

ORAL REASONS FOR APPROVAL OF A SETTLEMENT

The following reasons have been prepared for publication, based on the reasons delivered orally at the hearing, as edited and approved by the panel, to provide a public record of the oral reasons.

- [1] Staff of the Ontario Securities Commission has alleged that Bybit Fintech Limited contravened the *Securities Act*¹ (the **Act**) by engaging in the business of trading in securities without the necessary registration or an applicable exemption from the registration requirement. Staff also alleges that Bybit engaged in trades of securities that were distributions under the Act, without complying with or being exempt from the prospectus requirements.
- [2] Staff and Bybit seek approval of a settlement agreement they have entered into regarding these allegations. I conclude that it would be in the public interest to approve the settlement, for the following reasons.
- [3] The factual background is set out in more detail in the settlement agreement, but I summarize the most important facts here.
- [4] Bybit operates a crypto asset trading platform. Investors can open an account, and can then deposit crypto assets or use fiat currency to buy crypto assets. In either case, the crypto assets reside in a wallet that Bybit controls. Investors may use the platform to trade crypto assets.
- [5] The investors have neither possession of, nor control over, the crypto assets. Bybit maintains custody. An investor who wants to take possession of their crypto assets must ask Bybit for the assets and then transfer those assets to a wallet that the investor controls.
- [6] Bybit provides its customers instruments or contracts involving crypto assets (*e.g.*, crypto asset futures contracts), as opposed to the crypto assets themselves. As Bybit has admitted in the settlement agreement, the instruments or contracts in this case are securities and derivatives.

¹ RSO 1990, c S.5

- [7] From the time that Bybit launched its platform in December 2018 to the date of the settlement agreement, Bybit opened approximately 368 accounts for Ontario investors. From those accounts, Bybit obtained gross revenue of approximately 2,468,910 US dollars.
- [8] Canadian securities regulators, including the Commission, have publicized their concerns about unregistered crypto asset trading platforms. The Commission issued a news release in March 2021 advising that those platforms must bring their operations into compliance with Ontario securities law or they may face regulatory action. The press release included a deadline of April 19, 2021, for such platforms to begin registration discussions.
- [9] Bybit did not contact the Commission by the deadline set out in that news release. Commission staff tried to inform Bybit directly, and after not receiving a response, Staff commenced this proceeding.
- [10] Soon after that, Bybit took steps to explore the Commission's registration and compliance process. Bybit communicated openly with Commission staff, and expressed an early interest in exploring a way to resolve the concerns. Bybit co-operated with Staff, providing all requested information promptly and transparently. Bybit's co-operation was instrumental in determining the amount of revenue that it had obtained from the Ontario accounts.
- [11] Bybit admits that its conduct breached the registration and prospectus requirements I mentioned earlier, and that it thereby contravened ss. 25(1) and 53(1) of the Act.
- [12] Staff and Bybit have agreed that Bybit will disgorge to the Commission the 2,468,910 US dollars that it obtained in the form of revenue, and 10,000 Canadian dollars for costs of the Commission's investigation. Bybit paid those amounts to the Commission before this hearing, and they are being held in escrow pending approval of the settlement.
- [13] Bybit has also given a written undertaking to the Commission. That undertaking provides, among other things, that:
- a. Bybit will wind down a specified portion of its Ontario business;

- b. Bybit will work diligently and in good faith with the Commission to bring its operations into compliance with Ontario securities law;
- c. until Bybit either becomes registered or has wound down its operations, Bybit will donate ongoing revenues from Ontario accounts to a payee named in the undertaking; and
- d. Bybit will refrain from any non-compliance with Ontario securities law in the future.

[14] I have reviewed the settlement agreement in detail. In addition, I had the benefit of a confidential settlement conference, and follow-up communication, with counsel for both parties.

[15] My role at this settlement hearing is to determine whether the negotiated result falls within a range of reasonable outcomes, and whether it would be in the public interest to approve the settlement.

[16] I have considered Bybit's failure to obtain registration and to comply with the prospectus requirements, both of which requirements are cornerstones of securities regulation in Ontario. I have also considered that while Bybit did not immediately respond to the Commission's communications to unregistered crypto asset trading platforms, once Staff commenced this proceeding, Bybit was co-operative and transparent, and responded promptly to Staff's requests.

[17] This Tribunal respects the negotiation process and accords significant deference to the resolution reached by the parties. In my view, given the mitigating factors, the full amount of the disgorgement, Bybit's undertaking, and the avoidance of significant resource consumption that would be required for a contested hearing, it is in the public interest for me to approve the settlement, including the negotiated result.

[18] I will therefore issue an order substantially in the form of the draft attached to the settlement agreement.

Dated at Toronto this 22nd day of June, 2022

"Timothy Moseley"

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