

IN THE MATTER OF BINANCE HOLDINGS LIMITED AND BINANCE.COM

APPLICATION OF BINANCE HOLDINGS LIMITED

For an Order revoking the Order issued under Subsection 11(1)(a) of the Securities Act, R.S.O. 1990, c. S.5, as amended (the “*Act*”) on May 10, 2023, and an Order quashing the summons issued under Section 13 of the *Act*

Under Section 144(1) of the *Securities Act*, R.S.O. 1990, s. S.5, Rule 17(1) of the Capital Markets Tribunal Rules of Procedure and Forms, and Section 25.0.1 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S. 22

AMENDED NOTICE OF APPLICATION

A. ORDER SOUGHT

The Applicant, Binance Holdings Limited (“**Binance**”) seeks the following Orders:

- (a) an Order revoking the Order issued under Subsection 11(1)(a) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “*Act*”) in the matter of Binance and Binance.com on May 10, 2023 (the “**Investigation Order**”);
- (b) an Order quashing the summons issued under Section 13 of the *Act* on May 11, 2023 (the “**Summons**”); and
- (c) such further relief as counsel may advise and this Tribunal may permit.

B. GROUNDS

The grounds for the application are:

Background

1. Binance is a corporation incorporated under the laws of the Cayman Islands and carries on business through its registered office located in George Town, Cayman Islands.
2. Binance owns the registered domain for www.binance.com (“**Binance.com**”). Through Binance.com, users can create an account (a “**Binance Account**”) and, among other things, send and store various digital assets.
3. These digital assets include cryptocurrencies like Bitcoin and Ethereum, value-referenced crypto assets such as BUSD, and other crypto assets including BNB.
4. Binance has never been registered with the Ontario Securities Commission (the “**Commission**”).
5. In December 2021, Binance Canada Capital Markets Inc. (“**Binance Canada**”) and Binance Canada Asset Management Inc. were incorporated under the laws of Canada for the purposes of servicing Canadian residents once regulatory approval had been granted.
6. In January 2022, Binance entered into discussions with Staff of the Commission in response to an indication from Staff that they intended to bring an Application for a Cease Trade Order against Binance in Ontario.
7. On March 16, 2022, in settlement of the Commission’s concerns with respect to Binance’s past conduct, to avoid a Cease Trade Order, and so that Binance could pursue a path toward registration in Ontario, Binance entered into an Undertaking and Acknowledgement with

the Commission (the “**Undertaking**”). The Commission, in turn, agreed not to take proceedings against Binance in relation to the facts underlying the Undertaking.

8. In the Undertaking, Binance undertook to do and in fact did the following things, among others:
- (a) Admit certain facts in relation to its prior conduct in Ontario, as set out in the Undertaking;
 - (b) Prevent Ontario users from opening a Binance Account, including through the use of specified Account Opening Procedures to be maintained until such time as Commission Staff confirms that Binance may remove them;
 - (c) Identify Binance Accounts held by Ontario investors through the use of specified Account Identification Procedures, to be maintained until such time as Commission Staff confirms that Binance may remove them;
 - (d) Prevent trading in any products in Binance Accounts held by Ontario investors, except those specified as Permissible Transactions, including through the use of specified Trading Procedures to be maintained until such time as Commission Staff confirms that Binance may remove them;
 - (e) Follow specified Waiver and Reimbursement Procedures with respect to specified fees collected by Binance;
 - (f) Train staff on the Account Opening Procedures, Account Identification Procedures, Ontario Trading Procedures, and Waiver and Reimbursement Procedures;

- (g) Provide Commission Staff with quarterly reports, which must include specified information on the Account Opening Procedures, Account Identification Procedures, Ontario Trading Procedures, and Waiver and Reimbursement Procedures for the purpose of permitting the Commission to monitor compliance with the Undertaking;
 - (h) Develop an audit plan acceptable to Commission Staff; and
 - (i) Retain an independent third-party consultant to conduct reviews of the design, implementation and effectiveness of the Account Opening Procedures, Account Identification Procedures, and Ontario Trading Procedures.
9. Section 11 of the Undertaking expressly sets out the Commission's forbearance in consideration of the Undertaking provided by Binance as part of the settlement and provides that the Commission will not bring enforcement proceedings against Binance for any past, present or future conduct arising from the facts set out in the Undertaking so long as Binance remains in compliance with the Undertaking.
10. Binance has complied with the Undertaking, including the compliance mechanisms set out therein, and to date, Staff have made no indication of any concerns with respect to deficiencies in Binance's compliance with the Undertaking.
11. In March 2022, Binance Canada filed an application for registration as an investment dealer in all provinces and territories, as a derivatives dealer in Québec and a membership application with the Investment Industry Regulatory Organization of Canada.

12. In March 2022, Binance Canada Asset Management Inc. filed an application for registration as an investment fund manager in Alberta, Ontario, Québec and Newfoundland & Labrador, as an exempt market dealer and as a portfolio manager in all provinces and territories.
13. For both registration applications, as the head office of Binance Canada and Binance Canada Asset Management Inc. was located in Calgary, Alberta, the Alberta Securities Commission (“ASC”) was designated as the principal regulator.
14. Beginning in May 2022, Binance and Binance Canada were actively engaged in ongoing discussions with the Canadian Securities Administrators (“CSA”) in respect of entering into a pre-registration undertaking (“PRU”) with the goal of launching a registered Canadian digital asset exchange.
15. By October 2022, many of the terms in the PRU had been negotiated and a tentative timeline for execution was put forward, subject to a few requirements, including whether the Commission would be agreeable to permitting Binance Canada to open accounts in Ontario under the PRU.
16. In November 2022, the cryptocurrency exchange, FTX Trading Ltd., abruptly collapsed. Shortly after, in December 2022, Binance and Binance Canada were informed that due to the fallout from FTX Trading Ltd., the CSA was reconsidering its current regulatory position with regards to crypto trading platforms in Canada.
17. On February 22, 2023, the CSA issued Staff Notice 21-332 – Crypto Asset Trading Platforms: Pre-Registration Undertakings – Changes to Enhance Canadian Investor

Protection (“**Staff Notice 21-332**”). Pursuant to Staff Notice 21-332, the CSA announced that it was requesting new commitments from unregistered crypto asset trading platforms (“**CTPs**”), including:

- (a) restrictions on the part of the CTP relying on crypto assets, including proprietary tokens issued by the CTP or an affiliate of the CTP, in determining the capital of the CTP for excess working capital purposes and in determining the capital base of the CTP;
 - (b) a prohibition on the part of the CTP in respect of clients buying or depositing Value-Referenced Crypto Assets (commonly referred to as stablecoins) through crypto contracts without the prior written consent of the CSA; and
 - (c) a prohibition on the part of the CTP in respect of trades in crypto contracts based on proprietary tokens, except with the prior written consent of the CSA.
18. As noted in Staff Notice 21-332, Binance was informed that a revised PRU (addressing the new regulatory regime articulated on February 22, 2023) was required to be filed with the ASC, as principal regulator, and the CSA by March 24, 2023.
 19. On March 24, 2023, Binance filed the PRU with the ASC.
 20. In discussions with the ASC in April 2023 following the filing of the PRU, Binance was advised that BUSD would not be approved by the CSA as a value-referenced asset, and further that both BNB (if approved) and BUSD would remain subject to the current investment limits applied by certain provinces. As Binance had previously advised the CSA, these limitations would make the offering of the platform in Canada untenable.

21. On May 2, 2023, Binance advised the ASC, on behalf of the CSA, that it intended to withdraw from operating in Canada and provided a withdrawal plan and timeline.
22. On May 9, 2023, ASC Staff advised Binance that its proposed timeline for withdrawal was reasonable. The proposed timeline provided that a public announcement of Binance's intention to withdraw would be made on May 19, 2023. Due to concerns regarding information leakage, Binance approached the ASC on May 11, 2023 (prior to the issuance of the Summons) in regards to accelerating this announcement, and with the approval of the ASC, the announcement was subsequently moved up to May 12, 2023.
23. At no point during Binance's extensive 12-month engagement with Canadian securities regulators as it pursued registration, which ended May 2, 2023, did the Commission, the ASC, or any other Canadian securities regulator raise any concerns with Binance's compliance with the Undertaking.
24. On May 10, 2023, the Commission issued the Investigation Order. The Investigation Order does not particularize any alleged breaches of Ontario securities law, the Undertaking, or conduct contrary to the public interest by Binance beyond the facts that were admitted by Binance in the Undertaking.
25. The Investigation Order authorizes an extremely broad inquiry into whether Binance may have taken steps to circumvent Ontario securities law and compliance controls in relation to Binance.com or engaged in conduct contrary to Ontario securities law and/or the public interest without any limitation.

26. On May 11, 2023, the Commission issued the Summons. The Summons is addressed to Binance Holdings Limited and does not name any individual person.
27. The Summons requires the production of “documents and things” specified in Appendix “A” to the Summons, some of which is information that is not contained in a document or other identified thing.
28. The Summons includes a blanket request for “all communications regarding Ontario (or Canada generally) among directors, officers, employees, contractors, agents and consultants of Binance Holdings Limited and related entities, including Binance Canada Capital Markets Inc. [emphasis added]” since January 1, 2021, without limitation.
29. The Summons specifically requires the production of identified communications that arise from the facts set out in the Undertaking or relate to Binance’s compliance with the Undertaking.
30. The Summons does not require the attendance of any person to testify.
31. On May 12, 2023, Binance announced publicly that it would withdraw from operating in Canada.

The Investigation Order should be revoked

32. The Tribunal has the authority to revoke or vary an Order of the Commission issued under s. 11 of the *Act* pursuant to section 144 of the *Act*.
33. The Tribunal should revoke the Investigation Order on the basis that:

- (a) The Investigation Order is an abuse of the Commission's process, as the repudiation of a settlement agreement and re-litigation of past conduct that led to the Undertaking.
- (b) The Investigation Order is a breach of the Commission's settlement agreement with Binance, in particular the Reservation of Rights set out at s. 11 of the Undertaking.
- (c) The Investigation Order was issued for an improper purpose, being the monitoring of Binance's compliance with the Undertaking in a manner that exceeds the compliance mechanisms agreed to in the Undertaking.
- (d) The Investigation Order has no legitimate purpose for the due administration of Ontario securities law or the regulation of the capital markets in Ontario given that those purposes are addressed by the compliance mechanisms set out in the Undertaking, and Binance has already confirmed that it will not be continuing to provide services in Ontario or Canada.
- (e) The Investigation Order was issued without any actual factual basis. It cites as its impetus recent unproven allegations made by the Commodity Futures Trading Commission against Binance in the US. These allegations, which were made in a different jurisdiction and regulatory context, do not contain allegations that Binance violated Ontario securities laws, acted contrary to the public interest in Ontario, or breached the Undertaking.
- (f) Such further grounds as counsel may advise and this Tribunal may permit.

The Summons should be quashed

34. The Tribunal has the authority to quash the Summons pursuant to:
- (a) Its authority to revoke the Investigation Order under section 144 of the *Act*; and
 - ~~(b) Its power to determine its own procedures and practices pursuant to s. 25.0.1 of the *Statutory Powers Procedures Act*.~~
35. The Tribunal should quash the Summons on the basis that:
- (a) The Summons was issued as part of an abuse of the Commission's process.
 - (b) The Summons was issued in breach of the Commission's settlement agreement with Binance.
 - (c) The Summons was issued for the improper purpose of monitoring Binance's compliance with the Undertaking.
 - (d) The Summons is too broad to be enforced and is an inappropriate fishing expedition into the affairs of Binance.
 - (e) The Summons requests documents and information that have no legitimate connection to the Investigation Order.
 - (f) The Summons is impermissibly vague as to the identity of the individual who is required to comply with the requests therein.

- (g) Items 1-3 of Schedule “A” of the Summons contain requests for information rather than documents, which is beyond the Commission’s investigative powers under s. 13(1) of the *Act*.
 - (h) The Summons seeks to compel Binance to produce documents outside of its custody or possession, which is beyond the Commission’s investigative powers under s. 13(1) of the *Act*.
 - (i) Such further grounds as counsel may advise and this Tribunal may permit.
36. The Tribunal should also quash the Summons on the basis that it is an unreasonable search and seizure contrary to s. 8 of the *Canadian Charter of Rights and Freedoms*, and in particular:
- (a) Binance has a reasonable expectation of privacy in the documents and information requested in the Summons relating to Binance’s business activities.
 - (b) The directors, officers, employees, contractors, agents and consultants of Binance and its related entities have a reasonable expectation of privacy in the communications requested in the Summons, and Binance has standing to assert those privacy interests on their behalf given:
 - (i) Binance’s relationship with these individuals:
 - (ii) That it would be impracticable to require each individual to assert their privacy interests in this proceeding, particularly given that there may be dozens of individuals whose privacy interests are impacted by the Summons

and s. 16 of the Act prohibits the disclosure of the nature or content of the Investigation Order and Summons to those individuals; and

- (iii) That the question involved is one of public importance.
- (c) The search and seizure of Binance's documents and information under the Summons is not authorized by the Act, on the basis that the Summons:
- (i) Was issued for the improper purpose of monitoring Binance's compliance with the Undertaking, and not for any legitimate investigative purpose;
 - (ii) Is an inappropriate fishing expedition into the affairs of Binance without proper factual foundation;
 - (iii) Requests documents and information that have no legitimate connection to the Investigation Order; and
 - (iv) Requests documents and information that are beyond the Commission's investigative powers under s. 13(1) of the Act.
- (d) The manner of the search of Binance's documents and information as requested in the Summons is unreasonable on the basis that it is overbroad and an inappropriate fishing expedition into the affairs of Binance without proper factual foundation.
- (e) The Tribunal is a court of competent jurisdiction for the purpose of s. 24(1) of the Charter and has jurisdiction to grant an appropriate remedy by quashing the Summons pursuant to s. 144 of the Act.

C. THE FOLLOWING EVIDENCE will be used at the hearing of the motion:

- (a) The Investigation Order;
- (b) The Summons;
- (c) The Undertaking;
- (d) Such further and other evidence as counsel may advise and this Tribunal may permit.

May ~~18-25~~, 2023

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