Ontario

Capital Markets Tribunal | Tribunal des marchés financiers | 22nd Floor 20 Queen Street West Toronto ON M5H 3S8 | 22e étage 20, rue Queen ouest Toronto ON M5H 3S8

Citation: *Phemex Limited (Re)*, 2025 ONCMT 9
Date: 2025-06-13
File No. 2023-22

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

REASONS AND DECISION

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

Adjudicators:	Cathy Singer (chair of the panel) Russell Juriansz Mary Condon	
Hearing:	March 3 and April 15, 2025	
Appearances:	Alvin Qian	For the Ontario Securities Commission
	Ran He	For Phemex Limited and Phemex Technology Pte. Ltd.

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REASONS AND DECISION

1. OVERVIEW

[1] In a decision on the merits dated December 18, 2024 (the **Merits Decision**),[1] the Capital Markets Tribunal found that the respondents, Phemex Limited and Phemex Technology Pte. Ltd., operated an online crypto asset trading platform (the **Phemex Platform**) and sold securities to Ontario investors without complying with the registration and prospectus requirements under the *Securities Act* (the ***Act***).[2]

[2] The Commission now seeks sanctions against the respondents pursuant to s. 127(1) of the *Act* and an order that they pay a portion of the Commission's investigation and proceeding costs.

[3] For the reasons set out below, we conclude it would be in the public interest to order that the respondents be permanently banned from participating in Ontario's capital markets, and jointly and severally:

a. disgorge to the Commission US$39,712.43;

b. pay an administrative penalty of $300,000; and

c. pay $134,975 of the Commission's costs.

2. BACKGROUND

[4] In the Merits Decision, the Tribunal found that the respondents contravened Ontario securities law by:

a. engaging in the business of trading in securities without registration or without obtaining an exemption from the registration requirement, contrary to s. 25(1) of the *Act*; and

b. distributing securities without filing a prospectus or without obtaining an exemption from the prospectus requirement, contrary to s. 53(1) of the *Act*.

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[1] 2024 ONCMT 30

[2] RSO 1990, c S.5

[5] The respondents operated the Phemex Platform and made it available to Ontario investors between November 2019 and January 2023. They solicited investors to use the platform to engage in trading activity. Phemex Technology developed and operated the mobile apps that enabled investors to trade on the platform.

[6] At least 117 Ontario investors traded over 74 million USDT (equivalent in value to over US$74 million) worth of securities on the platform. The respondents earned fees of 39,712.43 USDT.

[7] On January 7, 2023, after being contacted by the Commission, the respondents implemented IP-based restrictions that blocked Ontario IP addresses from accessing the Platform.

[8] At the merits hearing on October 7, 2024, Phemex Limited and the Commission filed a Statement of Agreed Facts. Phemex Limited subsequently conceded the statutory breaches in its opening statement.

3. ANALYSIS

3.1 Introduction

[9] The Tribunal may impose sanctions under s. 127(1) of the *Act* where it finds it to be in the public interest to do so. The Tribunal's exercise of that jurisdiction must be consistent with the purposes of the *Act*, which include protecting investors from unfair, improper and fraudulent practices, and fostering fair and efficient capital markets and confidence in them.

[10] Sanctions are protective and are intended to prevent future harm to investors and to the capital markets.[3]

[11] The Commission seeks the following sanctions and costs against the respondents:

a. permanent prohibitions on their ability to participate in Ontario's capital markets;

b. disgorgement of US$39,712.43, to be paid on a joint and several basis;

[3] *Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at para 42

c. an administrative penalty of $500,000, to be paid on a joint and several basis; and

d. costs of $134,975, to be paid on a joint and several basis.

[12] The respondents accept the proposed permanent market participation bans and disgorgement order but dispute the requested administrative penalty and costs order.

[13] Before discussing appropriate sanctions, we consider the status of Phemex Technology and its impact on our analysis.

[14] As noted in the Merits Decision, Phemex Technology was dissolved on September 4, 2024. We observed that Phemex Technology's dissolution did not detract from our ability to exercise our jurisdiction to make findings that it violated the *Act*.[4] We consider it in the public interest to make orders against Phemex Technology despite its dissolution, as it may be possible for it to be revived in the future.[5]

3.2 Market participation bans

[15] The Commission seeks permanent market participation bans against the respondents, with a carve-out to allow Ontario investors to close out their positions and withdraw their assets held on the Phemex Platform.

[16] The respondents accept that permanent market participation bans are in the public interest. We agree. Participation in the capital markets is a privilege, not a right.[6] Permanent market bans are necessary to protect Ontario investors and send a strong deterrent message to other crypto trading asset platforms.

3.3 Disgorgement

[17] The Commission requests, pursuant to s. 127(1)10 of the *Act*, that the respondents be ordered to disgorge, on a joint and several basis, the value of the fees they obtained as a result of their breaches of Ontario securities law.

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[4] Merits Decision at paras 16-17

[5] *Nvest Canada Inc (Re)*, 2024 ONCMT 25 at para 119; *Smillie (Re)*, 2024 BCSECCOM 496 at paras 51 and 102

[6] *Erikson v OSC,* 2003 CanLII 2451 (Div Ct) at paras 55-56

[18] The respondents accept that the requested disgorgement order is appropriate and in the public interest. We agree.

[19] Together the respondents earned USDT 39,712.43 in fees. The Commission provided evidence showing that during the material time, USDT traded on various crypto trading platforms globally against USD at an exchange rate close to 1-to-1. We therefore order that the respondents disgorge US$39,712.43.

3.4 Administrative penalty

3.4.1 Introduction

[20] Paragraph 9 of s. 127(1) of the *Act* provides that if a person or company has not complied with Ontario securities law, the Tribunal may require the person or company to pay an administrative penalty of not more than $1 million for each failure to comply.

[21] The Commission requests an administrative penalty of $500,000, while the respondents submit a penalty in the range of $150,000 to $200,000 is more appropriate and proportionate.

[22] There is no formula for determining the quantum of an administrative penalty. The panel must be satisfied that it is in the public interest to levy the penalty. The purpose of administrative penalties is to protect the public by deterring future misconduct, not to punish.[7]

[23] In determining appropriate sanctions, the Tribunal considers a number of factors, the relevance and weight of which depend on the circumstances of the case.[8] A predominant factor when considering an appropriate administrative penalty is the seriousness of the misconduct. Additional factors that are relevant in this case include the respondents' level of activity in the marketplace, the size of the profit they obtained, whether they have recognized the seriousness of their improprieties, their experience in the marketplace and deterrence. We discuss these factors below.

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[7] *Cartaway Resources Corp (Re)*, 2004 SCC 26 at para 60

[8] *Belteco Holdings Inc (Re)*, (1998) 21 OSCB 7743 at 7746

3.4.2 Seriousness of the misconduct

[24] The respondents violated the *Act* by failing to comply with their registration and prospectus requirements. The registration requirement enables regulatory oversight to promote the competence and integrity of registrants. The prospectus requirement ensures investors are provided with the necessary information to make informed investment decisions. These requirements are cornerstones of the protection of investors and fair and efficient capital markets. The respondents deprived Ontario investors of these essential statutory protections. Their non-compliance is a serious breach of the *Act* and warrants a significant administrative penalty.

3.4.3 Level of activity in the marketplace and the size of the profit obtained

[25] At least 117 Ontario investors used the Phemex Platform to trade in crypto asset products with a total trading volume of over US$74 million. The respondents earned US$39,712.43 in fees. These numbers, particularly the amount earned, are lower than in most of the crypto cases cited by the Commission (where those numbers were able to be calculated).[9] That said, we regard the trading volume on the platform as significant.

3.4.4 Recognition of seriousness of the improprieties

[26] The parties dispute whether and how the respondents cooperated with the Commission before and after this proceeding commenced in September 2023. The Commission submits there was no cooperation from the respondents between September and December 2022. The Commission also emphasizes it did not reach a Statement of Agreed Facts with Phemex Limited until September 26, 2024, shortly before the merits hearing began on October 7, 2024.

[27] We acknowledge this. But there is wisdom in the adage — "better late than never." Agreements to facts at any stage of the proceeding should be encouraged. Agreed facts streamline the proceedings, narrow the issues, and save time and resources for the parties and the Tribunal. In this case, the agreement was comprehensive and covered all the essential facts. Phemex

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[9] *Polo Digital Assets, Ltd (Re)*, 2022 ONCMT 32 (***Polo Digital***); *Manticore Labs OU (Re)*, 2025 ONCMT 1; *Bybit Fintech Limited (Re)*, 2022 ONCMT 16 (***Bybit***); *Aux Cayes Fintech Co Ltd (Re)*, 2022 ONCMT 30 (***Aux Cayes***)

Limited followed up by formally conceding the statutory breaches during its opening statement at the merits hearing.

[28] We accept the respondents' claim that, since their current counsel was retained in June 2023, they have been committed to cooperating with the Commission. That claim is consistent with their counsel's conduct before the Tribunal.

[29] The respondents' cooperation is a mitigating factor. Needless to say, an earlier agreement would have had a greater mitigating effect.

3.4.5 Experience in the marketplace

[30] The respondents point out that they were incorporated in Singapore and relied on agents in different countries to carry out and maintain corporate registration. They submit they were not familiar with the processes in Ontario. It is trite that ignorance of the law is no excuse. The law requires that operators of crypto platforms accessible by Ontario residents comply with Ontario's registration and prospectus requirements. Crypto platforms and other entities that operate globally are not exempt from the requirements that exist to protect Ontario investors.

[31] We reject the contention that the respondents' lack of experience in the Ontario marketplace should have a mitigating effect.

3.4.6 Deterrence

[32] Specific and general deterrence must be considered in determining the appropriate administrative penalty. In our view, the respondents' acceptance of a permanent market participation ban reduces our need to consider specific deterrence in assessing the appropriate administrative penalty.

[33] General deterrence, however, remains essential to fulfilling the dual purposes of an administrative penalty — protection and prevention. The penalty must be substantial enough to deter similar misconduct by other crypto asset platforms, without crossing the line into punitive enforcement.

3.4.7 Quantum

[34] In its submissions about the appropriate administrative penalty, the Commission relied only on prior decisions of this and other tribunals involving unregistered

crypto operators, and the respondents relied on decisions involving more traditional investment vehicles.

[35] The existing body of precedents involving crypto platforms is, in important respects, incomplete. In many earlier crypto-related cases, the respondents did not appear before the Tribunal or cooperate with the Commission's investigators. Consequently, little was known about the scope of the respondents' Ontario operations. As a result, the Tribunal had no alternative but to impose administrative penalties in the absence of complete evidence about the number of Ontario investors, the volume of trading activity within the province, or the profits earned from Ontario accounts.

[36] For example, in *Mek Global Limited,*[10] the Tribunal held a written merits and sanctions hearing in the respondents' absence after they did not participate in the Commission's investigation and chose not to participate in the proceeding. In fact, the respondents continued their illegal activities in Ontario throughout the proceeding.[11] The Tribunal imposed an administrative penalty in the amount of $2 million, primarily to reflect the seriousness of the misconduct and the respondents' disregard for the regulatory process. Similarly in Quebec, in *Coinex Global Limited*,[12] the Autorité des marchés financiers, without information about the respondent's Quebec operations, noted the respondents continued trading during the proceedings and imposed a comparable penalty.

[37] In *Polo Digital,* the panel had a more complete picture of the respondents' Ontario operations.[13] However, the respondents did not participate in the merits and sanctions hearings, leaving the Commission's evidence about revenue unchallenged. The Tribunal imposed a $1,500,000 administrative penalty, emphasizing the need to create an economic disincentive for Polo Digital and deter others in the crypto asset trading sector from evading Ontario securities law.[14]

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[10] 2022 ONCMT 15 (***Mek Global***)
[11] *Mek Global* at para 95
[12] 2023 QCTMF 75 at paras 269-271
[13] *Polo Digital* at para 103
[14] *Polo Digital* at para 134

[38] In *Aux Cayes* and *Bybit*, the Tribunal had a fuller picture of the respondents' Ontario operations. The administrative penalties imposed were markedly different than the above – none in *Bybit* and $600,000 in *Aux Cayes.* As both cases were settlements, and the product of negotiations between the parties, the precedential value of these decisions is limited. It is unclear if the same penalties would be imposed if there had been a contested hearing.

[39] Lastly, in *LiquiTrade Ltd*,[15] the British Columbia Securities Commission imposed a $500,000 administrative penalty. As in the present case, the LiquiTrade platform had a small number of investors and the fees earned were described as "likely nominal".[16] Unlike in this case, the respondent did not participate in the proceeding.[17]

[40] The penalties in earlier crypto cases often reflect not only the seriousness of the conduct at issue, but also the grave aggravating factor of noncooperation. By contrast, we have found the respondents' cooperation in this case to be a mitigating factor.

[41] In the more traditional unregistered trading cases cited by the respondents[18] there is more consistent and complete evidence about the scope of the misconduct, including investor losses, revenue earned, and level of cooperation. Although these cases share the common regulatory objective of deterring unregistered trading and protecting investors, they do not involve crypto assets.

[42] The crypto market has distinctive features and an evolving risk profile. The crypto market's use of the internet enables global operations and a disregard of jurisdictional boundaries. We must take into account this context when fashioning the appropriate sanctions. At the same time, unreflective reliance on the earlier crypto cases could lead us to impose penalties that are disconnected from the facts of the case before us.

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[15] *LiquiTrade Ltd (Re)*, 2024 BCSECCOM 406 (***LiquiTrade***)

[16] *LiquiTrade* at para 16

[17] *LiquiTrade* at para 26

[18] *Nvest Canada Inc (Re)*, 2024 ONCMT 25; *VRK Forex & Investments Inc (Re)*, 2022 ONCMT 28; *Ava Trade Ltd (Re)*, 2019 ONSEC 27; *eToro (Europe) Limited (Re)*, 2018 ONSEC 49; *MBS Group (Canada) Ltd (Re)*, 2013 ONSEC 15

[43] We conclude that both crypto-related and traditional cases offer relevant but incomplete guidance. We must impose a penalty that reflects the seriousness of the misconduct in light of the factors we have discussed above, and the need to deter similar misconduct. The penalty should also foster engagement with the regulatory process.

[44] Taking all the factors above into account, we impose an administrative penalty of $300,000, to be paid by the respondents on a joint and several basis. Absent the respondents' cooperation, a higher administrative penalty would have been appropriate.

3.5 Costs

[45] A costs order under s. 127.1 of the *Act* aims to reduce the burden on market participants — who finance the Commission through fees — by recouping expenses for investigations and enforcement proceedings.

[46] The Commission's Bill of Costs for this case totals $148,526.25. The Commission excluded certain items, such as time spent on settlement discussions and negotiations. After applying a 9.12% discount, the Commission seeks a costs order of $134,975 on a joint and several basis.

[47] The respondents propose a costs order of approximately $75,000, arguing the Commission's costs were excessive given their cooperation. They did not challenge the Bill's calculations but claim the Commission unnecessarily prepared for a full hearing despite their willingness to admit liability.

[48] We reject the respondents' position for two reasons. First, we have already taken their cooperation into account in mitigating the administrative penalty. Second, without a settlement or executed agreed statement of facts, the Commission was obliged to fully prepare its case. Although the late agreement did shorten the hearing considerably, this is already reflected in the Bill of Costs.

[49] We therefore find it to be in the public interest to grant the costs order sought by the Commission.

4. CONCLUSION

[50] For the above reasons, we order that:

a. pursuant to paragraph 2 of s. 127(1) of the *Act*, trading in any securities or derivatives by the respondents shall cease permanently;

b. pursuant to paragraph 2.1 of s. 127(1) of the *Act*, the acquisition of any securities by the respondents is 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 the respondents permanently;

d. notwithstanding the above, the respondents are permitted to engage in transactions in securities and/or derivatives to the extent necessary to permit Ontario investors to close out their positions and withdraw their funds from the Phemex Platform;

e. pursuant to paragraph 8.5 of s. 127(1) of the *Act*, the respondents are prohibited from becoming or acting as a registrant or as a promoter permanently;

f. pursuant to paragraph 9 of s. 127(1) of the *Act*, the respondents shall pay, jointly and severally, an administrative penalty of $300,000;

g. pursuant to paragraph 10 of s. 127(1) of the *Act*, the respondents shall disgorge, jointly and severally, US$39,712.43; and

h. pursuant to s. 127.1 of the *Act*, the respondents shall pay, jointly and severally, costs to the Commission in the amount of $134,975.

Dated at Toronto this 13th day of June, 2025

"Cathy Singer"

Cathy Singer

"Russell Juriansz"

Russell Juriansz

"Mary Condon"

Mary Condon