

Headnote

NP 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – exemption granted to an investment fund from margin deposit limit contained in paragraphs 6.8(1) and 6.8(2)(c) of National Instrument 81-102 to invest in specified futures – the Filer will use dealers in Canada and the United States – conditional on the amount of margin deposited not exceeding 35% of the net assets of the fund with any one dealer and 70% of the net assets of the funds on all margin deposited with all dealers being held in segregated accounts.

Applicable Legislative Provisions

National Instrument 81-102 *Investment Funds*, paragraphs 6.8(1), 6.8(2)(c) and 19.1

Citation: Re Accelerate Financial Technologies Inc., 2021 ABASC 136 Date: 20210824

In the Matter of
the Securities Legislation of
Alberta and Ontario (the **Jurisdictions**)

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
Accelerate Financial Technologies Inc. (the **Filer**)

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) on behalf of Accelerate Carbon-Negative Bitcoin ETF and any successor fund thereto (the **Fund**) to

- (a) revoke *Re Accelerate Financial Technologies Inc., 2021 ABASC 29* (the **Previous Decision**) and such relief the **Revocation Relief**), and
- (b) replace the Previous Decision with a decision granting an exemption from
 - (i) subsection 6.8(1) of National Instrument 81-102 *Investment Funds (NI 81-102)*, which restricts an investment fund from depositing portfolio assets as margin with a member of a regulated clearing agency or dealer that is a member of a self-regulatory organization that is a participating member of the Canadian Investor Protection Fund (**CIPF**) for a transaction in Canada involving certain specified derivatives in excess of 10% of the net asset value (**NAV**) of the investment fund at the time of deposit, and

- (ii) subsection 6.8(2)(c) of NI 81-102, which restricts an investment fund from depositing portfolio assets as margin with a member of a regulated clearing agency or dealer for a transaction outside of Canada involving certain specified derivatives in excess of 10% of the NAV of the investment fund as at the time of deposit

to permit the Fund to deposit as margin portfolio assets of up to 35% of the Fund's NAV as at the time of deposit with any one futures commission merchant in Canada or the United States (each a **Dealer**) and up to 70% of the Fund's NAV as at the time of deposit with all Dealers in the aggregate, in each case for transactions in standardized futures (the **Replacement Relief**, and together with the Revocation Relief, the **Requested Relief**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application)

- (a) the Alberta Securities Commission is the principal regulator for this application,
- (b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each jurisdiction of Canada, other than Ontario, and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 and NI 81-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by the Filer:

Background Facts

The Filer

1. The Filer is registered as an adviser in the category of portfolio manager, as a dealer in the category of exempt market dealer and as an investment fund manager under the Legislation. The Filer's head office is in Calgary, Alberta.
2. The Filer will be the investment fund manager and portfolio manager of the Fund. The Filer is not in default of securities legislation in any jurisdiction of Canada.

The Fund

3. The Fund is, or will be, an exchange-traded alternative mutual fund established under the laws of the Province of Ontario and is governed by the provisions of NI 81-102, subject to any relief therefrom granted by any securities regulatory authority or regulator.
4. The Fund is not in default of securities legislation in any jurisdiction of Canada.
5. Units of the Fund are, or will be, offered pursuant to a long form prospectus and ETF facts prepared in accordance with National Instrument 41-101 *General Prospectus Requirements*.
6. The Fund is, or will be, a reporting issuer in each jurisdiction of Canada.
7. The investment objective of the Fund is, or will be, to seek to provide investors with exposure to the performance of bitcoin by investing in derivatives that provide exposure to bitcoin. The manager of the Fund also intends to sequester over 100% of the estimated carbon dioxide emissions attributable to bitcoin transactions that the Fund is indirectly exposed to by funding decarbonisation initiatives.
8. To seek to achieve its investment objective, the Fund will invest directly in bitcoin futures contracts (**Bitcoin Futures**) traded on the Chicago Mercantile Exchange. In the future, the Fund may invest in Bitcoin Futures traded on other exchanges.
9. The investment strategies of the Fund will, except to the extent that the Requested Relief is granted and other exemptive relief is applicable, be limited to the investment practices permitted by NI 81-102. The Fund will not use leverage.
10. The Filer is or will be authorized to establish, maintain, change and close brokerage accounts on behalf of the Fund. In order to facilitate transactions in Bitcoin Futures on behalf of the Fund, the Filer will establish one or more accounts (each an **Account**) with one or more Dealers.
11. Each Dealer in the United States (each a **U.S. Dealer**) is regulated by the Commodity Futures Trading Commission (the **CFTC**) and the National Futures Association (the **NFA**) in the United States and is required to segregate all assets held on behalf of clients, including the Fund. Each U.S. Dealer is subject to regulatory audit and must have insurance to guard against employee fraud. Each U.S. Dealer has a net worth, determined from its most recent audited financial statements, in excess of the equivalent of C\$50 million. Each U.S. Dealer has an exchange assigned to it as its designated self-regulatory organization (the **DSRO**). As a member of a DSRO, each U.S. Dealer must meet capital requirements, comply with the conduct rules of the CFTC, NFA and its DSRO, and participate in an arbitration process with a complainant.

12. The Fund initially plans to use only U.S. Dealers, however it anticipates that Dealers in Canada (**Canadian Dealer**) may be utilized in the future. Each Canadian Dealer will be a member of a regulated clearing agency or dealer that is a member of a self-regulatory organization that is a participating member of the CIPF.
13. Additionally, each Dealer is a member of the clearing corporations and exchanges that the standardized futures in the Fund's portfolio are primarily traded through. Each clearing corporation is obliged to apply its surplus funds and the security deposits of its members to reimburse clients of failed members.
14. A Dealer will require, for each Account, that portfolio assets of the Fund be deposited with the Dealer as collateral for transactions in Bitcoin Futures (**Initial Margin**). Initial Margin represents the minimum initial amount of portfolio assets that must be deposited with a Dealer to initiate trading in specified derivatives transactions or to maintain the Dealer's open position in standardized futures.
15. Levels of Initial Margin are established at a Dealer's discretion. At no time will more than 70% of the NAV of the Fund be deposited as Initial Margin with one or more Dealers in the aggregate.
16. Each Dealer is required to hold all Initial Margin, including cash and government securities, in segregated accounts and the Initial Margin will not be available to satisfy claims against the Dealer made by creditors of the Dealer.

Reasons for the Requested Relief

17. The use of Initial Margin is an essential element of investing in Bitcoin Futures for the Fund.
18. The Requested Relief would allow the Fund to invest in standardized futures more extensively with any one Dealer, which would allow the Fund to pursue its investment strategies more efficiently and flexibly.
19. Opening Accounts and transacting with multiple Dealers adds complexity and cost to the management of the Fund. Using fewer Dealers will considerably simplify the Fund's investment and operations and will reduce the cost of implementing the Fund's strategy. Using fewer Dealers also simplifies compliance and risk management, as monitoring the data, controls and policies of a smaller number of Dealers is less complex.
20. The Filer obtained the Previous Decision for an exemption from the requirements of section 6.8(1) of NI 81-102 and section 6.8(2)(c) of NI 81-102.
21. The Requested Relief is substantially similar to the Previous Decision, with changes being made to reflect the new name of the Fund.

Decision

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted provided that

- (a) the Fund shall only use Initial Margin such that the amount of Initial Margin held by any one Dealer on behalf of the Fund does not exceed 35% of the net assets of the Fund, taken at market value as at the time of the deposit,
- (b) the Fund shall only use Initial Margin such that the amount of Initial Margin held by Dealers in aggregate on behalf of the Fund does not exceed 70% of the net assets of the Fund, taken at market value as at the time of the deposit, and
- (c) all Initial Margin deposited with any Dealer is and will be held in segregated accounts and is not, and will not be available to satisfy claims against such Dealer made by creditor of the Dealer.

“original signed by” _____

Tom Graham, CPA

Director, Corporate Finance

Alberta Securities Commission