-linked and secured decentralised digital records (blockchain)*. The Special Facility is intended to extend to all such Digital Assets, irrespective of the nomenclature used and whether described as security tokens, utility tokens, payment tokens, cryptocurrency, crypto-assets, coins, programmable security, smart security or otherwise, and is not intended to exclude any specific set of rights or asset which is within the compass of the definitions of the rules of the Special Facility.

APPLICATION OF LAWS

The Exchange recognises that there is no defined international standard related to the classification of Digital Assets, the delineation of the legal rights and obligations attaching to Digital Assets, the composite legal rules as to determination of *situs* of Digital Assets or the delineation of the legal rules surrounding the rights and obligations relating to the trading in Digital Assets.

The Exchange further recognises that the technology and the participants will be subject to various legal rules of a number of jurisdictions. The Exchange will seek, in its application of the Special

Facility, to accommodate the applicable rules set for any specific case, and may add or waive certain requirements or conditions as is necessary to ensure a consistent, regulated and stable framework with a right to fair and equitable market access.

The rules of the Special Facility are issued in accordance with the laws of Barbados. As such the Exchange will be guided by the legal rules in Barbados, including specifically the *Securities Act*, the *Financial Services Commission Act*, the *Electronic Transactions Act*, the *Companies Act*, the *Bankruptcy and Insolvency Act*, and any specific investor protection legislation to be administered by regulatory authority (acting individually or jointly), and the applicable rules and regulations published thereunder.

The Exchange cannot vary any rule of applicable law in Barbados or elsewhere and all promoters, dealers and participants should be guided and informed accordingly. It remains the responsibility of all promoters, dealers and participants to be informed of all legal and regulatory risks, and to make the Exchange aware of all such material legal and regulatory risks.

For the protection of all market participants and the integrity and soundness of the ISM, the Exchange may require that as a condition of listing under the Special Facility, the promoter require the trading participants on a Recognised Platform and the participants providing services in respect of the listed Digital Assets to accept specific terms and conditions as a condition of admission, and/or in respect of trading in Digital Assets listed on the Exchange which relate to:

- the publication of Terms and Conditions of Use;
- the requirement for express acceptance of the Terms and Conditions of Use at relevant times (admission and/or trading);
- the inclusion in the Terms and Conditions of Use, of deemed notice in respect of any exchange of Digital Assets between trading participants on the Recognised Platform;
- the requirement for the collection of appropriate and up-to-date dealer and transaction information to be retained on a database readily accessible by the Listing Sponsor for the Digital Assets with permitted disclosure subject to law;
- the publication of regulatory disclaimers; and
- the subrogation and/or subordination of rights and claims in and to Digital Assets, in favour of the Exchange and/or a designated third-party where appropriate for the proper operation of the Recognised Platform and/or the protection of participants or trading activity on a Recognised Platform.

SECURITIES LAWS AND INVESTOR PROTECTION LAWS

The Exchange recognises that some classes of Digital Assets may be subject, in Barbados specifically, to the *Securities Act* and any specific investor protection legislation to be administered by the relevant regulatory authorities (acting individually or jointly). The Exchange requires that any person seeking the listing of a Digital Asset demonstrate to the Exchange that all legal advice in relation to the listing, and the applicability of such laws to the listing, have been obtained.¹

¹ Every offering is unique and must be assessed on its own characteristics. An offering of tokens may involve the distribution of securities (security tokens), including because *(a) the offering involves the distribution of an investment contract; and/or (b) the offering and/or the tokens issued are securities under one or more of the other enumerated branches of the definition of security or may be a security that is not covered by the non-exclusive list of enumerated categories of securities*. The offer and distribution of securities remains subject to the prescriptions contained in the *Securities Act*. In determining whether or not an investment contract exists, the case law endorses a purposive interpretation that includes considering the objective of investor protection. This is especially important for businesses to consider in the context of offerings of tokens *where the risk of loss to investors can be high*. Listing Sponsors, promoters and their professional advisors should consider and apply the case law interpreting the term “*investment contract*”, including

The Exchange will generally require, as a condition of the listing of Digital Assets, any one or more legal opinions, confirming:

- the registration of the Digital Asset (where applicable) or a confirmation of the absence of the requirement for registration under the laws of Barbados;
- the registration of the Digital Asset (where applicable) or a confirmation of the absence of the requirement for registration under the laws of any other applicable jurisdiction;
- the non-contravention of any rules of any other applicable jurisdiction.

DIGITAL ASSETS PERMITTED FOR LISTING

The categories of Digital Assets which may be admitted to listing are not limited to any specific category of digital assets. The Digital Assets must however have embedded a financial or investment purpose. The Rules of the Special Facility are intended to include traditional and non-traditional forms of digital assets however created. The essential requirement is that the digital asset be created for commercial value or with the intention of reward.

The Digital Assets which may be admitted to listing includes the more traditional digital representations of value intended to represent debt or equity in the issuer, as well as digital representations which are (a) used as a medium of exchange, unit of account, or store of value and is not legal tender, whether or not denominated in legal tender; (b) intended to represent any assets or rights associated with such assets; and (c) intended to provide access to an application or service or product by means of the blockchain. It would not include non-commercial exploitation and in the normal course transaction a digital asset granting value as part of an affinity or rewards program, which value cannot be taken from or exchanged with the person for legal tender, bank credit or any digital asset; or a digital representation of value issued by or on behalf of the publisher and used within an online game, game platform, or family of games sold by the same publisher or offered on the same game platform would not be capable of being listed.

ISSUERS OF DIGITAL ASSETS

The Exchange recognises the unlimited categories of Digital Assets which may be admitted to listing, and as such recognises that the categories of issuer are not limited. The Exchange recognises that digital assets may be issued or created through the traditional legal forms of subscription and purchase contracts, as well as develop more “organically” in a collective or co-operative environment.

In cases where there is no traditional legal issuer, as a condition of listing, the Exchange may designate specific persons as the issuer for the purpose of admitting the Digital Assets to listing and in such case shall require any such persons to be established or registered in Barbados.

consideration of whether the offering involves *(1) an investment of money, (2) in a common enterprise, (3) with the expectation of profit, (4) to come significantly from the efforts of others*. In analysing whether an offering of tokens involves an investment contact, businesses and their professional advisors should assess not only the technical characteristics of the token itself, but the economic realities of the offering as a whole with a focus on substance over form.

REGISTRATION OF PARTICIPANTS

The Exchange requires that every Participant proposing to provide services in respect of a listed Digital Asset be registered with the Exchange. In cases where the Participant is carrying on business in Barbados, that Participant shall be required to comply in addition with the registration and licensing requirements under the *Companies Act* and the *Securities Act*.

REQUIREMENT FOR LISTING SPONSOR

The listing of Digital Assets under the Special Facility shall require a Listing Sponsor. The Rules relating to Listing Sponsors **Series 6000 of the Rules of the International Securities Market of the Barbados Stock Exchange** shall be read, construed and applied with appropriate modifications where necessary with the rules for the Special Facility. Any special rules or obligations stated in the rules of the Special Facility related to a Listing Sponsor shall be in addition to the rules or obligations stated Rules relating to Listing Sponsors **Series 6000 of the Rules of the International Securities Market of the Barbados Stock Exchange**.

REQUIREMENT FOR DUE DILIGENCE

The Exchange requires that each promoter, dealer and participant in any trade or exchange of Digital Assets provide the necessary due diligence required by the Exchange. All information shall be required to be maintained by the Listing Sponsor in accordance with the rules of the Special Facility, and shall be available to review by the appropriate regulatory authorities.

SPECIAL ADMISSION PANEL

The Exchange proposes to establish a panel of experts constituted of technology experts, software engineers, valuers, legal professionals and accountants and any other qualified persons to assist the Exchange in determining the relevant conditions for the listing of any Digital Asset on the Exchange.

SANDBOX

A Sandbox framework has been established by the Financial Services Commission acting in concert with the Central Bank of Barbados, which is governed by a Regulatory Review Panel (RRP). The RRP is constituted of members nominated by the Financial Services Commission, the Central Bank of Barbados, and the Office of the Director of Finance and Economic Affairs. The RRP may also invite other competent persons in its discussions, to bring appropriate expertise relevant to any decision.

Application forms are available on the CBB and FSC websites. Entities can apply to participate in the Sandbox by submitting a completed application form and supporting documentation, applications to be sent to regsandbox@centralbank.org.bb or regsandbox@fsc.gov.bb.

It is anticipated that through bilateral arrangements the Sandbox regime will admit listed Digital Assets to be approved for distribution persons in the other treaty jurisdictions.