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Ontario Securities Commission  
Cadillac Fairview Tower  
1800 - 20 Queen Street West  
Toronto, ON M5H 3S8

Attention: Secretary of the Commission

Dear Sirs/Mesdames:

**Application on behalf of Carta Capital Markets, LLC for exemptive relief under the Passport System from the dealer registration requirement in connection with a U.S.-based online alternative trading system for private secondary market transactions (the Application)**

**I. BACKGROUND**

We are acting for Carta Capital Markets, LLC (the **Filer**) in making this hybrid application under National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* (**NP 11-203**). The Filer is a broker-dealer registered under the securities laws of the United States and the operator of an alternative trading system (**ATS**) which offers secondary market auctions and tender offers for securities of private issuers and private funds domiciled in the United States and other jurisdictions outside of Canada (**Eligible Issuers**).

The head office of the Filer is in New York, United States. The Filer has identified Ontario as the jurisdiction of Canada in which it expects most of its Canadian clients to be resident at the end of its current financial year. Accordingly, pursuant to subsection 4.4(c) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**), the Ontario Securities Commission is the principal regulator for the application.

Pursuant to section 4.7 of MI 11-102, the Filer intends to rely on the decision of the OSC, as principal regulator, as an exemption from the equivalent regulation in each other province and territory of Canada (the **Other Jurisdictions**). The Filer notifies the Other Jurisdictions, by giving notice to the principal regulator, that the Filer intends to rely upon the Dealer Registration Relief (defined below) granted by the principal regulator to obtain the same exemption in each of the Other Jurisdictions.



Pursuant to section 3.4 of NP 11-203 the Filer intends to file this application in each of Ontario and simultaneously in the Other Jurisdictions for the Marketplace Relief (defined below), whereunder the OSC will review the application and each non-principal regulator in the Other Jurisdictions will coordinate its review with the OSC, and the decision of the OSC to grant exemptive relief will evidence the decision of each of the non-principal regulators of the Other Jurisdictions that has made the same decision as the OSC.

Pursuant to Section 3.5 of NP 11-203 this application shall be considered a “hybrid application” as the Dealer Registration Relief shall be considered a passport application and the Marketplace Relief shall be considered a coordinated review application.

## II. REQUESTED RELIEF

On behalf of the Filer, we apply for a decision under the securities legislation of the principal regulator and the non-principal regulators of the Other Jurisdictions (the **Legislation**) pursuant to:

1. Section 74 of the *Securities Act* (Ontario) (the **Act**) for relief from the dealer registration requirement in Section 25 of the Act to permit the Filer to provide Canadian residents who hold securities of Eligible Issuers with brokerage services to allow them to sell such securities in transactions offered on the ATS (the **Dealer Registration Relief**);
2. Section 15.1 of National Instrument 21-101 -- *Marketplace Operation* (**NI 21-101**), Section 12.1 of National Instrument 23-101 -- *Trading Rules* (**NI 23-101**) and Section 10 of National Instrument 23-103 -- *Electronic Trading and Direct Access to Marketplaces* (**NI 23-103** and, together with NI 21-101 and NI 23-101, the **Marketplace Rules**) exempting the Filer from the application of all provisions of the Marketplace Rules that apply to a person or company carrying on business as an ATS in Ontario and the Other Jurisdictions (the **Marketplace Relief**).

(collectively, the **Requested Relief**).

## III. INTERPRETATION

Terms used and not defined herein have the meanings given to them in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) or National Instrument 14-101 *Definitions*

## IV. FACTS GIVING RISE TO THE APPLICATION

### The Filer

1. The Filer is a corporation incorporated in the State of Delaware. The head office of the Filer is in New York, New York.



2. The Filer operates under the business name “**CCMX**”.
3. The Filer is registered as a broker-dealer with the U.S. Securities and Exchange Commission (**SEC**) (SEC#8-70396), is a member of the Financial Industry Regulatory Authority (**FINRA**) (CRD#: 304751) and is the operator of the ATS known as “**CartaX**”.
4. The Filer relies on the international dealer exemption set out in Section 8.18 of NI 31-103 (the **International Dealer Exemption**) in certain Jurisdictions to trade in foreign securities with permitted clients in such Jurisdictions.
5. The Filer is a wholly-owned subsidiary of eShares, Inc., doing business as Carta, Inc. (**CINC**). CINC is a corporation incorporated in the State of Delaware. The head office of CINC is in San Francisco, California.
6. CINC is a transfer agent registered with the SEC. CINC provides capitalization table management services to private companies, including registrar and transfer agency, equity compensation plan administration and related services.
7. CINC provides services to over 20,000 companies and over 1.2 million securityholders globally, including over 250 companies in Canada.
8. The Filer is not in default of securities legislation in any jurisdiction of Canada.

### **CartaX**

9. CartaX is an ATS which offers secondary market transactions in securities (**Eligible Securities**) of Eligible Issuers.
10. Two types of transactions are offered on CartaX:
  - (a) secondary purchases and sales of Eligible Securities which facilitate price discovery through a single-price auction-based mechanism (**Carta Cross**); and
  - (b) offerings by an Eligible Issuer or one or more third parties (**Offerors**) to the current holders of Eligible Securities of the Eligible Issuer to buy the Eligible Securities at a set price (**Tender Offers** or **TOs**, and together with Carta Cross, **CartaX Transactions**).
11. All Eligible Issuers are customers of CINC’s transfer agency services.
12. The Filer conducts comprehensive due diligence on each Eligible Issuer, and obtains representations from each Eligible Issuer that all CartaX Transactions are conducted in compliance with U.S. securities laws and that all Eligible Securities



traded on CartaX have been issued pursuant to private placement exemptions under the securities laws in the jurisdiction of the Eligible Issuer and the selling securityholder.

13. The Filer conducts due diligence on each Eligible Issuer and Offeror prior to approving the Eligible Issuer and/or Offeror to conduct a CartaX Transaction, including account registration and onboarding, review and approval of all offering documents and transaction documents and review of all potential buyers and sellers that an Eligible Issuer proposes to invite to participate in the CartaX Transaction.
14. An Eligible Issuer that has been approved to make its shares available for trading on CartaX (an **Approved Issuer**) determines the securities they want to permit to transact and designates existing shareholders and new investors as (**Permissioned Buyers**) for each Carta Cross. Eligible Issuers may also participate in a Carta Cross as Permissioned Buyers. Existing shareholders of an Approved Issuer (e.g., employees, former employees, affiliates/insiders, early-stage investors and others) may be allowed to sell (**Permissioned Sellers**).
15. The Filer works with Eligible Issuers to configure their Carta Cross to maximize orderly price discovery, liquidity and fairness for all participants, within parameters set out in the CartaX initial operating report (**Form ATS**), which has been filed with the SEC. Each Carta Cross is executed at a “Final Clearing Price”, which is the single price determined by CartaX’s proprietary algorithm at which the maximum number of Eligible Securities can transact between Permissioned Buyers and Permissioned Sellers while respecting order prioritization and minimum fill requirements.
16. CartaX operates on a private, invite-only, closed network. All orders submitted to a Carta Cross auction are submitted on a “sealed-bid” basis, meaning individualized price or volume order information is not revealed to any other participant or the Approved Issuer throughout or after the auction process.
17. Tender Offers feature a single price determined by the Offeror at which selling shareholders can choose whether to tender their Eligible Securities for sale. All Tender Offers are conducted in compliance with the tender offer rules of the *Securities Exchange Act of 1934* (the **'34 Act**), as amended, including by ensuring that the Tender Offer is made to all shareholders of the Eligible Issuer (the **TO Issuer**). For the purpose of this application, **Permissioned Sellers** includes shareholders of TO Issuers that have opened brokerage accounts with the Filer.
18. The Filer represents the orders of Permissioned Buyers, Permissioned Sellers and Offerors to the ATS in an agency capacity only and does not trade on CartaX in a principal capacity. Orders are entered by Permissioned Buyers and Permissioned



Sellers through their CCMX brokerage account (an electronic user interface offered by the Filer) and cleared and settled programmatically.

19. The Filer maintains risk controls for restricting or suspending access, disabling functionality or halting trading due to concerns regarding illegal activities, violation of contractual provisions with the Filer, or technical issues which could pose a risk to participants, Approved Issuers, Offerors, CartaX or the capital markets more generally.

### **Onboarding and KYC**

20. Permitted Sellers must open brokerage accounts with the Filer to enter sell orders for Eligible Securities under Carta Cross transactions and to tender Eligible Securities to Tender Offers. Such orders are directed by the Filer, as agent, to CartaX for execution. Permitted Sellers do not have direct access to CartaX.
21. Similarly, Permitted Buyers and Offerors must open brokerage accounts with the Filer to fund buy orders for purchases of Eligible Securities and Tender Offers. Such orders are directed by the Filer, as agent, to CartaX for execution. Permitted Buyers and Offerors do not have direct access to CartaX.
22. The Filer's onboarding process complies with applicable securities laws, anti-money laundering, anti-terrorist financing and economic sanctions laws in the United States. The Filer has adopted processes for complying with anti-money laundering, anti-terrorist financing and economic sanctions laws in Canada when onboarding permitted clients in reliance on the International Dealer Exemption.
23. Under the Filer's brokerage account agreement, customers are required to acknowledge and agree that:
  - (a) the account is self-directed, and the customer alone is solely responsible for any and all orders placed in its account, and all orders entered by the customer or on the customer's behalf are unsolicited and based on its own investment decisions;
  - (b) the customer has not received and does not expect to receive any investment, legal, tax or accounting advice from the Filer; and
  - (c) the customer alone is responsible for determining the suitability of customer's investments in light of customer's particular circumstances and the Filer assumes no responsibility for such determination.



24. The Filer provides customers with relationship disclosure as required under FINRA rules, including disclosure of the risk related to the use of services and the risks involved with opening a brokerage account with the Filer.
25. Permitted Sellers that open brokerage accounts with the Filer are not required to sell their Eligible Securities in the relevant Carta Cross or Tender Offer. Rather, Permitted Sellers may simply use the online interface provided by the Filer to view relevant information about the Eligible Securities.

#### **Canadian Participation in Carta Crosses and Tender Offers**

26. Numerous Eligible Issuers have Canadian securityholders. Many Canadian securityholders have acquired their Eligible Securities as equity-based compensation in their capacities as employees, consultants or advisors to an Eligible Issuer or a Canadian affiliate of an Eligible Issuer. Some Canadian securityholders have acquired eligible securities as early stage investors in Eligible Issuers.
27. Canadian permitted clients resident in Jurisdictions where the Filer relies on the International Dealer Exemption may open brokerage accounts with the Filer through which the permitted client may enter buy and sell orders for Eligible Securities through the Filer.
28. Canadian securityholders of Eligible Issuers who do not qualify as permitted clients cannot open brokerage accounts with the Filer and, therefore, cannot sell their Eligible Securities in Carta Crosses or Tender Offers.
29. It would be beneficial to Canadian securityholders to be able to sell their Eligible Securities in Carta Crosses and Tender Offers, as these transactions provide Canadian securityholders with unique opportunities for liquidity and fair price discovery for their Eligible Securities prior to a public offering.

#### **V. SUBMISSIONS**

The Filer submits that it would not be prejudicial to the public interest for the OSC to grant the Requested Relief for the following reasons:

##### **Context for CartaX**

1. In recent years, an increasing number of high-growth companies, many in the technology sector, have chosen to remain private issuers for relatively long periods of time, during which equity-based compensation may be awarded to hundreds of employees, consultants and advisors. CartaX was developed to provide such securityholders (as well as early-stage investors) with the opportunity to achieve



liquidity for their shareholdings prior to an initial public offering or other liquidity event.

2. It would be beneficial to Canadian residents who are securityholders of private issuers (**Canadian Private Securityholders**) to have opportunities to sell their Eligible Securities, particularly those who have contributed to the value of such issuers through employment or early-stage investment.
3. Absent the Requested Relief, Canadian Private Securityholders of Eligible Issuers conducting CartaX Transactions would be disadvantaged compared to other securityholders because they would not be able to participate in key liquidity events. Such Canadian securityholders would be unlikely to have opportunities to sell their Eligible Securities prior to a public offering without accepting a significant discount to fair value.

#### **Adequacy of Investor Protection**

4. As a registered broker-dealer in the United States, the Filer will conduct its dealing activities with Canadian securityholders pursuant to high industry standards.
5. The Filer offers self-directed brokerage services and does not provide recommendations or advice to customers in connection with orders for Eligible Securities. The Filer does not participate as principal in any CartaX Transactions, and therefore many conflicts of interest which arise between traditional investment dealers and their clients do not arise between the Filer and its brokerage clients.
6. Generally, holders of Eligible Securities are familiar with the business of the relevant Approved Issuer or TO Issuer (for example, through their employment or advisory relationships, or in their capacity as early-stage investors) and are not seeking recommendations or advice when deciding whether to participate in a Carta Cross or Tender Offer. Therefore, we submit that Canadian Private Securityholders will receive an appropriate level of investor protection when using the services of the Filer to sell their Eligible Securities.
7. Generally, Canadian Private Securityholders do not trade in securities of private issuers through brokerage accounts with investment dealers that are members of the Investment Industry Regulatory Organization of Canada (**IIROC**). Rather, trades in securities of private issuers are: (i) intermediated by registered exempt market dealers; or (ii) conducted in private transactions with the issuer or other securityholders that are not intermediated by a dealer. Consequently, Canadian Private Securityholders who would be permitted to open brokerage accounts with the Filer to sell their Eligible Securities in CartaX Transactions would not experience a reduced level of investor protection by selling through the Filer than they would if they sold their Eligible Securities through other means.



8. The Requested Relief will permit the Filer to conduct one type of transaction for Canadian retail investors: acting as agent for Canadian Private Securityholders in the liquidation of their private securities in a CartaX Transaction. The sale price for such Eligible Securities is determined pursuant to a fair and transparent process, and the CartaX Transaction likely represents the only meaningful opportunity for such Canadian Private Securityholder to sell their Eligible Securities prior to an initial public offering. As such, many variables which are generally associated with investing do not apply in the context of CartaX Transactions, and therefore most of the investor protection issues addressed by the IROC rules for retail account supervision do not arise.
9. The Requested Relief will provide Canadian Private Securityholders that choose not to sell their Eligible Securities in a CartaX Transaction with valuable information accessible through the online brokerage account interface, such as trading volumes and the Final Clearing Price for a Carta Cross. Canadian Private Securityholders may find such information useful when valuing of the Eligible Securities that they still hold and evaluating future sale opportunities for such Eligible Securities.

#### **Other Relevant Dealer Registration and Prospectus Exemptions**

10. Section 3.1 of Ontario Securities Commission Rule 72-503 *Distributions Outside Canada (OSC Rule 72-503)* and Section 13 of Alberta Securities Commission Rule 72-501 *Distributions to Purchasers Outside Alberta (ASC Rule 72-501)* (the **Outside Canada Dealer Registration Exemptions**) reflect the policy position of the Canadian Securities Administrators (CSA) that Canadian residents holding securities of foreign issuers with minimal connections to Canada should be permitted to trade such securities on markets outside of Canada without going through a Canadian registered dealer. Many of the CartaX Transactions would satisfy the conditions set out in the Outside Canada Dealer Registration Exemptions. However, the Requested Relief is necessary because:
  - (a) some Eligible Issuers may not satisfy the criteria for “foreign issuers” as set out in the Outside Canada Dealer Registration Exemptions;
  - (b) in the context of Carta Crosses, it is not possible for the Filer to ensure that the purchaser of an Eligible Security from a Canadian Private Securityholder is not also a Canadian resident, since orders interact programmatically and matched orders cannot be manually changed by the Filer. (Although it is reasonable to apply the interpretive guidance in Section 2.5 of OSC Rule 72-503 that distributions made on or through the facilities of an exchange or market outside Canada is a distribution to a person or company outside Canada if neither the seller nor any person acting on its behalf has reason to believe that the distribution has been pre-arranged





with a buyer in Canada, this provision technically applies only to the prospectus exemptions set out in OSC Rule 72-503 and not to Section 3.1 of OSC Rule 72-503);

- (c) it is possible that a permitted client in Canada could be an offeror in a Tender Offer or a Permitted Buyer in a Carta Cross, in which case the Outside Canada Dealer Registration Exemptions would not be available, even with the application of the interpretive guidance in Section 2.5 of OSC Rule 72-503;
  - (d) the Outside Canada Dealer Registration Exemptions are not available in Jurisdictions other than Ontario and Alberta; and
  - (e) most importantly, under section 6.2 of NI 21-101, the registration exemptions applicable to dealers under securities legislation (including the Outside Canada Dealer Registration Exemptions) are not available to an ATS such as the Filer;
11. It is expected that all sales of Eligible Securities by Canadian Private Securityholders made through the Filer would qualify for one or more exemptions from the prospectus requirement, including Sections 2.14 or 2.15 of National Instrument 45-102 *Resale of Securities*, Sections 2.7 and 2.8 of OSC Rule 72-503 or Section 10 or 11 of ASC Rule 72-501. These prospectus exemptions demonstrate the policy position of the CSA that Canadian residents should be permitted to sell their securities of foreign issuers acquired pursuant to prospectus exemptions without compliance with the prospectus requirement provided that there are minimal connections to Canada associated with the transaction.
12. In the event that none of the foregoing prospectus exemptions are available, then sales of Eligible Securities by Canadian Private Securityholders to Permitted Buyers could be made in reliance on the “accredited investor” exemption under 73.3 of the Act and section 2.3 of National Instrument 45-106 *Prospectus Exemptions*, provided that the Permitted Buyer is an accredited investor.

### **Marketplace and Clearing Agency Issues**

13. As noted previously, CartaX operates on a private, invite-only, closed network. Only those parties that are invited by the Filer and pass the Filer’s onboarding and account opening processes may participate in CartaX Transactions. Because the Approved Issuers on CartaX are not reporting issuers, the fair access provision of Regulation ATS under the ’34 Act (**Reg. ATS**) does not apply to CartaX. In the context of the limited purpose for which CartaX was developed and the fact that there are no other marketplaces that offer transactions similar to the Carta Cross, the Filer’s access policy is fair and reasonable and the policy objective of ensuring



that all marketplaces provide fair and equal access which underpin the Marketplace Rules are adequately addressed by the Filer, to the extent that they apply to CartaX.

14. The Filer is regulated as an ATS by FINRA and the SEC and has adopted comprehensive policies and procedures for ensuring that CartaX operates a fair and orderly market. The Filer reports transaction information, including with respect to participants and volumes, to the SEC on a quarterly basis on Form ATS-R as prescribed by Regulation ATS. Consequently, the policy objectives of ensuring fair, orderly, and transparent markets which underpin the Marketplace Rules are adequately addressed by the Filer and by FINRA's and SEC's oversight of the Filer.
15. We submit that the clearing function performed by the Filer in connection with transactions effected through CartaX does not occur in Canada and does not give rise to the requirement for the Filer to be regulated or recognized as a clearing agency under the Legislation in any Jurisdiction.
16. Relief similar to the Marketplace Relief has been granted in *Trumid Financial, LLC, Re*, 43 OSCB 4900, *Trumid Financial, LLC, Re*, 44 OSCB 1724, *TokenGX Inc., Re* 42 OSCB 8511 and *Finhaven Capital Inc.* 2020 BCSECCOM 391.

#### **Employee Participation in Equity Compensation Plans**

17. Relief similar to the Dealer Registration Relief has been granted in *NB Alternatives Advisers LLC et al, Re*, 41 OSCB 5590 (July 6, 2018), *Wordline S.A.*, 43 OSBC 9254 (October 27, 2020) and a series of prior decisions granting relief from the dealer registration and prospectus requirement for issuances of units of fonds communs de placement d'entreprise (FCPEs) to Canadian employees of French companies (or Canadian affiliates of such French companies) which offer employees the opportunity to participate in equity-based compensation programs using special purpose entities. These decisions reflect the policy position of the CSA that Canadian employees of foreign firms should have the ability to participate in all aspects of the equity-based compensation programs offered by their employers. It is expected that a majority of the Canadian Private Securityholders that the Filer would service in reliance on the Dealer Registration Relief will be employees or former employees of Eligible Issuers or their affiliates who received their Eligible Securities as equity-based compensation.

#### **General**

18. CartaX provides unique opportunities to Eligible Issuers to offer, and for securityholders to obtain, liquidity in secondary market transactions with fair price discovery that is not typically available in private markets. If the Requested Relief is granted, Canadian Private Securityholders will be able to participate in these



opportunities, while benefiting from the investor protections provided by the Filer as a FINRA member and SEC registered broker-dealer.

19. It is a principle of Ontario securities laws that innovation in Ontario's capital markets should be facilitated. The securities regulatory authorities in the Other Jurisdictions have adopted similar priorities and objectives. For the reasons outlined above, we submit that it would not be contrary to the public interest for the Requested Relief to be granted.

## VI. ENCLOSURES

Enclosed with this application are:

- (a) Annex A – Draft Decision Document for your consideration; and
- (b) Annex B – Authorization and Verification Statement signed by the Filer.

Filing fees in the amount of C\$7,000 have been submitted on behalf of the Filer using the OSC's electronic filing portal in connection with the passport application, and the appropriate filing fees in the Other Jurisdictions have been submitted in connection with the coordinated review application.

We would be pleased to respond to your questions and provide any further information which may be required in your consideration of the application. Please contact me at [lstein@osler.com](mailto:lstein@osler.com) with questions and comments.

Yours very truly,

Lori Stein

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