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Securities  
Commission

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Citation: USI-Tech Ltd (Re), 2019 ONSEC 11

Date: 2019-02-22

File No. 2018-75

**IN THE MATTER OF  
USI-TECH LIMITED**

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

**Hearing:** In Writing

**Decision:** February 22, 2019

**Panel:** Timothy Moseley Vice-Chair and Chair of the Panel

**Appearances:** Alexandra Matushenko For Staff

Email received from "USI-Tech Management"

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## REASONS AND DECISION

### I. OVERVIEW

- [1] In a decision dated March 16, 2018,<sup>1</sup> Québec's Tribunal administratif des marchés financiers (**TMF**) found that USI-Tech Limited (**USI-Tech**) had conducted an illegal distribution of securities and had engaged in unregistered dealing. The TMF ordered, among other things, that USI-Tech be prohibited from engaging in any activity with respect to transactions in securities.
- [2] Relying on the TMF decision, and on s. 127(10) of the Ontario *Securities Act* (the **Act**),<sup>2</sup> which provides for inter-jurisdictional orders, Staff of the Ontario Securities Commission (**Staff of the Commission**) applied for an order of the Commission pursuant to s. 127(1) of the Act, prohibiting USI-Tech permanently from trading in or acquiring securities, and from trading in derivatives.
- [3] On January 15, 2019, I issued an order<sup>3</sup> in the terms requested by Staff. The order indicated that reasons for the decision were to follow. These are my reasons.

### II. BACKGROUND FACTS

- [4] USI-Tech is a company purportedly headquartered in Dubai, United Arab Emirates. USI-Tech is not a reporting issuer in Ontario and has never filed a prospectus in Ontario.
- [5] The TMF found that USI-Tech and certain of its representatives were actively soliciting investments in USI-Tech through presentations, websites and social media. USI-Tech and its representatives promoted and sold financial products to the public, including:
- a. the "Bitcoin Package", which offered investors a return of 1% per day for 140 days, to be generated through Bitcoin trading using automated trading software developed by USI-Tech and through cryptocurrency mining; and
  - b. the "Token", which offered investors potentially astronomical returns based upon the hypothetical success of a new crypto-asset, the "Tech Coin", which USI-Tech intended to create and market.
- [6] USI-Tech was not registered as a broker with Québec's Autorité des marchés financiers (**AMF**), did not obtain any prospectus receipt from the AMF, and was not entitled to rely on any exemption that would permit the numerous investments at issue.
- [7] The TMF found that the products offered by USI-Tech were securities, and that USI-Tech had conducted an illegal distribution of securities and had engaged in unregistered dealing, contrary to ss. 11 and 148 of the Québec *Securities Act* (the **Québec Act**).<sup>4</sup>

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<sup>1</sup> *Autorité des marchés financiers c Usi-Tech Limited*, 2018 QCTMF 24. The TMF made a minor amendment to the decision on March 19, 2018, to correct the name of a *partie mise en cause*.

<sup>2</sup> RSO 1990, c S.5

<sup>3</sup> (2019) 42 OSCB 595

<sup>4</sup> CQLR, c V-1.1

[8] The TMF further noted that warnings had been issued against USI-Tech in December 2017 by regulators in Nova Scotia, British Columbia, and Manitoba and that the Texas State Securities Board had issued orders prohibiting USI-Tech and two of its representatives from carrying on activities in that jurisdiction.

### **III. TEMPORARY ORDERS**

[9] This Commission has previously issued temporary orders with respect to USI-Tech.

[10] On February 14, 2018, the Commission issued a temporary order<sup>5</sup> pursuant to s. 127(8) of the Act against USI-Tech and two individuals. As against USI-Tech, the Commission ordered that trading in any securities cease by USI-Tech and that any exemptions contained in Ontario securities law not apply.

[11] The relevant provisions of the temporary order were extended on February 26, 2018,<sup>6</sup> April 5, 2018,<sup>7</sup> and July 18, 2018.<sup>8</sup> The most recent extension order expired on its own terms, on January 23, 2019, eight days following the issuance of the permanent order to which these reasons relate.

### **IV. SERVICE AND PARTICIPATION**

[12] Counsel for USI-Tech appeared before the Commission at the attendances in respect of the temporary orders on April 5, 2018, and July 18, 2018. By order of the Commission dated September 11, 2018,<sup>9</sup> the law firm representing the respondents was removed as counsel of record, at its request.

[13] In this application for a permanent order, Staff elected to use the expedited procedure for an inter-jurisdictional enforcement proceeding set out in Rule 11(3) of the *Ontario Securities Commission Rules of Procedures and Forms*<sup>10</sup>, which permits the hearing to be conducted in writing.

[14] As appears from the affidavit of service filed by Staff on December 10, 2018,<sup>11</sup> Staff served USI-Tech with the Notice of Hearing issued December 5, 2018, the Statement of Allegations dated December 4, 2018, and Staff's written hearing materials, consisting of Staff's hearing brief,<sup>12</sup> written submissions and a brief of authorities.

[15] In a reply email dated December 11, 2018,<sup>13</sup> USI-Tech acknowledged receipt of Staff's materials. I find that USI-Tech was properly served.

[16] USI-Tech's email also contained brief submissions, described in more detail below.

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<sup>5</sup> (2018) 41 OSCB 1494

<sup>6</sup> (2018) 41 OSCB 1637

<sup>7</sup> (2018) 41 OSCB 2992

<sup>8</sup> (2018) 41 OSCB 6039

<sup>9</sup> (2018) 41 OSCB 7179

<sup>10</sup> (2017) 40 OSCB 8988

<sup>11</sup> Exhibit 1, Affidavit of Lee Crann sworn December 10, 2018

<sup>12</sup> Exhibit 2, Hearing Brief of Staff

<sup>13</sup> Exhibit 3, Email from USI-Tech to Alexandra Matushenko sent December 11, 2018

## **V. ANALYSIS**

### **A. Introduction**

- [17] Paragraph 4 of s. 127(10) of the Act provides that the Commission may make an order under s. 127(1) of the Act where a person is subject to an order made by a securities regulatory authority in any jurisdiction that imposes sanctions, conditions, restrictions or requirements on the person.
- [18] The TMF is a securities regulatory authority that imposed sanctions on USI-Tech. The test under paragraph 4 of s. 127(10) of the Act is satisfied.
- [19] I must now consider whether it is in the public interest for the Commission to make an order against USI-Tech, and if so, what that order should be.

### **B. Statutory Authority to Make Public Interest Orders**

- [20] Subsection 127(10) of the Act facilitates the inter-jurisdictional enforcement of orders imposed following breaches of securities law. The subsection does not itself empower the Commission to make an order; rather, it provides a basis for an order under s. 127(1).
- [21] Orders made under s. 127(1) of the Act are “protective and preventative” and are made to restrain potential conduct that could be detrimental to the integrity of the capital markets and therefore prejudicial to the public interest.<sup>14</sup>
- [22] In exercising its jurisdiction to make an order in reliance on s. 127(10) of the Act, the Commission does not require that the underlying conduct have a connection to Ontario.<sup>15</sup> In this case, however, Staff has adduced evidence beyond that which was before the TMF.
- [23] In his affidavit,<sup>16</sup> Staff’s primary investigator in this matter describes information received from several Ontario investors. Each of these investors learned of USI-Tech online and purchased Bitcoin Packages and/or Tech Coins. Two of the investors purportedly earned significant returns but were never paid returns. One investor was unable to recover the more than US\$23,000 she invested.

### **C. Appropriate Sanctions**

- [24] In determining appropriate sanctions, the Commission may consider a number of factors, including the seriousness of the misconduct and specific and general deterrence.<sup>17</sup>
- [25] Staff submits, and I agree, that the conduct that was the subject of the TMF proceeding would likely have constituted a contravention of ss. 25(1) and 53(1) of the Act. The TMF found, and I respectfully agree, that USI-Tech’s breaches were serious. The registration and prospectus requirements are cornerstones of the securities regulatory framework in Ontario, and breaches of those requirements warrant a meaningful response.

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<sup>14</sup> *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 26, [2001] 2 SCR 132 (SCC) at paras 42-43

<sup>15</sup> *Biller (Re)*, 2005 ONSEC 15, (2005) 28 OSCB 10131 at paras 32-35

<sup>16</sup> Exhibit 2, Tab 7, Affidavit of Jamie Stuart sworn November 27, 2018

<sup>17</sup> *Belteco Holdings Inc. (Re)*, (1998) 21 OSCB 7743 at 7746-7747; *MCJC Holdings (Re)*, (2002) 25 OSCB 1133 at 1136

- [26] Staff requests that the Commission issue a protective order that imposes sanctions on USI-Tech substantially similar to the TMF’s prohibition against USI-Tech engaging in any activity with respect to transactions in securities. Staff submits that such an order is required to protect Ontario investors and Ontario’s capital markets from further misconduct by USI-Tech and from similar misconduct by others, thereby achieving the goals of specific and general deterrence.
- [27] In the email from “USI-Tech Management”, which identifies no individual author(s), USI-Tech submits that:
- a. it has no Canadian office;
  - b. online purchasers of USI-Tech products must accept certain terms and conditions, including that products may not be purchased in violation of “regional prohibitions”;
  - c. it never sold products directly in Canada, and all sales were made through local independent traders;
  - d. it has undertaken no marketing activities specifically targeting the Canadian market;
  - e. it has blocked access to its websites by Canadian IP addresses; and
  - f. it will not conduct any activity in Canada.
- [28] Subsection 127(10) of the Act honours one of the principles to which the Commission is required, by the Act, to have regard: “The integration of capital markets is supported by the sound and responsible harmonization and co-ordination of securities regulation regimes.”<sup>18</sup> Absent evidence, submissions and/or compelling reasons that dictate otherwise, it is generally in the public interest for the Commission, in a proceeding such as this, to issue an order that mirrors the sanctions imposed by another securities regulatory authority.
- [29] Neither USI-Tech’s factual assertions nor its submissions justify departing from this general principle. To the extent that the factual assertions bear upon matters that were the subject of the TMF decision, I give them no weight, for two reasons. First, the conclusions in the TMF decision stand as findings of fact for the purpose of the Commission’s considerations under s. 127(10) of the Act.<sup>19</sup> Second, the assertions are unsworn, are unattributed to any individual, and have not been subjected to cross-examination.
- [30] USI-Tech’s statement that it will not conduct any activity in Canada is vague, is unattributed to any individual, and adds nothing, given that USI-Tech is not registered and has not filed a prospectus. I give the statement no weight.
- [31] The sanctions imposed by the TMF were proportionate to the serious misconduct. A similar order in Ontario, prohibiting USI-Tech permanently from trading in or acquiring securities, and from trading in derivatives, is consistent with the principle of inter-jurisdictional enforcement, and is necessary for specific and general deterrence.

## **VI. CONCLUSION**

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<sup>18</sup> Paragraph 5 of s. 2.1 of the Act

<sup>19</sup> *Black (Re)*, 2014 ONSEC 16, (2014) 37 OSCB 5847, at paras 24-26

[32] For the reasons set out above, I find that it is in the public interest to impose the sanctions requested by Staff and have ordered that:

- a. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by or of USI-Tech Limited cease permanently;  
and
- b. pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by USI-Tech Limited cease permanently.

Dated at Toronto this 22<sup>nd</sup> day of February, 2019.

"Timothy Moseley"

Timothy Moseley