Ontario

Capital Markets Tribunal

Tribunal des marchés financiers

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Citation: *Manticore Labs OÜ (Re)*, 2024 ONCMT 19
Date: 2024-08-26
File No. 2023-24

IN THE MATTER OF
MANTICORE LABS OÜ (o/a COINFIELD) and MANTICORE LABS INC.

REASONS AND DECISION

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

Adjudicators:	Mary Condon (chair of the panel) Tim Moseley M. Cecilia Williams
Hearing:	By videoconference, May 13, 14 and June 12, 2024; final written submissions received June 7, 2024
Appearances:	Aaron Dantowitz Hansen Wong — For the Ontario Securities Commission
	No one appearing for Manticore Labs OÜ (o/a CoinField) or Manticore Labs Inc.

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REASONS AND DECISION

1. OVERVIEW

[1] The two respondents (Manticore Labs OÜ, or **Manticore Estonia**, and Manticore Labs Inc.) are corporations with a common parent. From 2018 to 2023, they operated a crypto asset trading platform called CoinField (in these reasons, we use the term "the respondents" interchangeably with "CoinField").

[2] At least 21 Ontario investors deposited money with CoinField but were ultimately unable to withdraw any assets. The investors lost their money.

[3] The Ontario Securities Commission alleges that the respondents did the following, all contrary to the *Securities Act* (the ***Act***):[1]

a. they engaged in the business of trading securities without being registered;

b. they carried out illegal distributions of securities; and

c. they made false or misleading statements designed to induce investors to enter into or maintain a trading relationship.

[4] A threshold issue was whether this case involved "securities" as defined in the *Act*. For the reasons set out below, we find that the relationship between CoinField and each of the investors was an "investment contract" and therefore a "security". We also find that the respondents contravened the *Act* in the three ways listed above.

[5] The Commission also identifies four categories of conduct by the respondents that, even though they are not contraventions of Ontario securities law, would justify the Tribunal concluding that it is in the public interest to issue a sanctions order under s. 127(1) of the Act. As we explain below, we agree that two of those four categories, *i.e.*, failing to maintain custody of investors' assets and failing to honour withdrawal requests, justify such an order.

[1] RSO 1990, c S.5

2. THE RESPONDENTS' ABSENCE

[6] Before this proceeding began, the Commission was in communication with the respondents. However, the respondents have not appeared at any time during this proceeding, despite having been given proper notice of it. On January 26, 2024, the Tribunal ordered[2] that the merits hearing would proceed in their absence.[3]

3. ANALYSIS

3.1 Introduction

[7] The Commission's allegations raise the threshold issue of whether this case involves a "security". We address that issue first, then analyze the three alleged contraventions, and the Commission's "public interest" allegations.

3.2 The contracts between CoinField and the investors are "investment contracts" and therefore "securities"

[8] The Commission submits that the "crypto contracts", *i.e.*, the contracts that the CoinField users entered into with CoinField when they deposited fiat currency or crypto assets, and bought or sold crypto assets, are securities. We agree.

[9] The Commission relies on the definition of "investment contract", which is one of the enumerated definitions of a "security" in s. 1(1) of the *Act*. In *Pacific Coast Coin*,[4] the Supreme Court of Canada identified the elements of an investment contract:

a. an investment of money,

b. with an intention or expectation of profit,

c. in a common enterprise in which the fortunes of the investor are interwoven with and dependent upon the efforts and success of those seeking the investment or of third parties, and

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[2] *Manticore Labs OÜ (Re)*, 47 OSCB 925

[3] Rule 24(3) of the Tribunal's *Rules of Procedure* (formerly rule 21(3), at the time of the order)

[4] *Pacific Coast Coin Exchange of Canada v Ontario Securities Commission,* 1977 CanLII 37 (SCC), [1978] 2 SCR 112 (***Pacific Coast Coin***)

d. where the efforts made by those other than the investor are the undeniably significant ones – essential managerial efforts which affect the failure or success of the enterprise.

[10] The first element is satisfied, because each investor began their relationship with CoinField by investing money. CoinField described itself as a "digital asset trading platform", the terms and conditions of use of which provided that users could use their CoinField account and Manticore Estonia's payment processing services to buy, manage, exchange and withdraw their crypto assets or fiat currency.

[11] Two investors testified at the hearing and confirmed that the relationship involved an investment of money:

a. S.V. opened an account on the CoinField platform by depositing fiat currency, with which he was able to purchase digital tokens, including Etherium; and

b. S.E. used a credit card to deposit funds into his CoinField account, and then used those funds to purchase crypto assets.

[12] The second element, an expectation of profit, is also satisfied. As CoinField's own website stated, "Whether you're new to investing or an experienced trader, you're seconds away from great returns." Investors S.V. and S.E. confirmed that they invested their funds (in one case, the proceeds of an insurance claim) expecting that their assets would grow.

[13] The third and fourth elements set out above (*i.e.*, common enterprise, and reliance on the efforts of others) are so interwoven that they can be addressed together.[5] We should consider those elements using a purposive approach that considers the need of CoinField's users for the protections that securities law provides.

[14] Investors deposited money and made trading decisions but were otherwise entirely dependent on the respondents. Investors relied on the respondents to

[5] *Pacific Coast Coin* at p 128 SCR

provide the trading platform, to maintain proper custody of their assets, and to enable prompt transactions, including withdrawals.

[15] In some ways, the environment in which the CoinField users were operating is similar to that experienced by clients of registered dealers, trading common shares and other more traditional securities. Significantly, that more traditional environment features wide-ranging protections that are not present here. Consistent with this Tribunal's approach in *Mek Global*[6] and *Polo Digital Assets, Ltd.*,[7] we heed both the *Act*'s mandate that we consider investor protection[8] and the Supreme Court of Canada's call for a flexible and purposive approach.[9] We conclude that the crypto contracts between CoinField and its users embodied a common enterprise and the investors' reliance on CoinField, thereby meeting the third and fourth elements of the *Pacific Coast Coin* test.

[16] We find, therefore, that each element of the test set out above has been met. Each crypto contract between CoinField and one of its users is an investment contract and therefore a security.

3.3 Did the respondents engage in the business of trading securities without registration?

3.3.1 Introduction

[17] The Commission alleges that CoinField's activities constituted being in the business of trading in securities without registration, and that the respondents thereby breached s. 25(1) of the *Act*. We agree.

[18] A person or company must be registered under Ontario securities law to engage in the business of trading in securities unless an exemption applies.[10] This registration requirement is a cornerstone of the securities regulatory regime and is designed to ensure that those who engage in trading in securities are proficient and solvent, and that they act with integrity. Unregistered trading

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[6] *Mek Global Limited (Re)*, 2022 ONCMT 15 (***Mek***)
[7] *Polo Digital Assets, Ltd (Re),* 2022 ONCMT 32 (***Polo***)
[8] *Act*, s 1.1
[9] *Pacific Coast Coin* at p 127 SCR
[10] *Act*, s 25(1)

defeats these legal protections and undermines both investor protection and the integrity of the capital markets.

[19] The allegation of a breach of s. 25(1) requires us to consider two issues:

a. whether the respondents' conduct constituted "trading"; and

b. if so, whether that conduct was carried out for a business purpose.

[20] We address each of these in turn.

3.3.2 Did the respondents' conduct constitute "trading"?

[21] The *Act* defines "trade" or "trading" to include:

a. any sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise, and

b. any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing.[11]

[22] We have already found that each crypto contract was a security. These contracts contemplated ongoing transactions, rather than one unique sale for each contract. The Commission did not clearly establish that the contracts in this case were "sold" or "disposed of" in the ordinary sense of those terms, but even if there were no "sale" or "disposition" of the contracts, the respondents did take steps in furtherance of the contracts. Among other things, the respondents maintained the CoinField website, which solicited users who wanted to acquire digital assets. The respondents then did everything necessary to conclude a crypto contract with the new user. These steps were in furtherance of that contract and therefore constitute "trading".

3.3.3 Did the respondents engage in trading for a business purpose?

[23] In determining whether the respondents' conduct was for a business purpose, we adopt and apply the criteria set out in Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, as this Tribunal

[11] *Act*, s. 1(1) "trade"

has previously done.[12] These criteria, commonly called the "business trigger" test, suggest that we should consider whether we find:

a. trading with repetition, regularity or continuity;

b. the direct or indirect solicitation of securities transactions;

c. the receipt of, or expectation to receive, compensation for trading; and

d. activities similar to those of a registrant, such as the setting up of a company to sell securities or the promotion of the sale of securities.

[24] CoinField described itself in incorporation documents as providing a "virtual currency service", and on its website as being a "Fully Regulated Exchange" that operated in 186 countries. CoinField's terms of use made clear that the contractual relationship with users was intended to be ongoing.

[25] The Commission's investigator testified at the hearing that CoinField charged trading fees and commissions using the maker-taker model, whereby a transaction rebate was given to investors who provided liquidity (the market maker) while investors who took that liquidity were charged a fee. The trading fees ranged from free to 0.15% for a "maker" and from 0.02% to 0.25% for a "taker".

[26] Investor S.V. testified about the duration and type of interaction he had with the CoinField platform. He opened his account in approximately 2017 or 2018. He lost access to the account in 2023. He deposited an initial amount of fiat currency (Canadian dollars) to his account through a bank transfer, paid CoinField a fee to do so, and bought crypto assets with those funds. He later deposited a more substantial amount (approximately $30,000) in order to purchase Ethereum. He stopped using the account in 2020 or 2021 because CoinField's fees were higher than those on other trading platforms.

[27] CoinField itself advised securities regulators that more than 1200 Ontario residents had accounts, and that at one point the total assets held by Canadian investors exceeded $2.5 million. CoinField described itself as a small- to mid-

[12] See, for example, *Meharchand (Re),* 2018 ONSEC 51, (2018) 41 OSCB 8434 at para 111 and *Money Gate Mortgage Investment Corporation (Re),* 2019 ONSEC 40, (2020) 43 OSCB 35 at para 145

sized crypto platform that was pursuing a path toward registration as a restricted dealer. It acknowledged that it constituted a "Dealer Platform" as defined by the Canadian Securities Administrators and the Investment Industry Regulatory Organization of Canada in Staff Notice 21-329 *Guidance for Crypto-Asset Trading Platforms: Compliance with Regulatory Requirements*.

[28] CoinField was "in the business" of trading crypto contracts. CoinField repeatedly entered into those contracts after soliciting investors to join the platform. CoinField expected to receive transaction fees as a result of that relationship. Finally, CoinField operated in a manner similar to a registrant, as is evident from its own statements to securities regulators about its intention to seek registration.

3.3.4 Conclusion about s. 25(1) of the *Act*

[29] We have found that the respondents' conduct constituted trading, and that the respondents engaged in this conduct for a business purpose.

[30] Ontario securities law provides for various exemptions from the registration requirement. However, the respondents bear the burden of establishing entitlement to any exemption.[13] The respondents have not claimed an exemption, and we are unaware of any evidence in the record that would support such a claim.

[31] We therefore conclude that the respondents engaged in the business of trading in securities, contrary to s. 25(1) of the *Act*.

3.4 Did the respondents distribute securities without a prospectus?

[32] The Commission also alleges that CoinField distributed securities without a prospectus, contrary to s. 53(1) of the *Act*. We agree.

[33] Subsection 53(1) of the *Act* prohibits trading in a security if the trade would be a "distribution", unless the prospectus requirements have been complied with. A "distribution" is defined to include a trade in securities that have not been previously issued.[14] These provisions offer protection by requiring the issuer to

[13] *Polo* at para 82; *Mek* at para 80

[14] *Act*, s 1.1 "distribution"

make disclosure that would enable investors to make informed investment decisions.

[34] We have previously found that the CoinField crypto contracts are securities, and that the respondents traded in these securities. In each instance of an investor entering into a crypto contract with CoinField, the contract was new, and was specific to that investor. By definition, none of the crypto contracts had previously been issued. Each issuance of a crypto contract was therefore a distribution.

[35] The respondents took no steps toward the filing of a prospectus. As is the case with the registration requirement, Ontario securities law does provide various exemptions from the prospectus requirement. Once again, the respondents bear the burden of establishing entitlement to any exemption. The respondents have not claimed an exemption, and we are unaware of any evidence in the record that would support such a claim.

[36] We therefore find that the respondents breached s. 53(1) of the *Act* by issuing the crypto contracts.

3.5 Did the respondents make false or misleading statements contrary to s. 44(2) of the *Act*?

[37] The Commission alleges that the respondents made statements that were contrary to s. 44(2) of the *Act*. We agree.

[38] Section 44 supports the registration requirement by prohibiting certain false representations about registration. Investors should be able to trust that an individual or firm with whom they are dealing is subject to the registration requirements of Ontario securities law (if applicable), and that relevant statements made by the individual or firm are neither false nor misleading.

[39] Specifically, s. 44(2) prohibits the making of statements that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship.

[40] In assessing whether a particular statement contravenes s. 44(2), we consider the two components of that provision:

a. whether the statement is untrue or omits information necessary to prevent it from being false or misleading in the circumstances in which it is made; and

b. whether a reasonable investor would consider the statement relevant in deciding whether to enter into or maintain a trading relationship.

[41] In this case, the impugned statements flow from investors' attempts to get their money back. The Commission alleges that CoinField made various false statements to reassure investors.

[42] For example, S.V. tried to withdraw Ethereum from his CoinField account in April 2023. When this transaction did not complete, he sent a follow-up email to CoinField. He received an email response which stated that "[unfortunately], at the moment we are facing unforeseen challenges with crypto and FIAT transactions" and "[our] team is working on it and all the ongoing issues should be fixed very soon." The representative further stated that, "[all] the funds are safe regardless of the status (enqueued, authorization, or any other status)."

[43] In a July 2023 email from CoinField to another investor, who was also inquiring about the status of their transaction, CoinField wrote that the "transaction is currently being reviewed by our dedicated team and will be released to you as soon as possible" and that CoinField was "experiencing technical issues that are causing delays in the processing of withdrawals."

[44] The statements regarding "unforeseen challenges" and "technical issues" are vague, and we cannot conclude that they are false or misleading. However, we are satisfied that the statements that "all the ongoing issues should be fixed very soon" and that "(A)ll the funds are safe" were, to CoinField's knowledge, untrue. The platform had shut down and investors had not received their funds as requested. Accordingly, the first element of the test set out above is met.

[45] We also conclude that a reasonable investor would consider the statements relevant in deciding whether to maintain a trading relationship. We accept the Commission's contention that CoinField made the statements to assuage investors' concerns that their funds had disappeared or were otherwise at risk. Reasonable investors would consider statements about the safe custody of

assets and the ability to access trading accounts as highly relevant in deciding whether to maintain a trading relationship.

[46] The Commission has proven that the respondents breached s. 44(2) of the *Act*.

3.6 Did the respondents engage in other conduct that would justify an order under s. 127(1)?

[47] We now turn to the four separate bases that the Commission submits should ground an order against CoinField under s. 127(1) of the *Act*:

a. CoinField's failure to maintain custody of investors' crypto assets;

b. CoinField's failure to honour withdrawal requests in a timely manner or at all;

c. CoinField's failure to inform investors of the true reason for not honouring withdrawal requests; and

d. CoinField's misleading the Commission as to the true reasons for delays in honouring withdrawal requests.

[48] The Tribunal may make orders "in the public interest", under s. 127(1) of the *Act*, in response to conduct that does not necessarily contravene Ontario securities law, but that harms investors or undermines the integrity of, or confidence in, the capital markets.[15] Such orders are justified in cases of abusive conduct, or of conduct that breaches the animating principles of the *Act*.

[49] In this case, we have found that CoinField was engaging in registrable activities in its dealings with users of its platform. It was in the business of trading securities, which attracts a registration requirement. Had CoinField been registered as required, it would have been obligated to maintain safe custody of investors' assets and to honour appropriate withdrawal requests.

[50] None of the investors that the Commission's investigator interviewed was able to withdraw their assets from the platform after it became inaccessible. CoinField failed to ensure that investor assets were protected by appropriate custody

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[15] *Nova Tech Litd (Re)*, 2024 ONCMT 18 at para 56; *Re CTC Dealer Holdings Ltd et al and Ontario Securities Commission et al (1987),* 1987 CanLII 4234 (ON SC); *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission),* 2001 SCC 37

arrangements. CoinField also failed to facilitate withdrawal requests. These failures harmed Ontario investors.

[51] Where businesses operate outside the perimeter of regulation, yet engage in registrable activities, those businesses must not be permitted to ignore regulatory requirements that would apply to compliant firms. Such conduct harms Ontario investors and the reputation of Ontario capital markets, and breaches core animating principles of the *Act* concerning the protection of investors.

[52] We agree that the first two of the four bases the Commission cites are sufficient to justify an order under s. 127(1) of the *Act*.

[53] The third reason that the Commission says we should make an order against CoinField is that CoinField failed to inform investors of the true reason for not honouring their withdrawal requests. However, we have already found that this conduct by CoinField contravened s. 44(2) of the *Act*. As a result, we need not consider the request for an order premised on the absence of a contravention.

[54] Finally, the Commission urges us to find that CoinField misled the Commission as to the true reasons for delays in honouring withdrawal requests, and that this provides a basis for an order in the public interest against CoinField. We agree with the Commission that misleading enforcement staff in the course of an investigation is highly inappropriate conduct that could undermine the integrity of Ontario's capital markets. Indeed, it is an offence under s.122(1)(a) of the *Act* to do so.

[55] However, the specific statements on which the Commission relies are insufficient to justify a s. 127(1) order. CoinField told the Commission that the withdrawal delays were due to an "audit" (by a prospective investor), leading to a "considerable backlog". CoinField said that it expected to resolve the withdrawal delays "shortly after the audit's completion".

[56] We have no evidentiary basis to conclude that the reference to an audit was false. While in hindsight there would be good reason to doubt that the audit, assuming it existed, was the primary cause of CoinField's failure to honour withdrawal requests, we do not have sufficient evidence to accept the Commission's submission that this was a misstatement deserving of a sanction.

4. CONCLUSION

[57] The crypto contracts entered into between CoinField and investors were securities. The respondents:

a. were engaged in the business of trading those securities, contrary to s. 25(1) of the *Act*;

b. distributed those securities without a prospectus, contrary to s. 53(1) of the *Act*; and

c. made false or misleading statements that a reasonable investor would consider relevant in deciding whether to maintain a trading relationship, contrary to s. 44(2) of the *Act*.

[58] The respondents also engaged in conduct that would justify a sanctions order, in that they:

a. failed to maintain proper custody of investors' assets; and

b. failed to honour withdrawal requests in a timely manner.

[59] For the purposes of a hearing regarding sanctions and costs, we therefore require that the Commission contact the Registrar by 4:30pm on September 9, 2024, to advise of proposed dates for the delivery of the Commission's written materials, and available dates for an oral hearing.

Dated at Toronto this 26th day of August, 2024

"Mary Condon"

Mary Condon

"Tim Moseley"

Tim Moseley

"M. Cecilia Williams"

M. Cecilia Williams