



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF
AUX CAYES FINTECH CO. LTD.**

STATEMENT OF ALLEGATIONS

(Subsection 127(1) and Section 127.1 of the
Securities Act, RSO 1990, c S.5)

A. OVERVIEW

1. Staff of the Enforcement Branch of the Commission (**Enforcement Staff**) brings this proceeding to hold Aux Cayes Fintech Co. Ltd. (**Aux Cayes**) accountable for violating Ontario securities law and to signal that crypto asset trading platforms which engage in illegal activity and do not cooperate fully with Enforcement Staff may face regulatory action.
2. Aux Cayes operates an online crypto asset trading platform (the **OKEx Platform**). The OKEx Platform is available to Ontario residents. Ontario residents have opened accounts on the OKEx Platform and have used the platform to deposit and trade in crypto asset products.
3. Aux Cayes is subject to Ontario securities law because crypto asset products offered on the OKEx Platform are securities and derivatives. Aux Cayes has nonetheless failed to comply with the registration and prospectus requirements under Ontario securities law.
4. Registration and disclosure are cornerstones of Ontario securities law. The registration requirement serves an important gate-keeping function by ensuring that only properly qualified and suitable persons are permitted to engage in the business of trading. Prospectus requirements are fundamental to ensuring investors are provided with full, true and plain disclosure of all material facts relating to the securities being offered.

5. On March 29, 2021, the Ontario Securities Commission (the **Commission**) issued a press release notifying crypto asset trading platforms that currently offer trading in derivatives or securities to persons or companies located in Ontario that they must bring their operations into compliance with Ontario securities law or face potential regulatory action. The press release included a deadline of April 19, 2021 for such platforms to contact Commission staff to start compliance discussions. The press release followed regulatory guidance issued by the Canadian Securities Administrators and the Investment Industry Regulatory Organization of Canada on the application of securities legislation to crypto asset trading platforms.¹
6. Despite this warning, Aux Cayes did not contact the Commission by April 19, 2021 or at any time to start compliance discussions. After being contacted by Enforcement Staff, on or about June 25, 2021 Aux Cayes implemented measures aimed at blocking the creation of new accounts by Ontario residents on the OKEx Platform and added Ontario to the list of “Restricted Locations” on the OKEx Platform website. Aux Cayes also indicated to Enforcement Staff that it would identify existing Ontario clients and assist them in withdrawing their account assets. However, after asserting that it would identify Ontario clients for withdrawal purposes, Aux Cayes declined to provide Enforcement Staff with basic information about its Ontario clients—including the total number of Ontario-based accounts and aggregate holdings in those accounts—claiming that this information was unavailable and could not be provided. As of the date of this Statement of Allegations, Aux Cayes continues to allow trading of crypto asset products in existing Ontario accounts on the OKEx Platform.

B. FACTS

Enforcement Staff makes the following allegations of fact:

(a) Aux Cayes

7. Aux Cayes is a corporation incorporated in the Seychelles. Aux Cayes has never been registered with the Commission to engage in the business of trading or obtained an

¹ This guidance included Joint CSA/IIROC Staff Notice 21-329 *Guidance for Crypto-Asset Trading Platforms: Compliance with Regulatory Requirements* (March 29, 2021), CSA Staff Notice 21-327 *Guidance on the Application of Securities Legislation to Entities Facilitating the Trading of Crypto Assets* (January 16, 2020) and Joint CSA/IIROC Consultation Paper 21-402 *Proposed Framework for Crypto-Asset Trading Platforms* (March 14, 2019).

exemption from the registration requirement. Aux Cayes has never filed a prospectus with the Commission or obtained an exemption from the prospectus requirement.

(b) The OKEx Platform

8. Investors access the OKEx Platform by first creating an account on the platform using an online application process. After opening an account, an investor may deposit crypto assets into the account. An investor makes a crypto asset deposit by transferring crypto assets to a wallet controlled by Aux Cayes. An investor may also use fiat currency to purchase crypto assets which are then credited to their account.
9. Investors may trade crypto assets credited to their account for a variety of other assets. The crypto assets available on the platform include, among others, Bitcoin and Ether. Aux Cayes offers investors the ability to trade on margin.
10. Aux Cayes maintains custody of crypto assets deposited and traded on the OKEx Platform in wallets Aux Cayes controls. Investors do not have possession or control of crypto assets deposited or traded on the OKEx Platform. Rather, they see a crypto asset balance displayed in their account on the OKEx Platform. In order to take possession of crypto assets reflected in their account balance, an investor must request a withdrawal and is dependent on Aux Cayes to satisfy that withdrawal request by delivering crypto assets to an investor-controlled wallet.
11. While Aux Cayes purports to facilitate trading of the crypto assets in its investors' accounts, in practice, Aux Cayes only provides its investors with instruments or contracts involving crypto assets. These instruments or contracts constitute securities and derivatives.
12. Investors may also trade crypto asset futures, swap and options contracts on the OKEx Platform that constitute securities and derivatives. The OKEx Platform allows investors to engage in leveraged trading of up to 125:1 on various futures and swap contracts.
13. Aux Cayes charges fees for trades made on the OKEx Platform and for crypto asset withdrawals.

(c) Aux Cayes' Ontario presence

14. Aux Cayes has opened and operated trading accounts for Ontario residents on the OKEx Platform. Ontario investors have deposited crypto assets into their accounts.

They are able to trade, and have traded, the products offered on the OKEx Platform, as described above. OKEx's website indicates that investors may use Canadian fiat currency to purchase crypto assets on the OKEx Platform. Until June 2021, Ontario was not included in the list of restricted jurisdictions on the OKEx website.

C. BREACHES AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

Enforcement Staff alleges the following breaches of Ontario securities law and conduct contrary to the public interest:

15. Aux Cayes has engaged in, or held itself out as engaging in, the business of trading in securities without the necessary registration or an applicable exemption from the registration requirement, contrary to subsection 25(1) of the Ontario *Securities Act*, RSO 1990, c. S.5, as amended (the **Act**);
16. Aux Cayes has engaged in trading in securities which constitute distributions without complying with the prospectus requirements and without an applicable exemption from the prospectus requirements, contrary to section 53 of the Act; and
17. Aux Cayes has engaged in activity that is contrary to the public interest.

D. ORDER SOUGHT

Enforcement Staff requests that the Commission make the following orders:

18. that Aux Cayes cease trading in any securities or derivatives permanently or for such period as is specified by the Commission, pursuant to paragraph 2 of subsection 127(1) of the Act;
19. that Aux Cayes be prohibited from acquiring any securities permanently or for such period as is specified by the Commission, pursuant to paragraph 2.1 of subsection 127(1) of the Act;
20. that any exemptions contained in Ontario securities law not apply to Aux Cayes permanently or for such period as is specified by the Commission, pursuant to paragraph 3 of subsection 127(1) of the Act;
21. that Aux Cayes be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;

22. that Aux Cayes be prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter permanently or for such period as is specified by the Commission, pursuant to paragraph 8.5 of subsection 127(1) of the Act;
23. that Aux Cayes pay an administrative penalty of not more than \$1 million for each failure to comply with Ontario securities law, pursuant to paragraph 9 of subsection 127(1) of the Act;
24. that Aux Cayes disgorge to the Commission any amounts obtained as a result of non-compliance with Ontario securities law, pursuant to paragraph 10 of subsection 127(1) of the Act;
25. that Aux Cayes pay the costs of the Commission investigation and the hearing, pursuant to section 127.1 of the Act; and
26. such other orders as the Commission considers appropriate in the public interest.

DATED this 18th day of August, 2021.

ONTARIO SECURITIES COMMISSION

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