



Ontario  
Securities  
Commission

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Citation: Daley (Re), 2021 ONSEC 29  
Date: 2021-11-22  
File No. 2019-28

**IN THE MATTER OF  
SEAN DALEY; and SEAN DALEY carrying on business as the ASCENSION  
FOUNDATION, OTO.Money, SilentVault, and CryptoWealth; WEALTH  
DISTRIBUTED CORP.; CYBERVISION MMX INC.; KEVIN WILKERSON;  
and AUG ENTERPRISES INC.**

**REASONS FOR DECISION  
(Subsections 127(1) and (8) of the *Securities Act*, RSO 1990, c S.5)**

**Hearing:** October 29, 2021

**Decision:** November 22, 2021

**Panel:** Lawrence P. Haber Commissioner and Chair of the Panel

**Appearances:** Hanchu Chen For Staff of the Ontario Securities  
Commission

Sean Daley For himself

No one appearing for Sean Daley  
carrying on business as the  
Ascension Foundation, OTO.Money,  
SilentVault, and CryptoWealth;  
Wealth Distributed Corp.;  
Cybervision MMX Inc.; Kevin  
Wilkerson; or Aug Enterprises Inc.

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## REASONS FOR DECISION

### I. OVERVIEW

- [1] This was a hearing pursuant to section 127(8) of the *Securities Act*<sup>1</sup> (the **Act**) to consider whether it is in the public interest to extend a temporary cease trade order (the **Temporary Order**) against the respondents Sean Daley, Sean Daley carrying on business as the Ascension Foundation, OTO.Money, SilentVault and CryptoWealth, Wealth Distributed Corp., Cybervision MMX Inc., Kevin Wilkerson, and Aug Enterprises Inc. (collectively, the **Respondents**).
- [2] The Temporary Order has been extended eleven times.
- [3] Daley contests the extension. Daley appeared on his own behalf and made submissions. No other Respondents attended the hearing or made submissions, although having been properly served.
- [4] After hearing the submissions from Staff and Daley, and considering the evidence submitted in this matter, I ordered that the Temporary Order be extended until the public release of the sanctions and costs decision in a separate, but related, proceeding involving Daley and Wilkerson, File No. 2019-39 (the **Related Matter**). These are the reasons for my decision.

### II. BACKGROUND

- [5] Staff began an investigation on November 9, 2018 (the **Investigation**) based on concerns that the Respondents were breaching the registration, distribution and fraud provisions of the Act through their operation of, what Staff describes as, a crypto-asset investment scheme.
- [6] The Temporary Order was issued on August 6, 2019, pursuant to s. 127(5) of the Act.<sup>2</sup> In the original request for a temporary order, Staff stated that it appears that the Respondents may have:
- a. traded in securities without registration and without an exemption to the registration requirement contrary to s. 25 of the Act; and
  - b. traded securities without a prospectus having been receipted by a Director contrary to s. 53 of the Act.
- [7] The Temporary Order provides that:
- a. trading in all securities by the Respondents shall cease;
  - b. all trading in 'overcome the odds' vouchers, also known as OTO Vouchers, and Lyra shall cease (**OTO/Lyra**); and
  - c. the exemptions contained in Ontario securities law do not apply to the Respondents
- for the period of time as specified in the order, unless it is extended by order of the Commission.
- [8] The Temporary Order has been extended on August 16, 2019, September 24, 2019, November 6, 2019, February 12, 2020, May 25, 2020, July 10, 2020,

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<sup>1</sup> RSO 1990, c S.5

<sup>2</sup> (2019) 42 OSCB 6630

September 14, 2020, October 19, 2020 and July 14, 2021. On September 15, 2021, the Temporary Order was extended until the fourteenth day following the date of the Reasons and Decision in the merits hearing in the Related Matter. On October 22, 2021, the Temporary Order was extended until October 29, 2021, when this motion was heard, on the consent of the parties.

- [9] Staff have not commenced an enforcement proceeding against the Respondents relating to the Investigation giving rise to the Temporary Order. On November 18, 2019, Staff filed a Statement of Allegations in the Related Matter and a merits hearing in that matter was held in April, June and July, 2021.
- [10] On October 12, 2021, the Commission issued its Reasons and Decision in the merits hearing in the Related Matter.<sup>3</sup> The Commission found that Daley and Wilkerson obstructed Staff's investigation and that their conduct engaged the animating principles of the Act and was abusive of the capital markets. The Commission ordered that the Related Matter proceed to a sanctions and costs hearing, which has not yet been held.<sup>4</sup>

### III. ISSUE AND ANALYSIS

- [11] As a preliminary issue, both parties requested to be able to rely on the evidentiary record of the Related Matter for the purposes of this motion. I granted the request that the evidentiary record in the Related Matter could be relied upon in this motion, to the extent necessary.
- [12] The sole issue before me is whether the Temporary Order should be extended again, until the public release of the sanctions and costs decision in the Related Matter.
- [13] The Commission may extend a temporary order, under s. 127(8) of the Act, "for such period as it considers necessary if satisfactory information is not provided to the Commission".
- [14] As noted in an earlier decision extending the Temporary Order in this proceeding, the Commission's authority to issue and extend temporary cease trade orders is an important tool for the Commission in achieving its mandate to protect investors and the capital markets.<sup>5</sup>
- [15] Staff must satisfy the Commission that there is "sufficient evidence of conduct that may be harmful to the public interest."<sup>6</sup> In considering the sufficiency of the evidence, the Commission should consider "the seriousness of the allegations and the evidence supporting them" as well as "any explanations or evidence that may contradict such evidence."<sup>7</sup> This "will allow [the Commission] to weigh the threat to the public interest against the potential consequences of the order."<sup>8</sup> The evidence presented "may fall short of what would be required in a hearing on the merits", but must be "more than mere suspicion or speculation."<sup>9</sup>

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<sup>3</sup> *Daley (Re)*, 2021 ONSEC 27, (2021) 44 OSCB 8747 (***Daley Merits***)

<sup>4</sup> *Daley Merits* at para 74

<sup>5</sup> *Daley (Re)*, 2020 ONSEC 26, (2020) 43 OSCB 8239 (***Daley TCTO 1***) at para 14, citing *Watson (Re)*, 2008 ONSEC 2, (2008) 31 OSCB 705 (***Watson***) at para 31

<sup>6</sup> *Watson* at para 35

<sup>7</sup> *Valentine (Re)*, (2002) 25 OSCB 5329 (***Valentine***) at para 27

<sup>8</sup> *Valentine* at para 27

<sup>9</sup> *Western Wind Energy Corp (Re)*, 2013 ONSEC 25, (2013) 36 OSCB 6749 at para 11

- [16] Staff submits that the Commission has repeatedly found sufficient evidence here of conduct that may be harmful to the public interest. Staff also submits that the sanctions it will seek in the Related Matter would enhance investor protection and that the merits decision in the Related Matter reinforces that it is in the public interest to extend the Temporary Order.
- [17] In my October 2020 reasons and decision extending the Temporary Order, I concluded that “the investor protection concerns are still present and have not dissipated.”<sup>10</sup> The Panel in the September 2021 extension motion found that Daley’s statements about the continued circulation of OTO/Lyra despite the Temporary Order and about his potential engagement with a new investor raised a heightened concern that the risk of potential harm to the public persists and may be increasing.<sup>11</sup> Daley repeated those statements in the present motion and I share those heightened concerns.
- [18] Since I have found that there is sufficient evidence of conduct that may be harmful to the public interest, the onus shifts to a respondent to provide satisfactory information that the Temporary Order should not be extended, absent which the Commission is justified in extending the Temporary Order.<sup>12</sup>
- [19] None of the Respondents have submitted any evidence regarding the grounds forming the basis for the issuance of the Temporary Order, although Daley did conduct a cross-examination of Staff’s witness on this motion. Daley commented that extending the Temporary Order was prejudicial to him in his personal capacity as the order effectively prevented him from conducting discussions with the potential new investor in order to infuse capital into the crypto-asset project and prevented him from funding the crypto-asset project through the sale of OTO/Lyra. Staff submits that Daley has repeatedly stated that any decision of the Commission in the Related Matter would be “inconsequential” to him, thus acknowledging that no prejudice would result from the extension sought.
- [20] As indicated above, I received no evidence about the existence of these investment discussions or how far along they might be. In addition, Daley was appearing only on his own behalf. The Panel deciding the September 2021 motion found that any prejudice suffered would be by one or more of the corporate respondents and not by Daley in his personal capacity.<sup>13</sup> Daley submits that he has in fact suffered prejudice in his personal capacity as he was prevented by the Temporary Order from selling OTO/Lyra to fund his work. I find that his inability to sell OTO/Lyra is one of the main purposes of the Temporary Order and such prejudice is suffered by all respondents to a temporary order. Such prejudice does not suffice to justify the termination of a temporary order.
- [21] Daley submits, with reference to the evidentiary record of the Related Matter referenced in paragraph 11 above, that the Temporary Order should not be extended because OTO/Lyra is not a “security”, as he has maintained throughout this proceeding and the Related Matter. The issue of whether OTO/Lyra is a security is irrelevant in the context of this motion. In the merits decision in the Related Matter, the Panel found that even where it is unclear whether the

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<sup>10</sup> Daley TCTO 1 at para 29

<sup>11</sup> Daley (Re), 2021 ONSEC 23, (2021) 44 OSCB 8203 (**Daley TCTO 2**) at paras 14-15

<sup>12</sup> Daley TCTO 1 at para 17; Meharchand (Re), 2015 ONSEC 43, (2015) 38 OSCB 10761 at para 57

<sup>13</sup> Daley TCTO 2 at para 18

product at issue is a security, the Commission is justified in pursuing an investigation.<sup>14</sup> At this stage, Staff is only required to satisfy the Commission that there is “sufficient evidence of conduct that may be harmful to the public interest” and a finding that OTO/Lyra is a security is not necessary.

- [22] Daley submits that Staff has not tendered any new evidence in support of this extension request and there is no evidence of an ongoing investigation. However, during cross-examination, Daley asked Staff’s witness, Kevin Dusseldorp, lead investigator, whether there was still an investigation. Mr. Dusseldorp replied, “This is an open Enforcement matter still...”<sup>15</sup> Staff submits that new evidence of an ongoing investigation is not required in order to extend a temporary order and that evidence regarding further steps taken in the investigation may be privileged. I agree with Staff’s submissions that it is not required in this instance to adduce evidence of the new steps taken in the investigation for the purposes of extending the Temporary Order, especially where there is evidence and findings in the Related Matter that the Respondents have obstructed that investigation.
- [23] I conclude that there is insufficient evidence before me that would warrant a decision not to extend the Temporary Order.
- [24] Staff requested an extension of the Temporary Order until the public release of the sanctions and costs decision in the Related Matter. I had questions about the appropriateness of that timing. In response, Staff explained that the timing would allow Staff to factor the outcome in the Related Matter into their consideration of appropriate next steps regarding the Investigation in this matter and that the sanctions they are seeking in the Related Matter, if granted, will sufficiently cover the public interest and investor protection concerns that underlie the Temporary Order. I was satisfied with this explanation.

#### **IV. CONCLUSION**

- [25] The allegations against the Respondents are serious. The Respondents have provided no evidence to counter the basis on which the Temporary Order was issued. Daley’s comments, while not evidence, suggests that the risk of public harm remains. There is no evidence that extending the Temporary Order for the period sought is prejudicial. I therefore conclude that the threat to the public interest outweighs the potential consequences of extending the Temporary Order.
- [26] I find that it is appropriate to extend the Temporary Order until the public release of the sanctions and costs decision in File No. 2019-39 with respect to Sean Daley and Kevin Wilkerson.

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<sup>14</sup> *Daley Merits* at paras 46-47

<sup>15</sup> Hearing Transcript, Daley (Re), October 29, 2021 at 42 lines 3-4

Dated at Toronto this 22nd day of November, 2021.

*"Lawrence P. Haber"*

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Lawrence P. Haber