



Capital
Markets
Tribunal

Tribunal des
des marchés
financiers

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**IN THE MATTER OF
BYBIT FINTECH LIMITED**

File No. 2021-21

Adjudicator: Timothy Moseley

June 22, 2022

ORDER

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

WHEREAS on June 22, 2022, the Capital Markets Tribunal (the **Tribunal**) held a hearing by videoconference to consider the request for approval of a settlement agreement dated June 9, 2022 (the **Settlement Agreement**) with respect to Bybit Fintech Limited (**Bybit**);

ON READING the joint request for a settlement hearing, including the Statement of Allegations dated June 21, 2021, the Settlement Agreement, and the written submissions, on hearing the submissions of the representatives for each of the parties, on considering that Bybit has paid US\$2,468,910.00 and C\$10,000.00 to the Commission in accordance with the terms of the Settlement Agreement, and on considering the undertaking of Bybit dated June 9, 2022, attached as Schedule "A" to this Order;

IT IS ORDERED THAT:

1. The Settlement Agreement is approved pursuant to s. 127(1) of the *Securities Act* (the **Act**);
2. Bybit is reprimanded, pursuant to paragraph 6 of s. 127(1) of the Act; and
3. Bybit shall:
 - a. disgorge to the Commission US\$2,468,910.00, pursuant to paragraph 10 of s. 127(1) of the Act; and
 - b. pay costs of the Commission's investigation in the amount of C\$10,000.00, pursuant to s. 127.1 of the Act.

"Timothy Moseley"

Timothy Moseley

Schedule “A” – UNDERTAKING

IN THE MATTER OF BYBIT FINTECH LIMITED

UNDERTAKING

1. This Undertaking is given by Bybit Fintech Limited (**Bybit**) to the Ontario Securities Commission (the **Commission**) in connection with the settlement agreement dated June 9, 2022 in the matter of Bybit Fintech Limited (the **Settlement Agreement**).
2. For the purposes of this Undertaking:
 - (a) “**Restricted Products**” means any contracts that involve leverage, margin, or the extension of credit, including but not limited to contracts that are marketed/labelled by Bybit as:
 - (i) futures;
 - (ii) forward contracts;
 - (iii) OTC contracts on margin;
 - (iv) perpetual swaps and futures;
 - (v) rolling spot;
 - (vi) contracts for difference;
 - (vii) options; or
 - (viii) leveraged tokens.
 - (b) “**Retail Customers**” means investors who are not “permitted clients” as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

Undertaking in respect of Retail Customers

3. In respect of Retail Customers, Bybit undertakes to:

- (a) within 60 days of the approval of the Settlement Agreement (unless a different time frame is agreed to in writing by the Commission), determine which existing Ontario accounts are held by Retail Customers, including implementing appropriate systems and procedures, acceptable to the Commission, to make that determination;
- (b) within 60 days of the approval of the Settlement Agreement (unless a different time frame is agreed to in writing by the Commission), implement systems and procedures, acceptable to the Commission, to prevent any Ontario Retail Customers from opening new positions in Restricted Products;
- (c) within 60 days of the approval of the Settlement Agreement (unless a different time frame is agreed to in writing by the Commission), notify existing Ontario Retail Customers, in a form acceptable to the Commission, that (i) they are only permitted to reduce their existing positions in Restricted Products, (ii) they must close out and settle their existing positions in Restricted Products (including for greater certainty, any margined positions) within 90 days from the approval of the Settlement Agreement (unless a different time frame is agreed to in writing by the Commission); and (iii) any funds or assets remaining in Ontario Retail Customer accounts can continue to be used for non-Restricted Products or withdrawn from the Bybit Platform.

Undertaking in respect of permitted clients

- 4. In respect of permitted clients (as defined in National Instrument 31-103), Bybit undertakes to, within 60 days of the approval of the Settlement Agreement (unless a different time frame is agreed to in writing by the Commission), take steps, acceptable to the Commission, to determine which, if any, Ontario accounts are held by permitted clients, including implementing appropriate systems and procedures to make that determination;

Undertaking to engage in registration discussions regarding registrable business

- 5. Bybit undertakes to engage in discussions with the Commission, with diligence and good faith, with a view to bringing the operations of the crypto asset trading platform www.bybit.com (the **Bybit Platform**) into compliance with Ontario securities law, on the following terms:

- (a) While these discussions are ongoing, Bybit will abide by the following limitations:
- (i) Bybit will stop accepting new accounts for investors identified as residents of Ontario. Bybit will implement the following procedures and controls to prevent Ontario investors from opening new accounts on the Bybit Platform:
 - (1) within 5 days of the approval of the Settlement Agreement, Bybit will update the terms of use of the Bybit Platform to indicate that, as of a date to be determined by Bybit, but no later than 30 days from the approval of the Settlement Agreement, residents of Ontario are not permitted to open new accounts on the Bybit Platform;
 - (2) as of a date to be determined by Bybit, but no later than 30 days from the approval of the Settlement Agreement, Bybit will ensure that potential investors who are identified as residents of Ontario based on the address or identification provided through the account onboarding process are not permitted to open an account with Bybit; and
 - (3) as of a date to be determined by Bybit, but no later than 30 days from the approval of the Settlement Agreement, Bybit will screen the IP address location of potential investors and ensure that potential investors accessing the Bybit Platform from an Ontario based IP address are not permitted to open an account with Bybit;(collectively, the **Enhanced Procedures and Controls**);
 - (ii) Bybit will not offer any new products to existing accounts held by Ontario investors;
 - (iii) Bybit will not engage in any marketing or promotional activities specifically directed at Ontario investors, which include marketing or promotional activities at events that take place in Ontario; and
 - (iv) Bybit will comply with any additional restrictions that the Commission may require as a condition of continuing registration discussions, or if not prepared to comply with such additional restrictions, terminate registration discussions in accordance with paragraph 6.

Undertaking to wind up Ontario operations if registration discussions fail

6. If at some time during registration discussions (the **Decision Date**) the Commission concludes and communicates to Bybit that it will not be feasible for the Bybit Platform to operate in a manner that is compliant with Ontario securities law, or Bybit, acting in good faith, elects to terminate registration discussions, Bybit undertakes to:
- (a) identify the accounts on the Bybit Platform associated with Ontario investors (**Ontario Accounts**) and report to the Commission on the number of Ontario

Accounts and the aggregate holdings in the Ontario Accounts within 30 days of the Decision Date;

- (b) cease trading in all Ontario Accounts with no funds or assets remaining in them and close those accounts within 30 days of the Decision Date;
- (c) with respect to Ontario Accounts with funds or assets remaining in them (**Funded Ontario Accounts**), initiate steps to return all funds or assets to the account holders by completing the following steps:
 - (i) send correspondence to account holders of the Funded Ontario Accounts within 30 days of the Decision Date, indicating that:
 - (1) no new deposits of funds or other assets shall be made in the Funded Ontario Accounts;
 - (2) account holders will have a grace period to trade and withdraw their existing holdings, which period expires within 90 days of the Decision Date;
 - (3) upon the expiry of the grace period, no further trading will be permitted in the Funded Ontario Accounts and any funds or assets remaining in the Funded Ontario Accounts will be returned to the account holders; and
 - (4) account holders must contact Bybit to provide instructions regarding the return of funds or assets in their Funded Ontario Accounts.
 - (ii) attempt to contact the account holders by any other means provided by the account holder if no response to the correspondence referred to above is received within 30 days of sending the correspondence;
 - (iii) on instruction from the account holders, return the funds or assets in the Funded Ontario Accounts without charging fees;
 - (iv) close the Funded Ontario Accounts where the funds or assets have been returned to the account holders;
 - (v) provide email reminders to all remaining Funded Ontario Account holders every 30 days in relation to unreturned funds until all funds are returned;
 - (vi) deliver to the Commission, on the first and second anniversary of the Decision Date, certificates signed by a senior officer of Bybit, certifying, on behalf of Bybit, that, based on the senior officer's knowledge, after exercising reasonable due diligence:
 - (1) Bybit did not open any accounts for clients resident in Ontario since the Decision Date;
 - (2) Bybit has ceased trading in and closed all Ontario Accounts with no funds or assets remaining in them;

- (3) the Enhanced Procedures and Controls remain in place on the Bybit Platform; and
 - (4) Bybit shall also provide a list of the Funded Ontario Accounts with funds or assets remaining in them and confirm that Bybit has taken the steps set out above to attempt to obtain instructions from each account holder; and
- (vii) if Bybit has not obtained instructions regarding the return of any remaining funds or assets in the Funded Ontario Accounts by the second anniversary of the Decision Date, Bybit shall segregate and maintain control of the remaining funds or assets, or sufficient funds or assets to satisfy all claims by the holders of these accounts, and shall not dispose of them other than in accordance with the relevant user's instructions, or as required by law, or as agreed in writing by the Commission, and provide confirmation to the Commission that it has done so.

Undertaking to donate ongoing Ontario revenues

7. Bybit shall donate, to the University of Waterloo (to be allocated to the general trust fund for the Engineering Department), revenues earned from Ontario accounts between the date of the Settlement Agreement and either (i) the date registration discussions are successfully completed or (b) if registration discussions are terminated without registration, the date that Bybit has ceased trading in and closed all Ontario accounts.

Undertaking to abide by Ontario securities law

8. Bybit will refrain from any non-compliance with Ontario securities law in the future.

Dated this 9th day of June, 2022.

BYBIT FINTECH LIMITED

"Ben Zhou"

We have authority to bind the corporation