



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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IN THE MATTER OF
PHEMEX LIMITED and PHEMEX TECHNOLOGY PTE. LTD.

STATEMENT OF ALLEGATIONS

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

A. OVERVIEW

1. The Enforcement Branch of the Ontario Securities Commission brings this proceeding to hold Phemex Limited and Phemex Technology Pte. Ltd. (collectively, the **Respondents**) accountable for disregarding Ontario securities law and to signal that crypto asset trading platforms flouting Ontario securities law will face regulatory action.
2. The Respondents operated an online crypto asset trading platform under the trade name "Phemex" (the **Phemex Platform**) on which Ontario investors could trade in securities and derivatives based on exposure to underlying assets that included crypto assets. The Phemex Platform was available to Ontario residents at least during the period between November 25, 2019 and January 6, 2023 (**Material Time**). Since on or about January 7, 2023, the Phemex Platform is no longer accessible to investors using an Ontario internet protocol (**IP**) address.
3. The Respondents are subject to Ontario securities law because, prior to January 7, 2023, the Phemex Platform offered crypto asset products that are securities and derivatives to investors, including Ontario investors. They nonetheless failed to comply with the registration and prospectus requirements under Ontario securities law.
4. Registration and disclosure are cornerstones of Ontario securities law. The registration requirement serves an important gate-keeping function by ensuring that only properly

qualified and suitable persons are permitted to engage in the business of trading. Prospectus requirements are fundamental to ensuring investors are provided with full, true and plain disclosure of all material facts relating to the securities being offered.

5. Entities such as the Respondents that do not comply with Ontario securities law expose investors to unacceptable risks and create an uneven playing field within the crypto asset trading platform sector.

B. FACTS

Staff of the Enforcement Branch of the Ontario Securities Commission (**Enforcement Staff**) make the following allegations of fact:

(a) The Phemex Platform

6. The Phemex Platform went live on or around November 25, 2019.
7. During the Material Time, the Phemex Platform could be accessed through the website located at www.phemex.com and through mobile apps on the Google and Apple app stores.
8. Investors accessed the Phemex Platform by first creating an account on the platform using an online application process which does not require know-your-client information such as name, phone number and address.
9. After opening an account, an investor could deposit crypto assets into the account. Investors made crypto asset deposits by transferring crypto assets to a wallet controlled by the Respondents. Through third parties identified on the Phemex Platform, investors were also provided with the option to purchase crypto assets using fiat currency, including Canadian dollars.
10. During the Material Time, the Respondents maintained custody of crypto assets deposited and traded on the Phemex Platform in wallets they controlled. Investors did not have possession or control of crypto assets deposited or traded on the Phemex Platform. Rather, they saw a crypto asset balance displayed in their account on the Phemex Platform. In order to take possession of crypto assets reflected in their account balance, an investor was required to request a withdrawal and was dependent on the Respondents to satisfy that withdrawal request by delivering crypto assets to an investor-controlled wallet.

11. While the Respondents purported to facilitate trading of the crypto assets in its investors' accounts, in practice, they only provided their investors with instruments or contracts involving crypto assets. These instruments or contracts constitute securities and derivatives.
12. During the Material Time, investors were also able to trade crypto asset futures contracts on the Phemex Platform that constitute securities and derivatives. The Phemex Platform allowed investors to engage in leveraged trading of up to 100:1 on various futures contracts.
13. The Phemex Platform offered bonuses, fee discounts and other promotions to solicit trading by investors. The Phemex Platform also employed a multi-level recruiting strategy named the "Phemex All-Star Program" which encouraged existing investors to refer new investors to the Phemex Platform in exchange for commissions based on trading fees collected from those referrals.
14. The Phemex Platform charged fees for trades on the platform and for crypto asset withdrawals.

(b) Operators of the Phemex Platform

15. Phemex Limited and Phemex Technology Pte. Ltd. operated the Phemex Platform during the Material Time.
16. Phemex Limited is a company incorporated under the laws of the British Virgin Islands. An archived version of the Phemex Platform's Terms of Use dated March 18, 2020 states that "Phemex is a platform operated by Phemex Limited".
17. Phemex Technology Pte. Ltd. is a company incorporated under the laws of Singapore. It has been identified on the Google and Apple app stores as the developer of the mobile apps associated with the Phemex Platform.
18. Phemex Technology Pte. Ltd. is a wholly owned subsidiary of Phemex Limited.
19. The Respondents have never been registered with the Commission in any capacity or obtained an exemption from the registration requirement. The Respondents have also never filed a prospectus with the Commission or obtained an exemption from the prospectus requirement.

(c) Phemex's Ontario presence

20. The Phemex Platform was accessible to Ontario residents during the Material Time. The Commission's investigation team was able to open an account on the Phemex Platform and conduct transactions.
21. On or about January 3, 2023, Phemex added Ontario to its list of restricted locations in the Phemex Platform's Terms of Use, after being contacted by the Commission's investigation team regarding its activities in Ontario. No notification about this change was sent to investors.
22. On or about January 7, 2023, the Respondents implemented a restriction based on IP addresses to purportedly restrict Ontario residents from accessing the Phemex Platform (**IP Address Restriction**).
23. Existing investors impacted by the IP Address Restriction were not notified of the reason for the IP Address Restriction. In particular, the Respondents did not notify existing investors that Ontario residents were prohibited from using the Phemex Platform.
24. In addition, the Respondents did not provide any guidance to existing investors impacted by the IP Address Restriction on how to withdraw their assets held on the Phemex Platform in light of the IP Address Restriction.
25. Prior to the implementation of the IP Address Restriction, as of January 6, 2023, the Phemex Platform had a total of 117 accounts for investors who: (a) self-identified as Ontario residents; and/or (b) primarily accessed their accounts using an Ontario IP address (**Ontario Accounts**). These investors traded the products offered on the Phemex Platform, as described above, in the Ontario Accounts.
26. In total, the Respondents obtained at least 39,712.43 USDT (a.k.a. Tether) in fees from the Ontario Accounts based on total trading volume in those accounts which exceeded 74 million USDT.

C. BREACHES AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

27. Enforcement Staff allege the following breaches of Ontario securities law and conduct contrary to the public interest:

- (a) Phemex Limited and Phemex Technology Pte. Ltd. each engaged in, or held itself out as engaging in, the business of trading in securities without the necessary registration or an applicable exemption from the registration requirement, contrary to subsection 25(1) of the *Securities Act*, RSO 1990, c. S.5, as amended (the **Act**);
- (b) Phemex Limited and Phemex Technology Pte. Ltd. each engaged in trading in securities which constitute distributions without complying with the prospectus requirements and without an applicable exemption from the prospectus requirements, contrary to section 53 of the Act; and
- (c) In addition to breaching Ontario securities law as outlined above, Phemex Limited and Phemex Technology Pte. Ltd. each acted in a manner contrary to the fundamental purposes and principles of the Act as set out in sections 1.1 and 2.1 of the Act, and contrary to the public interest. Specifically, by engaging in the business of trading in securities through the Phemex Platform without the necessary registration, prospectus or exemptions from those requirements and by making the Phemex Platform available in Ontario, the Respondents undermined safeguards intended to protect investors from unfair, improper or fraudulent practices. Furthermore, by failing to comply with the registration and prospectus requirements before offering securities to Ontario residents, with which other crypto asset trading platforms are required to comply, at a cost, the Respondents undermined the fairness, efficiency, and confidence in the Ontario capital markets.

28. These allegations may be amended, and further and other allegations may be added as the Capital Markets Tribunal (the **Tribunal**) may permit.

D. ORDER SOUGHT

29. Enforcement Staff request that the Tribunal make the following orders against the Respondents:

- (a) 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;

- (b) 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;
- (c) 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;
- (d) that they submit to a review of their practices and procedures and institute such changes as may be ordered by the Tribunal, pursuant to paragraph 4 of subsection 127(1) of the Act;
- (e) that they be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;
- (f) that they be prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter permanently or for such period as is specified by the Tribunal, pursuant to paragraph 8.5 of subsection 127(1) of the Act;
- (g) 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;
- (h) that they disgorge to the Commission any amounts obtained as a result of non-compliance with Ontario securities law, pursuant to paragraph 10 of subsection 127(1) of the Act;
- (i) that they pay the costs of the Commission investigation and the hearing, pursuant to section 127.1 of the Act; and
- (j) such other orders as the Tribunal considers appropriate in the public interest.

DATED this 5th day of September, 2023.

ONTARIO SECURITIES COMMISSION

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