



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Citation: Coinsquare Ltd. (Re), 2020 ONSEC 19

Date: 2020-07-21

File No. 2020-21

**IN THE MATTER OF
COINSQUARE LTD., COLE DIAMOND,
VIRGILE ROSTAND and FELIX MAZER**

**ORAL REASONS FOR APPROVAL OF A SETTLEMENT
(Sections 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5)**

Hearing: July 21, 2020

Decision: July 21, 2020

Panel: M. Cecilia Williams Commissioner and Chair of the Panel

Appearances: Carlo Rossi, Alvin Qian For Staff of the Commission

David Conklin For Coinsquare Ltd.
Peter Kolla
Robert Vaux

Shane D'Souza For Cole Diamond
Rene Sorell

Melissa MacKewn For Virgile Rostand

Lawrence Ritchie For Felix Mazer
James Smith

ORAL REASONS FOR APPROVAL OF A SETTLEMENT

The following reasons have been prepared for publication in the Ontario Securities Commission Bulletin, based on the transcript of the reasons delivered orally at the hearing, and as edited and approved by the Panel, to provide a public record.

- [1] Enforcement Staff of the Ontario Securities Commission (**Staff**), Coinsquare Ltd. (**Coinsquare**), Cole Diamond (**Diamond**), Virgile Rostand (**Rostand**) and Felix Mazer (**Mazer**) (Coinsquare, Diamond, Rostand and Mazer are collectively the **Respondents**) have jointly submitted that it would be in the public interest to approve a settlement agreement among the parties dated July 16, 2020 (the **Settlement Agreement**).
- [2] I agree. These are my reasons for approving the Settlement Agreement.
- [3] The relevant facts and admissions, which are set out in detail in the Settlement Agreement, include:
- a. Coinsquare operates a crypto asset trading platform, based in Toronto (the **Coinsquare Platform**) that facilitates the buying and selling of crypto assets;
 - b. the crypto assets purchased and sold on the Coinsquare Platform were held in crypto wallets controlled by Coinsquare and transactions were recorded in Coinsquare's internal ledger;
 - c. Coinsquare provided its clients with contractual rights or claims to these crypto assets; these contractual rights constituted securities and derivatives and the crypto assets themselves constituted commodities and/or underlying interests of derivatives;
 - d. Rostand founded Coinsquare, developed the Coinsquare Platform, is Coinsquare's President and acted as the Chief Technology Officer until January 2019, after which time he remained in charge of the technological aspects of the Coinsquare Platform;
 - e. Diamond is Coinsquare's Chief Executive Officer (**CEO**) and has been its *de facto* Chief Financial Officer since approximately January 2019;
 - f. Mazer held the title of Chief Compliance Officer (**CCO**) at Coinsquare from May 2018 to June 2020 and reported directly to Diamond;
 - g. Coinsquare is not registered with the Commission;
 - h. Mazer is not registered in connection with his role as Coinsquare's CCO;
 - i. Coinsquare inflated the trading volumes on the Coinsquare Platform through reporting "wash" trades (the **Activity**) representing over 90% of its reported trading volume between July 2018 and December 2019, through the use of a market volume function algorithm;
 - j. The market volume function algorithm created simultaneous matching buy and sell orders from an internal Coinsquare account resulting in Coinsquare reporting the wash trades; the wash trades had no economic substance, involved no change in beneficial ownership and did not involve the exchange of funds or financial interests;

- k. Diamond directed that Coinsquare engage in the Activity;
- l. Rostand developed and implemented the market volume function algorithm to give effect to the Activity;
- m. the Activity took place while the Respondents were engaging with the Commission and with the Investment Industry Regulatory Organization of Canada (**IIROC**) for the purpose of seeking to register a Coinsquare subsidiary, Coinsquare Capital Markets Ltd. (**Coinsquare Capital Markets**), as an investment dealer and to operate an alternative trading system. The Respondents failed to disclose the Activity to the Commission, including during an on-site pre-registration review at Coinsquare's offices in March 2019;
- n. Coinsquare reported the inflated volumes resulting from the Activity on its website and through its application programming interface which, in turn, resulted in the inflated volumes being reported to the public by third party websites;
- o. Coinsquare admits that it engaged in market manipulation through reporting of the inflated trading volumes;
- p. in response to inquiries about the inflated trading volumes on a social media site and through emails from clients, Coinsquare made misleading statements about the possible source or cause of the inflated trading volumes and Diamond and Rostand admitted to authorizing, permitting and/or acquiescing in this conduct;
- q. Mazer became aware of the Activity in March 2019 and failed to take steps that a reasonable CCO would have taken in the circumstances, contrary to the public interest;
- r. Coinsquare also took a reprisal against an internal whistleblower (the **Internal Whistleblower**) who learned of the Activity and who reported concerns about the Activity to senior management, including Diamond and Rostand, between March 2019 and October 2019;
- s. Diamond authorized, permitted and/or acquiesced in the reprisal against the Internal Whistleblower; and
- t. Coinsquare also failed to implement appropriate controls to prevent other inappropriate trading practices, contrary to the public interest, which resulted in Coinsquare:
 - i. reporting additional non-economic internal trades valued at approximately 112,000 bitcoins between December 2014 and December 2019; and
 - ii. placing more than 10.5 million orders outside a range likely to result in executed trades.

[4] The breaches of Ontario securities law here are serious. The conduct addressed in the Settlement Agreement arises in the context of the emerging crypto asset industry. The Settlement Agreement follows recent guidance from the Canadian Securities Administrators on the application of securities legislation to entities facilitating the trading of crypto assets. It must be clear to all who participate in the crypto asset industry that, where Ontario securities law applies to their

activities, they are expected to meet the same high standards of honesty and responsible conduct that apply in the more traditional capital markets. It must also be clear that, while the Commission encourages innovation in the capital markets, it will not do so at the expense of fair and efficient markets. In addition, the protection against whistleblower reprisal is fundamental and the Commission expects that employees be free to raise concerns about potential breaches of Ontario securities law without fear of adverse impacts on their employment.

- [5] I have also taken into account mitigating circumstances. Specifically:
- a. the Respondents:
 - i. cooperated with Staff's investigation;
 - ii. had no prior disciplinary record with any securities regulatory authority, including the Commission; and
 - iii. sought to reach an early resolution of this matter, prior to the commencement of proceedings; and
 - b. Diamond and Rostand had no experience in the capital markets or securities industry prior to running Coinsquare.
- [6] The terms under which Staff and the Respondents have agreed to settle this matter are set out in detail in the Settlement Agreement and need not be repeated here. They include:
- a. Diamond and Rostand will resign from their positions with Coinsquare and will be prohibited from acting as a director or officer of a registrant for 3 years or of any other market participant for 3 and 2 years, respectively, subject to specified exceptions;
 - b. Diamond and Rostand will be prohibited from having any influence over the Coinsquare Platform for 3 years;
 - c. Diamond paid an administrative penalty of \$1 million;
 - d. Rostand paid an administrative penalty of \$900,000;
 - e. Mazer has resigned as Coinsquare's CCO, has made a voluntary payment of \$50,000 and will be prohibited for 1 year from acting as a director or officer of a registrant or holding a position that requires registration;
 - f. Coinsquare and Coinsquare Capital Markets have entered into an undertaking (the **Undertaking**) that will require them to make important corporate governance and internal control improvements, including creating and maintaining independent boards of directors, creating an internal whistleblower program, implementing policies and procedures designed to monitor and assess compliance with Ontario securities law and appointing new CEOs and CCOs;
 - g. Also as part of the Undertaking, Coinsquare Capital Markets will resubmit complete and updated applications for registration as an investment dealer and to operate a marketplace with the Commission and for membership with the IIROC; and

- h. Coinsquare, Diamond and Rostand have also paid a total of \$300,000 towards the cost of Staff's investigation.
- [7] I have reviewed the Settlement Agreement in detail and have had the benefit of a confidential settlement conference, held by videoconference, with the parties' counsel. I asked questions of counsel and heard their submissions.
- [8] My obligation at this hearing is to determine whether the negotiated result reflected in the Settlement Agreement falls within a range of reasonable outcomes, and whether it would be in the public interest to approve the Settlement Agreement.
- [9] The Settlement Agreement is the product of negotiations between Staff and the Respondents. When considering settlements for approval, the Commission respects the negotiation process and accords significant deference to the resolution reached by the parties.
- [10] Approval of the Settlement Agreement would resolve the matter promptly, efficiently and with certainty. A settlement avoids the expenditure of significant resources that would be associated with a lengthy, contested merits hearing. The payment of costs helps to reduce the burden on market participants to pay for investigations and enforcement proceedings.
- [11] All of these factors weigh in favour of approving the Settlement Agreement. However, I must still be satisfied that doing so would have the necessary deterrent effect, both generally to all those who participate in Ontario's capital markets, including those in the crypto asset industry, and specifically to the Respondents.
- [12] The Settlement Agreement is unique as it represents three firsts. It is the first time the Commission is settling allegations against a crypto asset platform. Secondly, it concerns the first allegations regarding market manipulation involving crypto assets. Finally, it concerns the first allegations involving the *Securities Act's* whistleblower protections from reprisals.¹
- [13] It is not unusual in settlements that are the first of their kind that sanctions may be less severe than they might otherwise be in less novel circumstances.
- [14] Staff submits that the settlement strikes an appropriate balance between specific and general deterrence and reflecting the Commission's role in fostering innovation in the capital markets. I agree.
- [15] The significant sanctions against the individual respondents and the requirements for critical corporate governance and internal controls' improvements by Coinsquare and its subsidiaries and affiliates achieve both specific and general deterrence in these circumstances. The individual respondents are being held accountable for their specific misconduct and the market is on notice that the Commission will not tolerate deceptive conduct, reprisals against whistleblowers, or failures to maintain compliance systems.
- [16] The parties submit that the proposed financial sanctions and bans reflect the misconduct of the individual respondents and their roles and responsibilities at Coinsquare and they are proportionate in the circumstances. I agree.

¹ RSO 1990, c S.5, s 121.5 (the **Act**).

- [17] In my view, the terms of the Settlement Agreement fall within a range of reasonable outcomes in the circumstances and represent an appropriate balance between the Commission's role in achieving the purposes of the Act and fostering innovation. The Settlement Agreement also properly reflects the principles applicable to sanctions, including recognition of the seriousness of the misconduct and the importance of fostering investor protection and confidence in the capital markets.
- [18] For these reasons, I conclude it is in the public interest to approve the settlement. I will therefore issue an Order substantially in the form attached to the Settlement Agreement.

Dated at Toronto this 21st day of July, 2020.

M. Cecilia Williams

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