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Citation: *Vuong (Re)*, 2023 ONCMT 32  
Date: 2023-09-29  
File No. 2023-16

**IN THE MATTER OF  
APRIL VUONG and HAO QUACH**

**REASONS AND DECISION**

**(Subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990, c S.5)**

**Adjudicators:** M. Cecilia Williams (chair of the panel)

**Hearing:** In writing; final written submissions received July 6, 2023

**Appearances:** Vincent Amartey For Staff of the Ontario Securities  
Commission

No one appearing for April Vuong and Hao Quach

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## REASONS AND DECISION

### 1. OVERVIEW

- [1] On July 5, 2018, the respondents April Vuong and Hao Quach were convicted of fraud before the Ontario Superior Court of Justice. The Court found that Vuong and Quach had engaged in a large scale and sophisticated fraud whereby they solicited funds from individuals, with promises of significant investment returns, but used some of the funds to pay returns to other investors, akin to a Ponzi scheme, and for personal expenses.
- [2] Staff of the Ontario Securities Commission commenced this enforcement proceeding, which is known as an inter-jurisdictional enforcement proceeding, relying principally on Vuong's and Quach's conviction in court. Staff asks for an order banning Vuong and Quach permanently from the capital markets.
- [3] Vuong and Quach were afforded an opportunity to participate in this proceeding. They did not. As I explain below, I conclude that it is in the public interest to make the order Staff requests.

### 2. SERVICE AND PARTICIPATION

- [4] Staff elected to bring this proceeding using the expedited procedure for inter-jurisdictional enforcement proceedings as set out in Rule 11(3) of the Tribunal's *Rules of Procedure and Forms* (the **Rules**). That procedure allows a respondent who is served with a Notice of Hearing to request an oral hearing, or to file a hearing brief and written submissions.
- [5] According to the affidavit of Rita Pascuzzi sworn on July 6, 2023,<sup>1</sup> Staff served Vuong and Quach with the Notice of Hearing, Statement of Allegations, and other written materials by courier, on June 29, 2023. I am satisfied that Staff has complied with the service obligations set out in Rule 11(2).

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<sup>1</sup> Marked as exhibit 1 in this hearing

[6] Neither Vuong nor Quach responded, either to request an oral hearing or by filing materials. Pursuant to the *Statutory Powers Procedure Act*<sup>2</sup> and the Rules,<sup>3</sup> the Tribunal may proceed in the absence of a party where that party has been given adequate notice of a proceeding. I am satisfied that Vuong and Quach received adequate notice of this proceeding and that I may proceed in their absence.

### **3. ANALYSIS**

#### **3.1 Introduction**

[7] Subsection 127(1) of the *Securities Act*<sup>4</sup> (the **Act**) empowers the Tribunal to make various orders against an individual if, in the Tribunal's opinion, it is in the public interest to do so. Subsection 127(10) of the Act explicitly authorizes an order under s 127(1) where a person has been convicted in any jurisdiction of an offence arising from a transaction, business, or course of conduct related to securities or derivatives.

[8] Vuong and Quach were convicted of one count of fraud over \$5000, contrary to s 380(1)(a) of the *Criminal Code*.<sup>5</sup> They were given a custodial sentence of five years, eight months, and 19 days.

[9] Vuong and Quach appealed their convictions and sentence. On October 12, 2021, the Court of Appeal dismissed the appeals.

#### **3.2 Did Vuong and Quach engage in a transaction, business or course of conduct related to securities or derivatives?**

[10] I must determine whether the criminal offence arose from a transaction, business or course of conduct related to securities or derivatives. I conclude that it did, based on the facts described in the sentencing decision dated October 23, 2018.<sup>6</sup>

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<sup>2</sup> RSO 1990, c S.22, s 7(2)

<sup>3</sup> Rules, r 21(3)

<sup>4</sup> RSO, 1990, c S.5

<sup>5</sup> RSC, 1985, c C-46

<sup>6</sup> Contained in Staff's Hearing Brief, marked as exhibit 2 in this hearing (**Reasons for Sentencing**)

- [11] Vuong and Quach defrauded numerous investors of \$5,175,000 in a large scale and sophisticated investment scam resembling a Ponzi scheme. They solicited investors under the guise of their money being protected and guaranteed high annual rates of interest between 12 and 15 per cent and sometimes as high as 20 per cent.
- [12] Investor funds were deposited into multiple bank accounts held in the name of Vuong and Quach jointly, bank accounts held in their own names individually, and bank accounts held in the name of Systematech Solutions Inc. Vuong and Quach had originally incorporated this company as a software consulting company. By 2007, they were using the company as a vehicle to offer investment opportunities to various investors. Vuong and Quach were the sole directors and employees of the company. None of Vuong, Quach nor the company has ever been registered with the Commission in any capacity.
- [13] Vuong and Quach provided most investors with promissory notes setting out the guaranteed rates of interest. Staff submits, and I agree, that the promissory notes were securities as defined in s 1(1) of the Act and as determined by the Tribunal in various prior decisions.<sup>7</sup> Vuong and Quach operated in tandem to solicit investments and issued the promissory notes to investors. They thereby engaged in a course of conduct related to securities.

### **3.3 Appropriate sanctions**

- [14] I now turn to consider whether it is in the public interest to grant the order requested by Staff, barring Vuong and Quach from the capital markets permanently.
- [15] I conclude that the requested order, with one variation, is in the public interest, for the following reasons:
- a. Vuong's and Quach's conduct was fraudulent, making it among the most egregious kinds of misconduct related to the capital markets;

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<sup>7</sup> *Dunk (Re)*, 2019 ONSEC 6, at para 16; *Cook (Re)*, 2018 ONSEC 6 at para 4; *Nixon Lau (Re)* 2017 ONSEC 28 at para 6; *21967628 Ontario Ltd. (Rare Investments)*, 2014 ONSEC 17 at para 94

- b. the Court viewed their conduct as serious, as reflected in the custodial sentence of 5 years, 8 months, and 19 days;<sup>8</sup>
- c. this was a large scale fraud involving many victims who were defrauded of \$5,175,000. Vuong and Quash were ordered to pay restitution of \$3,567,992 to 12 investors;<sup>9</sup>
- d. the fraud was complex and occurred over a five-year period;<sup>10</sup>
- e. Vuong and Quach were motivated by greed, as they continued to personally benefit from the scheme through cash withdrawals, credit card debt payments, and retail transactions, diverting money to themselves while their promises to pay victims' interest and return their principal went largely unfulfilled;<sup>11</sup> and
- f. their misconduct had a devastating impact on many investors.<sup>12</sup>

[16] The variation to the relief sought by Staff is that I have not included references to "investment fund manager" because investment fund managers are registrants under the Act.<sup>13</sup>

[17] Neither Vuong nor Quach appeared in this proceeding to offer mitigating factors or to submit that Staff's request ought not to be granted.

[18] Their conduct demonstrates that Vuong and Quach cannot be trusted. A permanent ban from the capital markets is required to protect investors by restraining future conduct by Vuong and Quach that would be detrimental to the integrity of the capital markets. A permanent ban is also necessary to act as a general deterrent to other like-minded individuals who might be inclined to engage in similar conduct.

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<sup>8</sup> Reasons for Sentencing at para 139

<sup>9</sup> Reasons for Sentencing at paras 132 and 135

<sup>10</sup> Reasons for Sentencing at paras 112-114

<sup>11</sup> Reasons for Sentencing at para 119

<sup>12</sup> Reasons for Sentencing at paras 115-116

<sup>13</sup> *Inverlake (Re)*, 2018 ONSEC 35 at para 39

#### **4. CONCLUSION**

[19] I agree with Staff's submission that Vuong and Quach should be permanently banned from the capital markets because of their misconduct. Accordingly, I shall issue an order in reliance on paragraph 1 of s 127 (10) of the Act, that provides that:

- a. pursuant to paragraph 2 of s 127(1) of the Act, trading in any securities or derivatives by Vuong and Quach cease permanently;
- b. pursuant to paragraph 2.1 of s 127(1) of the Act, acquisition of any securities by Vuong and Quach be prohibited permanently;
- c. pursuant to paragraph 3 of s 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Vuong and Quach permanently;
- d. pursuant to paragraphs 7, 8.1 and 8.3 of s 127(1) of the Act, Vuong and Quach resign any positions that they hold as a director or officer of any issuer or registrant;
- e. pursuant to paragraphs 8, 8.2 and 8.4 of s 127(1) of the Act, Vuong and Quach be prohibited permanently from becoming or acting as a director or officer of any issuer or registrant; and
- f. pursuant to paragraph 8.5 of s 127(1) of the Act, Vuong and Quach be prohibited permanently from becoming or acting as a registrant or promoter.

Dated at Toronto this 29<sup>th</sup> day of September, 2023

*"M. Cecilia Williams"*

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M. Cecilia Williams