

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

NOTICE OF MOTION

(Motion to Stay Pending the Hearing of the Application)

The Applicant/Moving Party, Binance Holdings Limited (“**Binance**”), will make a motion to the Capital Markets Tribunal (the “**Tribunal**”).

A. ORDER SOUGHT

1. Binance, requests, with notice to Commission Staff, that the Tribunal make the following order:
 - (a) an Order staying the Investigation Order and Summons (defined below) pending determination of the merits of the Application (defined below); and
 - (b) such further relief as counsel may advise and the Tribunal may permit.

B. GROUNDS

Background

2. On May 10, 2023, the Commission issued an investigation order pursuant to s. 11 of the *Securities Act* (the *Act*) in the matter of Binance and Binance.com (the “**Investigation Order**”). The Investigation Order was issued by Grant Vingoe as Chief Executive Officer of the Commission.
3. The Investigation Order does not particularize any alleged breaches of Ontario securities law or conduct contrary to the public interest in Ontario beyond facts that were admitted to by Binance pursuant to an Undertaking and Acknowledgement dated March 16, 2022 (the “**Undertaking**”).
4. On May 11, 2023, pursuant to the Investigation Order, Jocelyn Wang, a Senior Forensic Accountant at the Commission, issued a summons to Binance under s. 13 of the *Act* (the “**Summons**”). The Summons is addressed to Binance Holdings Limited and does not name any individual person.
5. The Summons requires the production of “documents and things”, specified in Appendix “A” to the Summons, some of which is information that is not included in a document or other identified thing.
6. 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.” since January 1, 2021, without limitation. There is no requirement that these communications be related to Binance’s business.

7. The Summons specifically requires the production of identified communications that arise from the facts set out in the Undertaking entered into by Binance 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 (the “**Undertaking**”).
8. The Summons required that the documents and information requested therein be provided by May 25, 2023.
9. On May 18, 2023, Binance filed an Application with the Tribunal seeking an order to revoke the Investigation Order and quash the Summons pursuant to s. 144(1) of the *Act* (the “**Application**”).
10. On Friday May 19, 2023, Staff advised that they would extend the time for responding to the Summons to June 9, 2023.
11. At a First Attendance hearing held on May 26, 2023, Chief Adjudicator Moseley ordered that the question of the Tribunal’s jurisdiction to hear the Application under s. 144(1) of the *Act* be determined in advance of the hearing of the Application. A hearing to determine the Tribunal’s jurisdiction is scheduled for June 2, 2023.

12. A hearing of the merits of the Application has not yet been scheduled, pending the outcome of the preliminary hearing on the Tribunal's jurisdiction to hear the application under s. 144(1).
13. On May 29, 2023, Binance filed an Amended Notice of Application on consent seeking relief under s. 24(1) of the *Canadian Charter of Rights and Freedoms*, and served a Notice of Constitutional Question on the Attorney General of Canada and Attorney General of Ontario pursuant to s. 109 of the *Courts of Justice Act* and r. 31 of the *Capital Markets Tribunal Rules of Practice and Procedure*.
14. Pursuant to s. 109 of the *Courts of Justice Act* and r. 31 of the *Capital Markets Tribunal Rules of Practice and Procedure*, the Attorney General of Canada and Attorney General of Ontario are entitled to 15 days' notice prior to the hearing of the constitutional issue in the Amended Notice of Application, which period may be abridged by the Tribunal.
15. The Application will very likely be heard after Staff's deadline for responding to the Summons on June 9, 2023.

Request for a Stay

16. Binance seeks a stay of the Investigation Order and Summons pending a determination of the Application on its merits on the bases that:
 - (a) the issues raised in the Application pose serious questions;
 - (b) Binance will face irreparable harm if the stay is refused, on the basis that:

- (i) disclosure of the information and documents cannot be undone, such that it would render the Application moot; and
 - (ii) compliance with an order that is unconstitutional and illegal presents a substantial risk of harm to the legal rights and interests of Binance and other individuals subject to the Summons, which harm is not remediable;
 - (c) the balance of convenience weighs in favour of Binance that there is no harm to the Commission or the public interest in the regulation of securities if a stay of the Investigation Order and Summons is granted pending a determination on the Application.
17. The Tribunal has jurisdiction to grant a stay of the Investigation Order and Summons pursuant to s. 144(1) of the *Securities Act* and ss. 16.1 and 25.0.1 of the *Statutory Powers Procedure Act*.
18. Binance pleads and relies on:
- (a) Section 144(1) of the *Securities Act*, R.S.O. 1990, c. S.5;
 - (b) Sections 16.1 and 25.0.1 of the *Statutory Powers Procedure Act*; and
 - (c) Rule 28 of the Capital Markets Tribunal Rules of Procedure and Forms.
19. Such further and other grounds as counsel may advise and the Tribunal may permit.

C. EVIDENCE

20. Binance intends to rely on the following evidence for the motion:

- (a) The Affidavit of Caitlin R. Sainsbury, to be affirmed, with exhibits thereto; and
- (b) Such further and other evidence as counsel may advise and the Tribunal may permit.

Date: June 1, 2023

BORDEN LADNER GERVAIS LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street West, Suite 3400
Toronto ON M5H 4E3
F: 416.367.6749

Graeme Hamilton (LSO# 56790A)
ghamilton@blg.com
416.367.6746

Teagan Markin (LSO# 74337R)
tmarkin@blg.com
416.367.6379

Brianne Taylor (LSO# 82082L)
btaylor@blg.com
416.367.6292

Lawyers for Binance Holdings Limited

TO: **ONTARIO SECURITIES COMMISSION**
20 Queen Street West, 22nd Floor
Toronto, ON MH5 3S8

Aaron Dantowitz (LSO# 47384L)
ADantowitz@osc.gov.on.ca
416.593.3678

Alvin Qian (LSO# 72360F)
AQian@osc.gov.on.ca

Counsel to the Ontario Securities Commission

AND TO: The Attorney General of Ontario
Constitutional Law Branch
4th Floor
720 Bay Street
Toronto, Ontario M5G 2K1
clbsupport@ontario.ca

AND TO: The Attorney General of Canada
120 Adelaide Street West
Suite 400
Toronto, Ontario M5H 1T1
NCQ-AQC.Toronto@justice.gc.ca