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

IN THE MATTER OF
NVEST CANADA INC., GX TECHNOLOGY GROUP INC.,
SHORUPAN PIRAKASPATHY and WARREN CARSON

STATEMENT OF ALLEGATIONS

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

A. OVERVIEW

1. This proceeding arises out of unregistered trading and an illegal distribution of crypto assets and company shares. Beginning in or around January 2018, and continuing to at least May 2020 (the **Material Time**),[1] Shorupan Pirakaspathy, Warren Carson, and the companies they controlled, created crypto assets called "GXTokens"—which are securities—and sold thousands of dollars' worth of them to Ontarians. They also sold shares in the companies.

2. The sale of GXTokens and revenue generated was central to the Respondents' activities. GXToken sales were driven through the creation of a multi-level marketing scheme called "GXBroker." The Respondents enticed members of the public to become "brokers," by telling them that they could run their own crypto asset business and earn commissions using the Respondents' online crypto asset operating system.

3. The Respondents aggressively promoted their activities online, including through YouTube videos, touting the tokens as investments that would increase in value, and the virtues of

[1] All activities described occurred during the Material Time unless otherwise indicated.

becoming a GXBroker. The Respondents used GXBrokers as a *de facto* sales force, and conduit, to facilitate the further sale of GXTokens to the public.

4. Registration requirements serve an important gate-keeping function by ensuring that only properly qualified persons are permitted to engage in the business of trading securities. Prospectus requirements are fundamental to ensuring that investors are provided with full, true, and plain disclosure of all material facts relating to the securities being offered.

5. None of the Respondents filed a prospectus in connection with the sale of GXTokens or the shares of the companies, and none of Pirakaspathy, Nvest, or GX Technology were registered to trade in securities. This conduct exposed investors to risk and undermined public confidence in the capital markets.

B. FACTS

The following allegations of fact are made:

A. The Respondents

6. Shorupan Pirakaspathy (**Pirakaspathy)**, and Warren Carson (**Carson)**, through their companies GX Technology Group Inc. (**GX Technology** DBA **Global X Change**), and Nvest Canada Inc. (**Nvest**) (collectively, the **Respondents),** created and sold a crypto asset called GXToken to Ontario investors. GXTokens are securities under s. 1.(1) of the Act.

7. Pirakaspathy and Carson also sold shares in the corporate Respondents to Ontario investors.

8. Pirakaspathy and Carson were residents in Ontario for periods during the Material Time. For periods of time thereafter, both Pirakaspathy and Carson ceased residing in Ontario.

9. Pirakaspathy and Carson controlled and operated Nvest and GX Technology. They were directors and *de facto* officers of the companies (Nvest from December 2017 to November 2020, and GX Technology from March 2018 to November 2020). Nvest was the parent company of GX Technology. Both federally incorporated companies listed the same Pickering, Ontario address as the head office.

10. Prior to the activities at issue, the OSC issued a warning letter to Pirakaspathy concerning Nvest's plans to enter the Ontario market and the need to register if offering securities in Ontario. Despite this letter, the Respondents engaged in the sale of GXTokens and shares.

B. The Creation and Sale of GXTokens

11. The sale of GXTokens and revenue generated, including through the Respondents' network of GXBrokers described below, was central to the Respondents' activities.

12. The Respondents created a finite supply of 350 million GXTokens. 300 million of these GXTokens were to be available for sale to the public through a three-stage offering period. The corporate Respondents held the majority of these GXTokens, and acted as the primary market for their sale.

13. GXTokens could be purchased through Global X Change using the Respondents' client-side operating system known as "the Global X Change Operating System" (the **GX Operating System**).

14. According to the Respondents, the GX Operating System was intended to provide users and GXBrokers with the tools necessary to facilitate the purchase, and sale of crypto assets, including GXTokens.

15. The Respondents held a portion of the GXTokens in reserve as a "Founders and Advisors Allocation" whereby they stood to profit if the market price of the GXTokens increased.

C. The GXBroker Program and Further Trading of GXTokens

16. The Respondents created a network of "brokers" through a proprietary multi-level marketing scheme they called GXBroker. Through this program, the Respondents were involved in, and facilitated and intermediated the further sales of GXTokens. They also created a market for the GXTokens.

17. The Respondents aggressively promoted GXTokens and the GXBroker program online, including on social media, and through in-person events. The Respondents and their affiliates were featured in YouTube videos that promoted, and contained representations about the mechanics of GXTokens, the GXBroker program, Global X Change, and the GX Operating System. Between December 2018 and January 2021, hundreds of these videos were released on YouTube accounts associated with the Respondents

18. The Respondents told the public that GXBrokers could run their own crypto asset business using the GX Operating System, and earn commissions/transactional revenue by facilitating trades of crypto assets, including GXTokens, for other investors.

19. The Respondents were responsible for the control and operation of Global X Change and the GX Operating System, including back-end system development, system maintenance, training, and customer support for the GXBrokers. The success of the GXToken, the GXBroker program, as well as Global X Change, was dependent upon the Respondents' efforts.

20. The Respondents' network of GXBrokers acted, in effect, as a *de facto* sales force, and conduit, to facilitate the further sale of GXTokens to the public.

21. The sale of the GXTokens was instrumental to the Respondents' ability to generate revenue and make money. Any user could create a free account and use the GX Operating System to trade crypto assets and to purchase GXTokens. Rather than charge a fee for the use of the GX Operating System, the Respondents' ability to generate revenue was largely to come from the sale of GXTokens, including from signing up GXBrokers, as well as the purported sale of additional services to these GXBrokers.

22. To become a GXBroker, an investor had to purchase and "stake" a specified block of GXTokens proving that they owned them.

23. The Respondents also created a further category of GXBroker called "GXBroker Dealer." To become a GXBroker Dealer, investors had to purchase USD 100,000 worth of GXTokens from the Respondents.

24. Practically, investors who wished to become either a GXBroker, or a GX Broker Dealer, had to purchase GXTokens directly from the Respondents.

25. When an investor ordered GXTokens through a GXBroker, this sale was to be fulfilled through Global X Change/the GX Operating System, and the GXTokens were to come from the corporate Respondents' GXToken holdings. GXBrokers did not themselves hold the crypto assets to be sold.

26. The Respondents offered financial incentives in the form of commission/transactional revenue to GXBrokers, and GXBroker Dealers, for recruiting other investors to purchase GXTokens and become GXBrokers themselves. The commissions/transactional revenue available to GXBrokers were said to be higher for the sale of GXTokens than for the other types of crypto asset transactions.

27. The Respondents singled out the sale of the GXTokens for higher commissions/transactional revenue payouts because their sale would produce revenue for the Respondents.

D. GXTokens were Promoted as Investments

28. The Respondents actively and regularly promoted GXTokens as investments. Pirakaspathy and Carson solicited investors both in person, and online. They also facilitated the sale of GXTokens by providing payment and account setup instructions to investors.

29. The YouTube videos associated with the Respondents made various representations concerning the investment potential of GXTokens. These representations included:

a) GXTokens would increase in value over time;

b) Demand for GXTokens would arise from the finite number of GXTokens released, the expected appeal of the GXBroker program, as well as other Global X Change products and services to be provided;

c) GXTokens would be tradeable through Global X Change's proprietary exchange, as well as through third party crypto asset exchanges. GXTokens were eventually listed on at least two third party crypto asset exchanges;

d) Buy-side pressure, arising from the listing and trading of GXTokens on secondary exchanges, would drive up the price; and

e) As a GXBroker, commissions/transactional revenue could continue to be earned after all the GXTokens were sold out. At that point in time, new crypto tokens would be onboarded for sale through the established distribution network of GXBrokers.

30. While the Respondents touted the value of GXTokens and Global X Change, various products and features were described as being in development, or to be developed. Investors experienced difficulties using the GX Operating System as a result of its state or lack of development, including problems trading crypto assets and liquidating GXTokens.

31. Investor funds were received in the Nvest, GX Technology and associated corporate bank accounts, all of which were controlled by Pirakaspathy and Carson. Disbursements of investor funds included payments to third parties, as well as to Pirakaspathy and Carson.

32. The Respondents raised at least $280,000 from Ontario investors through the sale of GXTokens, as well as the sale of shares of the corporate Respondents.

Unregistered Trading

33. None of Pirakaspathy, Nvest, or GX Technology, were registered with the Commission to trade in GXTokens, or the corporate Respondents' shares. No exemptions from the registration requirement were available to the Respondents under Ontario Securities Law

34. Based on the conduct described above, Pirakaspathy, Nvest, and GX Technology engaged in, or held themselves out as engaging in, the business of trading in GXTokens, as well as Nvest and GX Technology shares, without the necessary registration or an applicable exemption from the registration requirement, contrary to subsection 25(1) of the Act.

Illegal Distribution

35. The sales of the GXTokens and the shares of Nvest and GX Technology were trades in securities not previously issued and were therefore distributions.

36. No preliminary prospectus or prospectus was filed for the distribution of the GXTokens or the shares of Nvest and GX Technology. The Respondents did not take steps to determine whether

investors qualified as accredited investors. Many did not. The investments did not qualify for any other exemption from the prospectus requirements set out in s. 53 of the Act and the Respondents did not file reports of exempt distribution, including Form 45-106F1, with the OSC.

37. By engaging in the conduct described above, the Respondents engaged in a distribution of securities without filing a preliminary prospectus or a prospectus and without an applicable exemption to the prospectus requirement, contrary to section 53 of the Act.

Authorizing, Permitting, or Acquiescing in Breaches of Ontario Securities Law

38. Pirakaspathy and Carson, as directors and *de facto* officers of the corporate Respondents, authorized, permitted or acquiesced in the conduct described above. As a result, Pirakaspathy and Carson are deemed not to have complied with Ontario securities law pursuant to section 129.2 of the Act.

C. BREACHES AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

39. The following breaches of Ontario securities law and/or conduct contrary to the public interest are alleged to have occurred as a result of the conduct described above:

i. Pirakaspathy, Nvest, and GX Technology engaged in, and held themselves out as engaging in, the business of trading in securities without being registered to do so and without an applicable exemption from the registration requirement contrary to subsection 25(1) of the Act;

ii. Each of the Respondents engaged in distributions of securities without filing a preliminary prospectus or prospectus and without an applicable exemption from the prospectus requirement contrary to section 53 of the Act;

iii. Pirakaspathy and Carson authorized, permitted or acquiesced in Nvest and GX Technology's non-compliance with Ontario securities law, contrary to s. 129.2 of the Act; and

iv. Each of the Respondents engaged in conduct that is contrary to the public interest.

40. These allegations may be amended, and further and other allegations may be added as the Tribunal may permit.

D. ORDERS SOUGHT

41. It is requested that the Capital Markets Tribunal (the **Tribunal**) make the following orders:

As against each of Pirakaspathy, Carson, Nvest, and GX Technology:

i. that they cease trading in any securities or derivatives permanently or for such period as is specified by the Tribunal, pursuant to paragraph 2 of subsection 127(1) of the Act;

ii. that they be prohibited from acquiring any securities permanently or for such period as is specified by the Tribunal, pursuant to paragraph 2.1 of subsection 127(1) of the Act;

iii. that any exemptions contained in Ontario securities law do not apply to them permanently or for such period as is specified by the Tribunal, pursuant to paragraph 3 of subsection 127(1) of the Act;

iv. that they be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;

v. that they be prohibited from becoming or acting as a registrant or promoter permanently or for such period as is specified by the Tribunal, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

vi. that they pay an administrative penalty of not more than $1 million for each failure to comply with Ontario securities law, pursuant to paragraph 9 of subsection 127(1) of the Act;

vii. that they disgorge to the OSC any amounts obtained as a result of non-compliance with Ontario securities law, pursuant to paragraph 10 of subsection 127(1) of the Act;

viii. that they pay costs of the OSC investigation and the hearing, pursuant to section 127.1 of the Act; and

ix. such other order as the Tribunal considers appropriate in the public interest.

And further as against each of Pirakaspathy and Carson:

i. that they resign any position they may hold as a director or officer of any issuer, pursuant to paragraph 7 of subsection 127(1) of the Act;

ii. that they be prohibited from becoming or acting as a director or officer of any issuer permanently or for such period as is specified by the Tribunal, pursuant to paragraph 8 of subsection 127(1) of the Act;

iii. that they resign any position they may hold as a director or officer of any registrant, pursuant to paragraph 8.1 of subsection 127(1) of the Act; and

iv. that they be prohibited from becoming or acting as a director or officer of any registrant permanently or for such period as is specified by the Tribunal, pursuant to paragraph 8.2 of subsection 127(1) of the Act.

DATED this 17th day of January, 2023

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