



Capital
Markets
Tribunal

Tribunal des
marchés
financiers

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Toronto ON M5H 3S8

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20, rue Queen ouest
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**IN THE MATTER OF
AUX CAYES FINTECH CO. LTD.**

File No. 2021-29

Adjudicators: Timothy Moseley (chair of the panel)
Russell Juriansz
Sandra Blake

October 12, 2022

ORDER

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

WHEREAS on October 12, 2022, the Capital Markets Tribunal (the Tribunal) held a hearing by videoconference to consider the request for approval of a settlement agreement dated September 22, 2022 (the Settlement Agreement) in the matter of Aux Cayes Fintech Co. Ltd. (Aux Cayes);

ON READING the Joint Request for a Settlement Hearing, including the Statement of Allegations dated August 18, 2021, the Settlement Agreement, and the written submissions, on hearing the submissions of the representatives for each of the parties, on considering that Aux Cayes has paid \$600,000.00 CAD, \$514,950.00 USD and \$25,000.00 CAD to the Commission in accordance with the terms of the Settlement Agreement, and on considering the undertaking of Aux Cayes dated September 22, 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. Aux Cayes is reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act; and
3. Aux Cayes shall:
 - a) pay an administrative penalty in the amount of \$600,000 CAD, pursuant to paragraph 9 of subsection 127(1) of the Act;

- b) disgorge \$514,950.00 USD to the Commission, pursuant to paragraph 10 of subsection 127(1) of the Act; and
- c) pay costs of the Commission's investigation in the amount of \$25,000.00 CAD, pursuant to section 127.1 of the Act.

"Timothy Moseley"

Timothy Moseley

"Russell Juriansz"

Russell Juriansz

"Sandra Blake"

Sandra Blake

SCHEDULE “A” – UNDERTAKING

IN THE MATTER OF AUX CAYES FINTECH CO. LTD.

UNDERTAKING

1. This Undertaking is given by Aux Cayes Fintech Co. Ltd. (**Aux Cayes**) to the Ontario Securities Commission (the **Commission**) in connection with the settlement agreement dated September 22, 2022 in the matter of Aux Cayes Fintech Co. Ltd. (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 Aux Cayes 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, Aux Cayes 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 OKX Platform.

Undertaking in respect of permitted clients

4. In respect of permitted clients (as defined in National Instrument 31-103), Aux Cayes 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. Aux Cayes 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.okx.com (the **OKX Platform**) into compliance with Ontario securities law, on the following terms:
 - a) While these discussions are ongoing, Aux Cayes will abide by the following limitations:
 - (i) Aux Cayes will stop accepting new accounts for investors identified as residents of Ontario. Aux Cayes will maintain and implement the following procedures and controls to prevent Ontario investors from opening new accounts on the OKX Platform:
 - 1) Aux Cayes will maintain the language in the terms of use of the OKX Platform that indicates that residents of Ontario are not permitted to open new accounts on the OKX Platform;
 - 2) as of a date to be determined by Aux Cayes, but no later than 30 days from the approval of the Settlement Agreement, Aux Cayes will ensure that potential investors who identify themselves as residents of Ontario

based on the address or identification provided through the account onboarding process are not permitted to open an account with Aux Cayes; and

- 3) as of a date to be determined by Aux Cayes, but no later than 30 days from the approval of the Settlement Agreement, Aux Cayes will screen the IP address location of potential investors and ensure that potential investors accessing the OKX Platform from an Ontario based IP address are not permitted to open an account with Aux Cayes;

(collectively, **the Enhanced Procedures and Controls**);

- (ii) Aux Cayes will not offer any new products to existing accounts held by Ontario investors;
- (iii) Aux Cayes 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) Aux Cayes 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 Aux Cayes that it will not be feasible for the OKX Platform to operate in a manner that is compliant with Ontario securities law, or Aux Cayes, acting in good faith, elects to terminate registration discussions, Aux Cayes undertakes to:

- a) identify the accounts on the OKX 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 Aux Cayes 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 Aux Cayes listing the Funded Ontario Accounts with funds or assets remaining in them and certifying that Aux Cayes has taken the steps set out above to attempt to obtain instructions from each account holder; and based on the senior officer's knowledge, after exercising reasonable due diligence, also certifying that:
 - 1) Aux Cayes did not open any accounts for clients resident in Ontario since the Decision Date;
 - 2) Aux Cayes has ceased trading in and closed all Ontario Accounts with no funds or assets remaining in them; and
 - 3) the Enhanced Procedures and Controls remain in place on the OKX Platform; and
- (vii) if Aux Cayes 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, Aux Cayes 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. Aux Cayes shall donate, to Prosper Canada Centre for Financial Literacy, revenues earned from Ontario accounts between June 20, 2022 and either (i) the date registration discussions are successfully completed or (b) if registration discussions are terminated without registration, the date that Aux Cayes has ceased trading in and closed all Ontario accounts.

Undertaking to abide by Ontario securities law

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

Dated this 22nd day of September, 2022.

AUX CAYES FINTECH CO. LTD.

“Jie Hao”

Jie Hao
Director
I have authority to bind the corporation