

September 11, 2024

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
ONTARIO  
(the Jurisdiction)**

**AND**

**IN THE MATTER OF  
THE PROCESS FOR EXEMPTIVE RELIEF  
APPLICATIONS IN MULTIPLE JURISDICTIONS**

**AND**

**IN THE MATTER OF  
GOLDMONEY INC., GOLDMONEY VAULT INC. AND  
GOLDMONEY VAULT UK LIMITED**

**DECISION**

**Background**

The Principal Regulator (as defined below) in the Jurisdiction has received an application (the **Application**) from Goldmoney Inc. (the **Company**), Goldmoney Vault Inc (**GVI**) and Goldmoney Vault UK Limited (United Kingdom) (**GVUK** and collectively with the Company and GVI, the **Filers** or **Goldmoney**) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that the Filers and their respective officers, directors and representatives be exempt during the Interim Period (as defined below) from:

- (a) the dealer registration requirement (the **Dealer Registration Relief**), and
- (b) the prospectus requirement (the **Prospectus Relief**)

in the Legislation in connection with the offering by Goldmoney of Precious Metals Transactions (as defined below) to residents in the Applicable Jurisdictions (as defined below), subject to the terms and conditions below (the Dealer Registration Relief together with the Prospectus Relief being referred to collectively herein as the **Requested Relief**).

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

- (a) the Ontario Securities Commission is the principal regulator for this application (the **Principal Regulator**); and
- (b) the Filers have provided notice that, in the case of the Dealer Registration Relief and, in the jurisdictions where required, the Prospectus Relief, section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of

the other provinces and territories of Canada (the **Non-Principal Jurisdictions**, and, together with the Jurisdiction, the **Applicable Jurisdictions**).

## **Interpretation**

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

## **Representations**

This Decision is based on the following facts represented by the Filers:

### ***Goldmoney Inc.***

1. The Company is a corporation organized under the laws of British Columbia with its head office and principal place of business in Toronto, Ontario. The Company is seeking shareholder approval to continue the Company under the corporate laws of British Virgin Islands.
2. The Company is a public company listed on the Toronto Stock Exchange (the **TSX**).
3. The Company is a precious metals and technology company. Through its ownership of various operating subsidiaries, the Company engages with clients in the purchase and sale of precious metals, storage, jewelry sales, coin retailing and lending.
4. The Company makes available its precious metals purchase and storage services (collectively, **Precious Metals Transactions**) through an online trading platform (at <https://www.goldmoney.com/>) (the **Platform**). The Company considers the purchase of precious metals to be an alternative to traditional accounts at an investment firm or owning precious metals ETFs.

The Company conducts its precious metal activities through GVI and GVUK which maintain client agreements and related records and provide market-related quotes to enable clients to buy and sell precious metals and, as agent for clients, contract with independent non-bank precious metal vault custodians (sometimes referred to herein as **Independent Non-Bank Vault Custodians**) in seven countries to provide insured physical storage of gold under LBMA and/or COMEX standards. GVI currently maintains vault relationships with The Brink's Company, Loomis International and The Royal Canadian Mint.

5. The Company has clients located in over 100 countries and had safeguarded Client Assets of approximately \$2.2 billion as at March 31, 2024.

### ***Goldmoney Vault Inc.***

6. In Canada, the Company services its clients primarily through its wholly-owned subsidiary, GVI. Companies, institutions and high-net-worth individuals are managed by GVI or GVUK.
7. GVI is a wholly-owned Canadian subsidiary of the Company. GVI is classified as a "dealer in precious metal and stones" under the *Proceeds of Crime (Money Laundering)*

and Terrorist Financing Act (Canada) (**PCMLTFA**) and associated regulations. Accordingly, GVI is subject to Part 1 of the PCMLTFA and the associated regulations, and the obligations outlined therein. As a “dealer in precious metal and stones”, GVI is also subject to certain reporting and record-keeping requirements. GVI is a reporting entity to Financial Transactions and Reports Analysis Centre of Canada (**FINTRAC**).

### ***Goldmoney Vault (UK) Limited (United Kingdom)***

8. GVUK is a wholly-owned subsidiary of the Company organized under the laws of England and Wales, is subject to anti-money laundering requirements in England and Wales and is a reporting entity to the National Crime Agency of the United Kingdom.

### ***Online Platform***

9. The Company’s online Platform is a proprietary internet-based platform used by Goldmoney to communicate and interact with and manage the relationship with prospects and clients.
10. The Platform enables eligible clients to purchase, store or receive, sell, and exchange a weight of physical gold, silver, platinum, and palladium. Precious metals acquired by a Goldmoney client can be stored, if the client chooses, by Goldmoney at the instruction of the client in one or more of 10 high-security third-party bullion vaults chosen by the client. The clients’ metal is allocated by the vault to the clients of Goldmoney, and reported by the Company in the client’s “Holding” (as defined below) and recorded by the Company off-balance sheet to reflect that the Company has no ownership interest in client-owned assets.
11. The Platform is similar to those developed for order-execution-only online trading platforms that are operated by investment dealers/dealer members of the Canadian Investment Regulatory Organization (**CIRO**) in that the client purchases, stores or receives, and sells precious metal without recommendations or advice from Goldmoney. Goldmoney does not manage any discretionary accounts, nor does it provide any advice or recommendations regarding client purchases, sales or storage decisions.
12. Because a Goldmoney entity is counterparty to every Precious Metals Transaction, the Platform is not a “marketplace” as defined in National Instrument 21-101 *Marketplace Operation* since a marketplace is any facility that brings together multiple buyers and sellers by matching orders in fungible contracts in a nondiscretionary manner. The Platform does not bring together multiple buyers and sellers. Goldmoney will not operate a platform that is an exchange or marketplace and will not use the terms “exchange” or “marketplace” when referring to the Platform in the Company’s public disclosure or on the Platform itself.
13. Goldmoney completes a Precious Metals Transaction when a customer logs into a Holding and transacts in any of the following ways: (1) purchases metal using cleared funds in the Holding, (2) sells metal owned through the Holding and receives a national currency, or (3) exchanges one type of metal for a different type of metal.

14. The Company maintains its own precious metals inventory. From time to time, the Company may hedge its exposure to gold, silver, platinum and palladium in respect of the Company's own inventory in order to reduce the price risk associated with fluctuations in those metals. The Company does not engage in hedging activities on behalf of the Company's clients or with respect to metals recorded in a client's Holding. If the Company chooses to buy from or sell to the client from its own inventory, the Company is exposed to potential losses or gains from price fluctuations on any additions or reductions to its inventory.
15. Goldmoney does not provide the means for or arrange for Goldmoney clients to make purchases on a leveraged basis.
16. Goldmoney does not allow Goldmoney clients to enter into a short sale of or a short position in precious metals.
17. The Platform technology obtains pricing feeds from gold and other precious metals dealers, bullion banks, and service providers that quote bid/ask spreads in various vaults around the world.
18. During times in which there is no access to market prices, Goldmoney maintains its own bid/ask spreads using commercially reasonable efforts.
19. Goldmoney's physical gold bullion is provided by commodity traders operating in different global markets and some of these suppliers may be licensed to trade on COMEX.
20. The Company has represented on its website, in its Client Agreements and in its public filings that client assets should be considered safe, including the following representation:

"100% PHYSICAL BACKING, All client assets are segregated, fully-reserved (1:1), and securely stored in insured vaults around the world."
21. Once the purchaser has advanced a national currency and Goldmoney acknowledges receipt in its bank account, the buyer's role is limited to choosing a type of precious metal and storage location or delivery. The Company operates the Platform, and at the client's instruction, arranges for the delivery to the client of the precious metal purchased or its safe, secure, and fully insured storage in third-party vaults.

### *The Company's Assurances of Integrity*

22. The Company provides an extensive description of the activities the Company undertakes in order to provide its clients with "Assurances of Integrity" in the Company's annual continuous disclosure filings, such as the following at p. 12 of the Company's Annual Information Form (AIF) for the financial year ended March 31, 2024 (the **2024 AIF**)).

...

- **Internal Ledger Reconciliation** – Each day the Company reconciles individual and aggregate client precious metal recorded in Holdings with the weight of precious metals stored at each vault. This reconciliation ensures that a 1:1 fully

reserved status is always maintained. In addition to daily reconciliations the Company performs a full reconciliation on a monthly basis using a recommended methodology from the Company's external auditor and those monthly reconciliations are then reviewed internally by the Company.

- **Third-Party Independent Vault Audits** – The Company engages independent third parties to conduct quarterly vault audits according to the following parameters that are set out in the scope of service agreement:
  - (a) **Gold Bars (Good Delivery)** – All bars are visually checked by bar number, refiner brand, assay (purity) and are reconciled with the vault's records and those provided records by the Company. Sample selection of 25% of Registered bars Gross Check Weighed (minimum 10 bars). Sample selection of 2.5% of the total holdings Gross Check Weighed (minimum 10 bars).
  - (b) **Gold 1 kg Bars** – All bars are counted and reconciled with the vault's records and the records provided by Goldmoney. Sample selection 25% of Registered bars Gross Check Weighed (minimum 10 bars). Sample selection 2.5% of the total holdings Gross Check Weighed (minimum 10 bars). (Boxes must be opened to verify contents unless they have been audited in previous audits; they must be sealed with numbers recorded and a signed record by the auditor).
  - (c) **Gold 100 gram Bars** – All bars are counted and reconciled with the vault's records and the records provided by the Company. (Boxes must be opened to verify contents unless they have been audited in previous audits; they must be sealed with numbers recorded and a signed record by the auditor).
  - (d) **Silver Bars (Good Delivery)** – Sample selection of 10 pallets pre-selected by the Company is counted and reconciled with the vault's records and the records provided by the Company. Two individual bars from each of the pre-selected pallets are weighed and visually checked for the bar number, refiner brand, assay (purity). These bars are reconciled against the vault's records and the Company's records. All silver bars are counted annually.
  - (e) **Silver 1 kg Bars** – All bars are counted and reconciled with the vault's records and the records provided by Goldmoney. Sample selection 2.5% of the total holdings Gross Check Weighed (minimum 10 bars). (Boxes must be opened to verify contents unless they have been audited in previous audits; they must be sealed with numbers recorded and a signed record by the auditor).
  - (f) **Platinum Bars** – All bars are visually checked for the bar number, refiner brand, assay (purity) and are reconciled with the vault's records and the records provided by Goldmoney. Sample selection 25% of registered bars Gross Check Weighed (minimum 10 bars). Sample selection 2.5% of the total holdings Gross Check Weighed (minimum 10 bars).
  - (g) **Palladium Bars** – All bars are visually checked for the bar number, refiner brand, assay (purity) and are reconciled with the vault's records and the records provided by Goldmoney. Sample selection 25% of registered bars

Gross Check Weighed (minimum 10 bars). Sample selection 2.5% of the total holdings Gross Check Weighed (minimum 10 bars).

- **KPMG Audit** – KPMG LLP audits the Company’s annual financial statements according to IFRS. Procedures include the auditing of client precious metals, of which the total weight is reported in the group’s regulatory filings. The audit includes physical bar counts and random sampling.

### ***The Vault Custodians***

23. GVI and GVUK store precious metals on behalf of Goldmoney Clients (which term may include certain Goldmoney entities) (**Goldmoney Clients**) at 10 vaults operated by vault custodians (collectively the **Vault Custodians**) in seven countries.

As at March 31, 2024, the Vault Custodians (the **Existing Vault Custodians**) are:

- The Brink’s Company (NYSE: BCO),
  - The Royal Canadian Mint, and
  - Loomis International (NASDAQ OMX: LOOM).
24. The Existing Vault Custodians are all Independent Non-Bank Vault Custodians. The Existing Vault Custodians are approved by London Bullion Market Association (**LBMA**). Two are publicly traded companies.
25. If the Requested Relief is granted, the Filers will ensure that all precious metals held on behalf of Goldmoney Clients resident in Canada are held at one or more of the following:
- (a) an Existing Vault Custodian
  - (b) a vault custodian qualified to act as a custodian or sub-custodian for assets held in Canada pursuant to section 6.2 [*Entities Qualified to Act as Custodian or Sub-Custodian for Assets Held in Canada*] of National Instrument 81-102 Investment Funds (**NI 81-102**) or section 14.5.2 [*Restriction on self-custody and qualified custodian requirement*] of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (collectively, a **CSA Acceptable Vault Custodian**);
  - (c) a vault custodian considered by CIRO to be equivalent to an “acceptable securities location” (a **CIRO Acceptable Vault Custodian**), enabling a dealer’s client positions in gold and silver bullion to be held at such entities without capital charge to the dealer, as set forth in IIROC Notice 21-0110 and New Self-Regulatory Organization of Canada (**New SRO**) IIROC Form 1 and Rule 4300 Protection of client assets – Segregation, custody and client free credit balances.

### ***Nature of a client’s interest in precious metals stored by the Company for the client***

26. The client-only accounts with the Vault Custodians are opened in the name of the Company as agent for its clients. Information about the identity of the Goldmoney Clients is not communicated to the Vault Custodians unless the Vault Custodian asks for this information. The Company and its subsidiaries are the sole entities able to deal with the precious metals held in these accounts. In relation to the Vault Custodians, GVI and GVUK are the sole entities able to place in or remove from storage the precious metals that are held in these accounts.
27. A client's ownership interest in precious metals stored by the Company is evidenced by an online record (a **Holding**) made available by the Company to the client that evidences that the client has (1) an undivided interest, measured by weight, in precious metals held by the Vault Custodian chosen by the client on behalf of each client (which term may also include certain Goldmoney entities) or (2) specific bars to identify the precious metal the client owns if the client chose this service.
28. When a potential client visits the Platform, the potential client may apply for a Holding. Depending on the choice of the client (such as an individual, company or trust), size of the proposed purchase and residence, clients choose to begin a relationship with the Company's Canadian operating subsidiary which administers the client's Holding under applicable laws and regulations.
29. Once the client's application has been approved and the client on-boarded, the client is able to fund a Holding for the sole purpose of purchasing precious metals. There is no margin or credit granted in the purchase of precious metals. A client Holding must always be funded first with funds having been cleared by the Company's bank before the client is able to proceed and purchase physical precious metal. Funds are received in client-only bank accounts maintained by the Company. When the client makes a purchase, the Company transfers the appropriate amount of funds from the client-only account to its own operating account. The client's Holding shows a reduction in funds and an increase in metal ownership on a delivery-versus-payment basis. All client precious metal is stored on a 100%-reserved basis with a specified weight of physical metal corresponding to each individual client's ownership.
30. If the client chooses not to take physical delivery, or the amount purchased by the client is too small to make physical delivery economic, the client stores the precious metals they purchase and own at 10 vaults in seven countries worldwide that are operated by an Existing Vault Custodian pursuant to agreements between the Company and the Existing Vault Custodian.
31. Eligible clients of GVI and GVUK have access to the additional features and services including the following:
  - **Registered Bars.** For an additional administration fee, a client may choose to have augmented protection by requesting that a specific bar(s) of precious metal be registered in their name in the records of Goldmoney and thereby record that they own the bar identified by the refinery serial number and other marks stamped into the bar, which is recorded in their Holding as their exclusive property.

- **Metal Delivery.** Verified clients who are residents of eligible countries including Canada may take delivery of their physical precious metals at certain vaults that allow this process or by way of insured delivery to their residential address in the form of 100 gram or 1 kilogram gold bars, 1 kilogram silver bars, and coins.
32. Clients may also choose by special arrangement with the Company to maintain a sub-account in their own names with the vault custodian for an additional monthly fee. This feature is designed for those institutional and commercial clients of the Company that actively undertake Precious Metals Transactions and individuals who wish to receive the bar lists prepared and issued by the vault that identify the bars of precious metal they own in the sub-account.
  33. Each vault has the right to receive customer data to comply with its own KYC/AML requirements and may request that data from the Company.
  34. Other than as described above, information about a client's Holding is not communicated to the Vault Custodian or otherwise reflected in the books and records of the Vault Custodian.
  35. A client who does not request immediate physical delivery as at the purchase date does not have any independent ability to obtain actual possession or control of their precious metals directly from the Vault Custodians without the involvement of the Company.
  36. Since the predecessor company to the Company was founded in 2001, the Company has never experienced a client claim for missing metal, metal theft, any failure in precious metal reconciliations during audits or any failure to deliver precious metals after requesting delivery from the Company. There have been a small number of delays in delivery that were the result of incomplete or inaccurate information from the client that Goldmoney needed to meet its AML obligations before releasing the metal to the client.

### ***Regulatory Status of the Platform***

#### *The Company's position*

37. Based on their publicly disclosed good faith belief that the Filers are not trading in securities or derivatives and that therefore securities laws do not apply, the Filers have not been complying with the dealer registration requirement, the prospectus requirement (in the jurisdictions where securities regulators have asserted that compliance is required) or the trade reporting requirement in the Legislation in connection with Precious Metals Transactions by the Filers with customers resident in Canada. Subject to the preceding statement, the Filers are not in default of securities, commodity futures or derivatives legislation in any province or territory of Canada.

#### *OSC staff position*

38. OSC staff have advised the Company of their view that the Goldmoney Precious Metals Transactions constitute or involve transactions in "securities" and "derivatives" for the purposes of Ontario securities law.



39. In support of this view, OSC staff have referred the Company to the following OSC and CSA staff guidance and caselaw:
- OSC Staff Notice 91-702 *Offerings of Contracts for Difference and Foreign Exchange Contracts to Investors in Ontario (OSC Staff Notice 91-702)* and the cases cited therein, including *Pacific Coast Coin Exchange v. Ontario (Securities Commission)*;
  - CSA Staff Notice 21-327 *Guidance on the Application of Securities Legislation to Entities Facilitating the Trading of Crypto Assets (CSA Staff Notice 21-327)* and Joint CSA IIROC Staff Notice 21-329 *Guidance for Crypto-Asset Trading Platforms: Compliance with Regulatory Requirements (CSA IIROC Staff Notice 21-329)*; and
  - Commission and Court decisions involving online trading platforms, decisions involving evidences of ownership of a commodity, including warehouse receipts, for investment or speculative purposes, and exemptive relief decisions granted to The Royal Canadian Mint in 2011 and 2012 in connection with its periodic offerings of silver bullion receipts and gold bullion receipts.

*Staff position as communicated to the Company by the other CSA jurisdictions*

40. Staff of the Canadian Securities Administrators (CSA) in the provinces of Alberta, British Columbia, Québec, New Brunswick, Nova Scotia, Manitoba and Saskatchewan (the **Other CSA Jurisdictions' staff**) have advised the Company that, in the Other CSA Jurisdictions' staff's view, the Goldmoney agreements constitute derivatives, and in some provinces securities, for the purposes of the securities law regimes in those provinces. Other CSA Jurisdictions' staff generally support the guidance and case law enunciated in paragraph 39 of the Decision in respect of their assessment of the Goldmoney agreements as derivatives or, if applicable, securities under the relevant securities legislation of Alberta, British Columbia, Québec, New Brunswick, Nova Scotia, Manitoba and Saskatchewan.

*Basis for application for relief*

41. The Filers have advanced arguments in good faith in support of their view that they are not trading in securities or derivatives. In the interest of resolving the regulatory uncertainty that may exist in relation to the status of the Goldmoney Precious Metals Transactions as a result of the above statements of staff position, the Filers are making this application for exemptive relief.
42. The Filers wish to continue to be able to make Goldmoney Precious Metals Transactions available to individuals in Canada on the terms and conditions described in this Decision. For the Interim Period (as defined below), the Filers are seeking the Requested Relief in connection with Goldmoney's activities in Ontario and intend to rely on this Decision and the Passport System described in MI 11-102 to offer Goldmoney Precious Metals Transactions in the Non-Principal Jurisdictions.
43. The Filers acknowledge that clients could benefit from the protection of additional risk disclosure delivered in connection with the exemption order. Accordingly, the Filers are willing to electronically deliver or to make available a risk disclosure document to its

clients in order to more fully explain the structure, features and risks of purchasing, selling and requesting Goldmoney to store precious metal for the client when requested by the client.

44. The Filers submit that, in view of the Goldmoney business model, which imposes certain restrictions on the manner in which a client trades and the Company's status as a public company listed on the TSX, as more fully set out below, that requiring one or more of the Filers to obtain investment dealer registration is not necessary to address staff's regulatory concerns.
45. Specifically, the Filers note the following:
  - (a) The Company is a reporting issuer in British Columbia, Alberta and Ontario and as such is subject to timely and periodic reporting requirements under the Legislation and TSX rules, including the obligation to file an AIF, audited annual financial statements and interim financial statements and material change reports under the Legislation.
  - (b) As a reporting issuer listed on the TSX, the Company has filed with the Principal Regulator and provided to the TSX the name and principal occupation of its officers and directors, together with either the personal information form and authorization of indirect collection, use and disclosure of personal information provided for in National Instrument 41-101 *General Prospectus Requirements*.
  - (c) A Holding represents a simple evidence of ownership of precious metals that are, fully-reserved (1:1) and stored with the Vault Custodian on an allocated basis under its contractual obligations to GVI which the Company through its own contractual obligations has arranged as agent on behalf of its clients outside of Quebec under principles of bailment.
  - (d) Goldmoney does not and will not offer or provide credit or margin to any of its clients in connection with the purchase of precious metals.
  - (e) Goldmoney does not and will not allow clients to enter into a short sale or short position in connection with precious metals or other assets.
  - (f) Goldmoney will not offer bitcoin, ether, cryptocurrencies or other novel or emerging asset classes, or options or other derivatives thereon, to clients with Holdings in the Applicable Jurisdictions unless and until such time as Goldmoney has obtained registration in an appropriate dealer category or an exemption from registration.
  - (g) GVI is subject to the PCMLTFA and is a reporting entity to FINTRAC. GVUK is subject to comparable requirements under the laws of England and Wales.
46. If the Requested Relief is granted, Goldmoney will comply with the terms and conditions of the Requested Relief including the Business Conduct Terms and Conditions in Schedule A (collectively the **Terms and Conditions of the Relief**).
47. Goldmoney acknowledges that the scope of the Requested Relief and the Terms and Conditions of the Relief including, without limitation, requirements in relation to

minimum capital applicable to the Filers may need to be revisited as a result of developments in international and domestic capital markets or the Company's activities, or changes in the Goldmoney business or business model or as a result of any changes to the laws in Canada affecting trading in commodities, derivatives, commodity futures contracts, commodity futures options or securities. Nothing in this paragraph 47 is intended to abridge or adversely affect the Filers' procedural and legal rights and protections should changes be proposed to the Requested Relief and the Terms and Conditions of the Relief.

### ***Books and Records***

48. Each of the Filers acknowledges that it will become a "market participant" for the purposes of the *Securities Act* (Ontario) (the **OSA**) if the Requested Relief is granted. For the purposes of the OSA, and as a market participant, the Filer is required by subsection 19(1) of the OSA to: (i) keep such books, records and other documents as are necessary for the proper recording of its business transactions and financial affairs, and the transactions that it executes on behalf of others; and (ii) keep such books, records and documents as may otherwise be required under Ontario securities law.
49. For the purposes of its compliance with subsection 19(1) of the OSA, GVI will keep books and records that comply with the requirements set out in Schedule A.

### ***Trade reporting***

50. To the extent legally required and subject to any exemptive relief the Filers may obtain, the Filers will comply in respect of the Precious Metals Transaction with the derivatives trade reporting rules and instruments in effect in the provinces and territories of Canada other than Quebec.

### **Decision**

The Principal Regulator is satisfied that the decision meets the test set out in the Legislation for the Principal Regulator to make the Decision is met.

The Decision of the Principal Regulator under the Legislation is that the Requested Relief is granted provided that:

- (a) the Company remains a reporting issuer listed on the TSX;
- (b) the Company remains in compliance with the reconciliation and audit procedures described in paragraph 22 and ensures that all precious metal assets of clients of GVI resident in Canada are allocated, fully-reserved (1:1), and stored in insured vaults that is an Existing Vault Custodian, a CSA Acceptable Vault Custodian or CIRO Acceptable Vault Custodian;
- (c) the Filers conduct all transactions with clients resident in Canada in compliance with and otherwise comply with the Business Conduct Terms and Conditions as set out in Schedule A;

- (d) each of the Filers remains in compliance with the requirements of the PCMLTFA and FINTRAC or any comparable legislation that applies to them;
- (e) prior to a client first entering into a Precious Metal Transaction after the date hereof, GVI or GVUK has provided to the client the Risk Disclosure Document (as defined in Schedule A) and has delivered, or has previously delivered, a copy of the Risk Disclosure Document provided to that client to the Principal Regulator;
- (f) prior to the client's first Precious Metal Transaction after the date hereof and as part of the account opening process after the date hereof, GVI or GVUK has obtained an electronic acknowledgement from the client, confirming that the client has received, read, and understood the Risk Disclosure Document;
- (g) each of the Filers has furnished to the Principal Regulator the name and principal occupation of its officers and directors, together with either the personal information form and authorization of indirect collection, use and disclosure of personal information provided for in National Instrument 41-101 *General Prospectus Requirements* or the registration information form for an individual provided for in Form 33-109F4 of National Instrument 33-109 *Registration Information* completed by any officer or director;
- (h) each of the Filers shall promptly inform the Principal Regulator in writing of any material change affecting the Filer, or, to the knowledge of the Filer, a Vault Custodian, being any change in the business, activities, operations or financial results or condition of the Filer or a Vault Custodian that may reasonably be perceived by a Goldmoney client to be material;
- (i) each of the Filers shall promptly inform the Principal Regulator in writing if a self-regulatory organization or any other regulatory authority or organization initiates proceedings or renders a judgment related to a compliance or enforcement action against the Filer or, to the knowledge of the Filer, a Vault Custodian;
- (j) each of the Filers shall promptly inform the Principal Regulator in writing if the Filer or, to the knowledge of the Filer, a Vault Custodian becomes subject to any of the following under the laws of any jurisdiction including any foreign jurisdiction:
  - i. a bankruptcy, a filing for bankruptcy or a proceeding governing an event similar to a bankruptcy;
  - ii. a proposal, including a consumer proposal, under any legislation relating to bankruptcy or insolvency or any similar proceeding;
  - iii. proceedings under any legislation relating to the winding up or dissolution of the entity, or under the Companies' Creditors Arrangement Act (Canada);
  - iv. any proceedings, arrangement or compromise with creditors, including the appointment of a receiver, receiver-manager, administrator or trustee;

- (k) In the jurisdictions where the Prospectus Relief is required, the first trade of a contract representing a Precious Metals Transaction is deemed to be a distribution under securities legislation of that jurisdiction;
- (l) Unless extended, the Requested Relief shall be in effect during a period (the **Interim Period**) that expires upon the earliest of
- i. five years from the date that this Decision is issued;
  - ii. the date of issuance of an order or decision by a court, a Commission or other similar regulatory body in Canada that is not the result of an *ex parte* proceeding and suspends or terminates the ability of any of the Filers to establish client relationships with clients in Canada provided that if the order is stayed, the Requested Relief shall remain effective until the expiration of the stay or the revocation of the order; and
  - iii. with respect to an Applicable Jurisdiction, the coming into force of a rule or other legislation regarding registration requirements applicable to entities that trade over-the-counter (**OTC**) derivatives with investors in such Applicable Jurisdiction but only to the extent that rule or legislation duplicates or conflicts with the Requested Relief.



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Susan Greenglass

Senior Vice President, Trading and Markets

Ontario Securities Commission

MTS File 2023/0336

**Schedule A**  
**Business Conduct Terms and Conditions**

**Part I – Risk disclosure**

*Risk Disclosure Statement*

1. GVI or GVUK will, prior to a client's first Precious Metal Transaction with any of the Filers after the date hereof, and as part of the account-opening process after the date hereof, provide the client with a separate risk disclosure document that clearly explains, in plain language, the transaction and the risks associated with the transaction (collectively the **Risk Disclosure Document**). The Risk Disclosure Document will include a plain language description of the structure, features and risks of holding precious metals and storing them through the Filers, and the potential risks to the client in the event of the bankruptcy or insolvency of any of the Filers.
2. The Risk Disclosure Document will clearly explain, in plain language, that none of the Filers is registered under the securities, commodity futures or derivatives laws of any jurisdiction of Canada and that client assets are not protected under the Canadian Investor Protection Fund (CIPF), the U.S. Securities Investor Protection Corporation, or equivalent protections. The Risk Disclosure Statement will include a reference to and a copy of or link to this decision.
3. The Risk Disclosure Statement will clearly explain, in plain language, that the Filers will safeguard assets of a client resident in Canada by:
  - (a) keeping client assets separate and apart from their own property;
  - (b) in trust for the client;
  - (c) in the case of CAD, in a designated customer segregated funds bank account at a bank in Canada or the UK;
  - (d) in the case of precious metals that the client chooses to store in Canada, in a designated account at a CSA Acceptable Custodian or a CIRO Acceptable Vault Custodian (and, for this purpose, Rhenus shall be considered a CSA Acceptable Vault Custodian).
4. GVI will include in the Risk Disclosure Document disclosure that clearly explains, in plain language, the following:
  - (a) GVUK is not resident in Canada;
  - (b) the foreign jurisdiction in which the head office or the principal place of business of GVUK is located;
  - (c) all or substantially all of the assets of GVUK may be situated outside Canada;
  - (d) there may be extra costs enforcing legal rights against GVUK because of the above;

- (e) the name and address of the agent for service of process of GVUK in the jurisdiction of Canada in which the client resides.
5. Prior to the client's first Precious Metal Transaction with any of the Filers, GVI will also obtain a written or electronic acknowledgement from the client confirming that the client has received, read and understood the Risk Disclosure Document. Such acknowledgement will be separate from and prominent among other acknowledgements provided by the client as part of the Holding-opening process.
  6. For each client in Canada with a pre-existing client account with any of the Filers at the date of the Decision and for whom the Filer has not already performed the following with respect to such client as at the date of this Decision, the Filer will deliver to the client a Risk Statement and will require the client to provide an electronic acknowledgement of having received, read and understood the Risk Statement at the earlier of (a) before placing their next Precious Metals Transaction on the Filer's Platform and (b) the next time they log in to their account with the Filer.
  7. Prior to a client's first Precious Metal Transaction with any of the Filers, GVI will ensure a complete copy of the Risk Disclosure Document to be provided to that client is delivered, or has previously been delivered, to the Principal Regulator.

## **Part II – Business conduct obligations**

### *Acting fairly, honestly and in good faith*

8. Each of the Filers shall act and shall take reasonable steps to cause each individual acting on its behalf to act fairly, honestly and in good faith with Goldmoney clients resident in Canada.

### *Conflicts of interest*

9. Each of the Filers will establish, maintain and apply reasonable policies and procedures to identify existing material conflicts of interest, and material conflicts of interest that the Filer in its reasonable opinion would expect to arise, between the Filer, including each individual acting on behalf of the Filer, and its client.
10. The Filers will respond to an existing or potential conflict of interest identified under the preceding paragraph. If a client, acting reasonably, would expect to be informed of a conflict of interest identified under the preceding paragraph, the Filers will disclose, in a timely manner, the nature and extent of the conflict of interest to a client whose interest conflicts with the interest identified.
11. On and after the date of this Decision, the Filers will comply, and will take reasonable steps to cause each individual acting on their behalf to act to comply, with the enhanced conflicts of interest provisions in section 13.4 and 13.4.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103)* as if the Filer were a "registered firm" and individuals acting on behalf of the Filer were "registered individuals".

*Gatekeeper know-your-client (KYC) obligations*

12. The Filers will establish, maintain and apply reasonable policies and procedures to
  - (a) obtain facts necessary to comply with applicable legislation, including anti-money laundering (AML) legislation, relating to the verification of a client's identity, and
  - (b) establish the identity of a client and, if the Filer has cause for concern, make reasonable inquiries as to the reputation of the client,
13. For the purpose of establishing the identity of a client that is a corporation, partnership or trust, the Filers will establish the following:
  - (a) the nature of the client's business;
  - (b) the identity of any individual who meets either of the following:
    - (i) in the case of a corporation, is a beneficial owner of, or exercises direct or indirect control or direction over, more than 25% of the voting rights attached to the outstanding voting securities of the corporation;
    - (ii) in the case of a partnership or trust, exercises control over the affairs of the partnership or trust.
14. The Filers will take reasonable steps to keep the information required under the preceding two paragraphs current. The requirement in the preceding two paragraphs does not apply if the client is a registered firm, listed on a regulated stock exchange, or a Canadian financial institution.

*No recommendations or advice*

15. The Filers will not advise a client or prospective client about the merits of making a Precious Metals Transaction or recommend or represent that a Precious Metals Transaction is a suitable action for the client.
16. In making this representation, the Filers have considered the guidance issued by CIRO in connection with activities that may be considered to constitute a recommendation or advice by CIRO order-execution-only dealers.
17. For clarity, the Filers may provide general advice through its website or other marketing materials about the merits of purchasing precious metals provided the general advice is fair, balanced and not misleading and the advice is not directed at or tailored to the needs of the particular person or company receiving the advice.
18. The Filers will not operate a managed account as that term is defined in section 1.1 of NI 31-103.

*No client-specific KYC or suitability*

19. The Filers shall not be required to determine whether each Precious Metals Transaction is suitable for a client.



20. Despite the preceding paragraph, the Filers will establish, maintain and apply reasonable policies and procedures that provide that, before it opens a Holding for a client after the date hereof,
  - (a) a Risk Disclosure Document in a form acceptable to the Principal Regulator has been provided to the client;
  - (b) The process of opening a Holding includes client identification, screening applicants and customers against lists of prohibited/blocked persons, and detecting and reporting suspicious trading and potential terrorist financing and money laundering activities to applicable enforcement authorities;
  - (c) The representatives of Goldmoney who conduct the KYC will have the education, training and experience that a reasonable person would consider necessary to perform the activity competently.
21. For each client in Canada with a pre-existing client account with any of the Filers at the date of the Decision and for whom the Filer has not already performed the following with respect to such client as at the date of this Decision, the Filer will take similar steps to the steps set out in the preceding paragraph at the earlier of (a) before placing their next Precious Metals Transaction on the Filer's Platform and (b) the next time they log in to their account with the Filer.

*Permitted referral arrangements*

22. Neither the Filers, nor any individual acting on behalf of the Filers, will participate in a referral arrangement in respect of a Precious Metals Transaction completed by any of the Filers with another person or company unless all of the following apply:
  - (a) before a client is referred by or to a Filer, the terms of the referral arrangement are set out in a written agreement between the Filer and the person or company;
  - (b) the Filer records all referral fees;
  - (c) the Filer, or the individual acting on behalf of the Filer, ensures that the information prescribed above is provided to the client in writing before the Filer opens a Holding for the referred party or provides services to the referred party.
23. None of the Filers will refer a client to another person or company unless the Filer in question first takes reasonable steps to verify and conclude that the person or company has the appropriate qualifications to provide the services, and, if applicable, is registered to provide those services.
24. The written disclosure of the referral arrangement must include all of the following:
  - (a) the name of each party to the agreement referred to in this section;
  - (b) the purpose and material terms of the agreement, including the nature of the services to be provided by each party;

- (c) any conflicts of interest resulting from the relationship between the parties to the agreement and from any other element of the referral arrangement;
  - (d) the method of calculating the referral fee and, to the extent possible, the amount of the fee;
  - (e) any other information that a reasonable client would consider important in evaluating the referral arrangement.
25. If there is a change to the information set out in the previous section, the Filer must ensure that written disclosure of that change is provided to each referred party affected by the change as soon as possible and no later than the 30th day before the date on which a referral fee is next paid or received.

*Restriction on lending*

26. The Filers will not lend money, extend credit or provide margin to, or arrange for any of the foregoing for, a client in the Applicable Jurisdictions.

*Restriction on short positions*

27. The Filers will not allow clients resident in the Applicable Jurisdictions to enter into a short sale of or a short position through a Holding in connection with precious metals or other assets.

*Restriction on contracts linked to novel or emerging asset classes*

28. The Filers will not offer bitcoin, ether, cryptocurrencies or other novel or emerging asset classes, or options or other derivatives thereon, to investors in the Applicable Jurisdictions without registration with or an exemption from the Principal Regulator and other Applicable Jurisdictions in Canada.

*Handling complaints*

29. The Filers will document and, in a manner that a reasonable person would consider fair and effective, promptly respond to each complaint made to it about any product or service offered by the Filer or an individual acting on behalf of it.
30. The Filers will include in the Risk Disclosure Document disclosure that clearly explains, in plain language, that none of the Filers is a registered dealer in any jurisdiction in Canada and as such is not presently required to make available to clients the services of an independent dispute resolution or mediation service such as the Ombudsman for Banking Services and Investments (**OBSI**).

**Part III – Client Holdings**

*Relationship disclosure information*

31. For the purposes of a requirement in this decision to deliver a document or provide disclosure to a client, including client relationship disclosure, Precious Metals Transaction confirmations and Holding statements, the Filers may deliver the document

or provide the disclosure to the client in electronic form if the client has previously provided electronic consent to receive such documents in electronic form.

32. GVI will, prior to a client's first Precious Metals Transaction with any of the Filers, and as part of the relationship-opening process, provide electronically by way of the website or the Risk Disclosure Document statement to a client resident in one of the Applicable Jurisdictions all information that a reasonable person would consider important about the client's relationship with the Filer and each individual acting on behalf of the Filer. Without limiting the foregoing, the information delivered to a client must include all of the following:
- (a) a description of the nature or type of the client's relationship;
  - (b) a description of any conflicts of interest that the Filers are required to disclose to a client under this decision;
  - (c) disclosure of the fees or other charges the client might be required to pay related to the client's relationship;
  - (d) a general description of the types of transaction fees or other charges the client might be required to pay in relation the client's relationship;
  - (e) a general description of any compensation paid to the Filers by any other party in relation to a client's Precious Metal Transactions;
  - (f) disclosure of the Filers' obligations under this decision if a client has a complaint;
  - (h) a statement that the Filers are not registered to provide advice in relation to investments involving securities or derivatives. Accordingly, the Filers will not advise a client or prospective client about the merits of any Precious Metals Transaction completed or recommend or represent that a Precious Metals Transaction is a suitable purchase by the client; and
  - (i) the information the Filers must collect about the client under this decision, including its obligations to collect *Gatekeeper know-your-client (KYC) information*.
33. The Filers must deliver the information in the preceding section to the client electronically, for which receipt by the client must be acknowledged before the Filers enter into a Precious Metal Transaction with, for or on behalf of the client. If there is a significant change in respect of the information delivered to a client in the preceding section, the Filers must take reasonable steps to notify the client of the change in a timely manner and, if possible, before the Filer next transacts in a Precious Metal Transaction with, for or on behalf of the client.

### **Content and delivery of transaction information**

34. GVI will on behalf of the Filers promptly deliver to the Holding of a client resident in any of the Applicable Jurisdictions electronically a written confirmation of the transaction to the client;
35. If a Filer transacts with, for or on behalf of a client that is not a permitted client, as defined in NI 31-103, the written confirmation required under the preceding section must include all of the following, if applicable:
  - (a) a description of a Precious Metals Transaction;
  - (b) a description of the agreement that governs the transaction;
  - (c) the notional amount, quantity or volume of the underlying asset of the Precious Metals Transaction;
  - (d) the number of units of metal in the Precious Metals Transaction;
  - (e) the total price paid for the Precious Metals Transaction and the per unit price of the metal in the Precious Metals Transaction;
  - (f) the commission, sales charge, service charge and any other amount charged in respect of the transaction;
  - (g) the particular Goldmoney entity that transacted with the client and whether such entity acted as principal or agent in relation to the Precious Metals Transaction;
  - (j) the date of the transaction.

#### **Client statements**

36. GVI will on behalf of the Filers make available a statement to a client, at the end of each quarterly period or more frequently if desired by the client , if either of the following applies:
  - (a) within the quarterly period any Precious Metals Transaction was transacted with, for or on behalf of the client;
  - (b) the client has an outstanding position resulting from a transaction where the client transacted in a Precious Metals Transaction.
37. A statement made available under this section must include all of the following information for each transaction made with, for or on behalf of the client during the period covered by the statement, if applicable:
  - (a) the date of the transaction;
  - (b) a description of the transaction, including notional amount, the number of units of the transaction, the per unit price and the total price;
  - (c) information sufficient to identify the agreement that governs the transaction.

38. A statement made available under this section must include all of the following information as at the date of the statement, if applicable:
- (a) a description of each outstanding precious metal owned by the client;
  - (b) the valuation in the national currency chosen by the client, as at the statement date, of each outstanding precious metal referred to in paragraph (a);
  - (c) the final valuation, as at the expiry or termination date, of each precious metal that was bought or sold during the period covered by the statement;
  - (d) any cash balance in the client's Holding;
  - (e) the total market value of all cash and precious metals in the client's Holding.

*Safeguarding of client assets*

39. The Filers will safeguard assets of a client resident in Canada by
- (a) keeping client assets separate and apart from their own property;
  - (b) and in trust for the client;
  - (c) in the case of CAD, in a designated customer segregated funds bank account at a bank in Canada or the UK;
  - (d) in the case of precious metals that the client chooses to store in Canada, in a designated account at a CSA Acceptable Custodian or a CIRO Acceptable Vault Custodian.
40. The Filers will provide an authorization and direction in a form acceptable to the Principal Regulator for the Principal Regulator to obtain information directly from each of the Filer's Vault Custodians.

*Insurance*

41. GVI will confirm that each Independent Non-Bank Vault Custodian maintains insurance covering theft or disappearance at least equal to one hundred per cent (100%) of the value of precious Metal stored by Goldmoney as agent for its Clients. Evidence of this insurance may be viewed by clients when logged into their Holding.
42. The Filer will comply with the applicable requirements of section 12.3 (2) [Insurance -- dealer] of NI 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103)* and Appendix A [*Bonding and Insurance Clauses*] to NI 31-103 by self-funding a segregated trust account holding precious metals having values equivalent to required insurance coverage levels from time to time except modified as follows:
- A. Fidelity -- cover required

B. On Premises -- cover not required as no assets of material value are held on premises and no client assets are held on site

C. In transit -- cover not required as there will be no physical transit of precious metals other than by way of armoured carrier;

D. Forgery or alterations -- cover not required as Filer does not deal in cheques, drafts, notes or any other written orders

E. Securities -- cover not required as risk not applicable to the Filer's business model.

#### *Capital requirements*

43. If, at any time, the working capital of GVI calculated in accordance with applicable accounting principles, is less than zero, the Filers must notify the regulator or, in Québec, the securities regulatory authority as soon as possible.
44. The working capital of GVI calculated in accordance with applicable accounting principles only must not be less than zero for 2 consecutive days.

#### ***Part IV – Compliance and record-keeping***

45. The Filers will establish, maintain and apply policies, procedures, controls and supervision sufficient to provide reasonable assurance that all of the following are satisfied:
  - (a) The Filers and each individual acting on its behalf in relation to transacting in a Precious Metal Transaction complies with this decision;
  - (b) the risks relating to its precious metals trading activities are managed in accordance with the Filers' risk management policies and procedures;
  - (c) each individual who performs an activity on behalf of the Filers relating to transacting in a Precious Metals Transaction, prior to commencing the activity and on an ongoing basis,
    - (i) has the experience, education and training that a reasonable person would consider necessary to perform the activity competently,
    - (ii) without limiting subparagraph (i), has the understanding of the structure, features and risks of each Precious Metals Transaction that the individual transacts in, and
    - (iii) has conducted himself or herself with integrity.

#### **Business continuity and disaster recovery**

46. The Filers will establish, maintain and apply a written business continuity and disaster recovery plan that is reasonably designed to allow it to minimize disruption and allow the Filers to continue its business operations.

47. The business continuity and disaster recovery plan must outline the procedures to be followed in the event of an emergency or other disruption of the Filers' normal business activities.
48. The Filers must conduct tests of its business continuity and disaster recovery plan on a reasonably frequent basis and not less than annually.

## **Records**

49. The Filers will keep records of its transactions, including all of the following, as applicable:
  - (a) records containing a general description of its business and activities conducted with clients, including
    - (i) records of client assets, and
    - (ii) records documenting the firm's compliance with internal policies and procedures;
  - (b) for each client's assets, records demonstrating the existence and nature of the client assets, including
    - (i) records of communications with the client relating to the client assets,
    - (ii) online records provided to the client to confirm the client assets, the terms of the client assets and each transaction relating to the client assets,
    - (iii) records relating to the client assets and each transaction relating to the client assets, and
    - (iv) records made by staff relating to the client assets and each transaction relating to the client assets, including notes, memos or journals;
  - (c) for each client's assets, records that provide for a complete and accurate understanding of the client assets and all transactions relating to the client assets, including
    - (i) records relating to pre-execution activity for each transaction including all communications relating to quotes, solicitations, instructions, transactions and prices however they may be communicated,
    - (ii) reliable timing data for the execution of each transaction relating to the client assets, and
    - (iii) records relating to the execution of the transaction, including
      - (A) information obtained to determine whether the client qualifies as a permitted client,

(B) fees or commissions charged,

(d) the price and valuation of the client assets.

**Form, accessibility and retention of records**

50. The records required to be maintained must be kept in a safe location, readily accessible and in a durable form for a period of 8 years following the date on which the Precious Metals Transaction expires or is terminated, and
51. A record required to be provided to the regulator or the securities regulatory authority must be provided in a format that is capable of being read by the regulator or the securities regulatory authority.