



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

22e étage
20, rue queen ouest
Toronto ON M5H 3S8

FILE NO.: 2021-21

IN THE MATTER OF BYBIT FINTECH LIMITED

SETTLEMENT AGREEMENT

PART I - INTRODUCTION

1. Regulators across the globe serve to protect the investing public and preserve the integrity of the capital markets in their respective jurisdictions; therefore, it is imperative that foreign market participants, including online crypto asset trading platforms, make a real and meaningful effort to identify and comply with local securities laws prior to entering a jurisdiction.
2. Foreign companies in the business of online trading of securities or derivatives for Ontario residents are subject to Ontario securities law. The registration and prospectus requirements of the Act foster integrity, fairness and enhance protection for Ontario investors.
3. Bybit Fintech Limited (**Bybit** or the **Respondent**) operates an online crypto asset trading platform under the trade name “Bybit” on which Ontario investors could trade in securities and derivatives based on exposure to underlying assets that included crypto assets.
4. Bybit contravened sections 25 and 53 of the Act by operating as an unregistered dealer of securities to Ontario investors and issuing securities without a prospectus or any exemption from the prospectus requirements.

PART II - JOINT SETTLEMENT RECOMMENDATION

5. A Notice of Hearing was issued and a Statement of Allegations was published in respect of a proceeding against Bybit (the **Proceeding**) on June 21, 2021.
6. The parties shall jointly file a request that the Capital Markets Tribunal (the **Tribunal**) issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, RSO 1990, c S5, as amended (the **Act**), it is in the public interest for the Tribunal to make certain orders in respect of Bybit described herein.
7. The Respondent agrees to the making of an order substantially in the form attached as Schedule "A" (the **Order**) based on the facts set out below. For the purposes of the Proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, the Respondent agrees with the facts set out in Part III and the conclusions in Part IV of this Settlement Agreement (the **Settlement Agreement**).

PART III - AGREED FACTS

A. Bybit

8. Bybit was first incorporated in March 2018 under the laws of the British Virgin Islands but has since continued its operations through a Seychelles company of the same name with a registered office at House of Francis, Room 303, Ile Du Port, Mahe, Seychelles.
9. Bybit has never been registered with the Ontario Securities Commission (the **Commission**) to engage in the business of trading or obtained an exemption from the registration requirement. Bybit has never filed a prospectus with the Commission or obtained an exemption from the prospectus requirement.
10. Bybit operates the crypto asset trading platform www.bybit.com (the **Bybit Platform**).
11. Investors access the Bybit Platform by first creating an account on the Platform using an

online account opening 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 Bybit. Through third-party payment providers, an investor may also use fiat currency to purchase crypto assets, which are then credited to the investor's account.

12. Investors may trade crypto assets credited to their account for a variety of other crypto assets. The crypto assets available on the platform include, among others, Bitcoin and Ether.
13. Bybit maintains custody of crypto assets deposited and traded on the Bybit Platform in wallets Bybit controls. Investors do not have possession or control of crypto assets deposited or traded on the Bybit Platform. Rather, they see a crypto asset balance displayed on their account on the Bybit Platform. In order to take possession of crypto assets reflected in their Bybit account balance, an investor must request a withdrawal and is dependent on Bybit to satisfy that withdrawal request by delivering crypto assets to an investor-controlled wallet.
14. While Bybit purports to facilitate trading of the crypto assets in its investors' accounts, in practice, Bybit only provides its investors with instruments or contracts involving crypto assets. These instruments or contracts constitute securities and derivatives.
15. The primary focus of the Bybit Platform is facilitating the trading of crypto asset futures contracts. Investors may trade crypto asset futures contracts on the Bybit Platform that constitute securities and derivatives. The Bybit Platform also allows investors to engage in leveraged trading of up to 100:1 on various futures contracts.
16. Bybit charges fees for trades made on the Bybit Platform and a fee for crypto asset withdrawals.

B. Ontario Investors

17. Bybit made the Bybit Platform available to Ontario investors. There was no restriction in the Bybit Platform's terms of service to disallow Ontario investors from using the Bybit

Platform. Bybit's website indicated that investors may, through third-party payment providers, use Canadian fiat currency to purchase crypto assets on the Bybit Platform. Ontario was also not identified in the list of restricted jurisdictions on Bybit's website.

18. As of the date of this Settlement Agreement, Bybit had opened and operated approximately 368 accounts for investors resident in Ontario since the launch of its trading platform in December 2018.
19. Ontario investors deposited crypto assets into these accounts, and used these accounts to trade the products offered on the Bybit Platform, as described above.
20. The total revenue Bybit obtained from these Ontario accounts was approximately \$2,468,910.00 USD as of the date of this Settlement Agreement. Although Bybit incurred overhead expenses in obtaining this revenue, the amount of \$2,468,910.00 USD is a gross figure, and does not credit Bybit with any deduction in respect of those expenses. This amount was obtained entirely from Restricted Products.¹ Bybit obtained no other revenues from these Ontario accounts.

C. Communications with Bybit

21. On March 29, 2021, 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 start registration 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.
22. Despite this warning, Bybit did not contact the Commission by April 19, 2021 to start

¹ "Restricted Products" means any contracts that involve leverage, margin, or the extension of credit, including but not limited to contracts that are marketed or 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.

registration discussions.

23. In June 2021, the Commission took steps to inform Bybit that it may be conducting registrable activity in Ontario. Bybit did not respond until after this proceeding was commenced, which was on June 21, 2021.

D. Mitigating Factors

24. Starting on or around July 5, 2021, Bybit took steps to explore the registration and compliance process with the Commission. To that end, Bybit is prepared to give a comprehensive undertaking to restrict its Ontario business while it pursues registration, and to leave Ontario in an orderly fashion if registration discussions terminate (as further described below).
25. Bybit maintained an open dialogue, and expressed an early interest in exploring resolution. Bybit also provided all requested information promptly and in a transparent manner. In particular, Bybit's co-operation was instrumental in ascertaining the amounts obtained by Bybit, making a disgorgement order possible.

PART IV- BREACHES OF ONTARIO SECURITIES LAW

26. The Respondent admits and acknowledges that it breached Ontario securities law by, without lawful exemption:
 - (i) engaging in the business of trading in securities without registration in accordance with Ontario securities law, contrary to subsection 25(1) of the Act; and
 - (ii) engaging in trading in securities which constitute distributions without a preliminary prospectus or a prospectus having been filed with the Commission, contrary to subsection 53(1) of the Act.

PART V - TERMS OF SETTLEMENT

27. The Respondent agrees to the terms of settlement listed below and consents to the Order in

substantially the form attached hereto as Schedule “A”, which provides that:

- a) the Settlement Agreement is approved;
 - b) Bybit is reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;
 - c) Bybit shall:
 - (i) Disgorge \$2,468,910.00 USD by wire transfer to the Commission before the commencement of the Settlement Hearing, pursuant to paragraph 10 of subsection 127(1) of the Act. This amount represents the total revenue earned from Ontario accounts up to the date of the Settlement Agreement, which was earned entirely from Restricted Products.; and
 - (ii) pay costs of the Commission’s investigation in the amount of \$10,000.00 CAD by wire transfer to the Commission before the commencement of the Settlement Hearing, pursuant to section 127.1 of the Act
28. Bybit has given the undertaking (the **Undertaking**) to the Commission attached as Schedule “B” to this Settlement Agreement, pursuant to which Bybit undertakes as follows:
- a) ByBit will take the steps outlined in the Undertaking to wind down its existing Ontario business in respect of Restricted Products (as defined in the Undertaking) for Retail Customers (as defined in the Undertaking);
 - b) ByBit will engage in discussions with the Commission, with diligence and good faith, with a view to bringing the operations of the Bybit Platform into compliance with Ontario securities law, on terms that include the following limitations while such discussions are ongoing:
 - (i) Bybit will stop accepting new accounts for investors identified as residents of Ontario;
 - (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 the terms prescribed in the Undertaking;
- c) If at any time during registration discussions, 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 will wind down its Ontario operations within the time frame and on the terms prescribed in the Undertaking;
 - d) Bybit will donate to the University of Waterloo (to be allocated to the general trust fund for the Engineering Department), ongoing revenues from Ontario accounts until Bybit either (i) becomes registered, or (ii) has wound down its operations;
 - e) Bybit will refrain from any non-compliance with Ontario securities law in the future.
29. Bybit agrees to attend at the hearing before the Tribunal to consider the proposed settlement by video conference.

PART VI - FURTHER PROCEEDINGS

30. If the Tribunal approves this Settlement Agreement, no enforcement proceeding will be commenced or continued under Ontario securities law against Bybit in relation to the facts set out in Part III of this Settlement Agreement, subject to paragraphs 31 and 32 below.
31. This Settlement Agreement is premised on, among other things, representations made by Bybit, including about the number of Ontario accounts (approximately 368) and the amounts obtained by Bybit (approximately \$2,468,910.00 USD in revenue from the Ontario accounts) as of the date of this Settlement Agreement. If Bybit opened and operated materially more Ontario accounts or if Bybit obtained materially more funds than it

represented, enforcement proceedings under Ontario securities law may be brought against the Respondent.

32. If the Respondent fails to comply with any term in this Settlement Agreement or the Undertaking, enforcement proceedings under Ontario securities law may be brought against the Respondent.
33. A proceeding referenced in paragraph 31 or 32 may be based on, among other things, the facts set out in Part III of this Settlement Agreement as well as the breach of this Settlement Agreement or the Undertaking.
34. The Respondent waives any defences to a proceeding referenced in paragraph 31 or 32 that are based on the limitation period in the Act, provided that no proceeding referenced in paragraph 32 shall be commenced later than six years from the date of the occurrence of the last failure to comply with this Settlement Agreement or the Undertaking.

PART VII - PROCEDURE FOR APPROVAL OF SETTLEMENT

35. The parties will seek approval of this Settlement Agreement at a public hearing (the **Settlement Hearing**) before the Tribunal, according to the procedures set out in this Settlement Agreement and the Tribunal's *Rules of Procedure and Forms*.
36. The parties agree that this Settlement Agreement sets forth all of the agreed facts that will be submitted at the Settlement Hearing, unless the parties agree that additional facts should be submitted at the Settlement Hearing.
37. If the Tribunal approves this Settlement Agreement:
 - (i) Bybit irrevocably waives all rights to a full hearing, judicial review or appeal of this matter under the Act; and
 - (ii) neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the Settlement Hearing.
38. Whether or not the Tribunal approves this Settlement Agreement, Bybit will not use, in

any proceeding, this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any attack on the Commission's or the Tribunal's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

PART VIII - DISCLOSURE OF SETTLEMENT AGREEMENT

39. If the Tribunal does not approve this Settlement Agreement or does not make an order substantially in the form of the Order attached as Schedule "A" to this Settlement Agreement:

(i) this Settlement Agreement and all discussions and negotiations between the parties before the Settlement Hearing takes place will be without prejudice to either party; and

(ii) the parties will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations contained in the Statement of Allegations. Any such proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this Settlement Agreement.

40. The parties will keep the terms of this Settlement Agreement confidential until the Tribunal approves the Settlement Agreement, except as is necessary to make submissions at the Settlement Hearing. If, for whatever reason, the Tribunal does not approve the Settlement Agreement, the terms of the Settlement Agreement shall remain confidential indefinitely, unless the parties otherwise agree in writing or if required by law.

PART IX - EXECUTION OF SETTLEMENT AGREEMENT

41. This Settlement Agreement may be signed in one or more counterparts which, together, constitute a binding agreement.

42. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

Dated this 9th day of June, 2022.

BYBIT FINTECH LIMITED

By: ***“Ben Zhou”***

CEO

We have authority to bind the
corporation

ONTARIO SECURITIES COMMISSION

By: ***“Johanna Superina” per:***

Jeff Kehoe

Director, Enforcement Branch

SCHEDULE “A” – DRAFT ORDER**FILE NO.: 2021-21****IN THE MATTER OF BYBIT FINTECH LIMITED****ORDER****(Subsections 127(1) and 127.1)**

WHEREAS on [date], 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**) *in the matter of 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 \$2,468,910.00 USD and \$10,000.00 CAD to the Commission in accordance with the terms of the Settlement Agreement, and on considering the undertaking of Bybit dated June 9, 2022 and attached as Schedule “A” to this Order;

IT IS ORDERED THAT:

1. The Settlement Agreement is approved pursuant to subsection 127(1) of the *Securities Act* (the **Act**)
 2. Bybit is reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act; and
 3. Bybit shall:
 - (a) disgorge \$2,468,910.00 USD, pursuant to paragraph 10 of subsection 127(1) of the Act; and
 - (b) pay costs of the Commission’s investigation in the amount of \$10,000.00 CAD, pursuant to section 127.1 of the Act.
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SCHEDULE “B” – 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

We have authority to bind the corporation