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Citation: *Phemex Limited (Re)*, 2024 ONCMT 30  
Date: 2024-12-18  
File No. 2023-22

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

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

**Adjudicators:** Cathy Singer (chair of the panel)  
Russell Juriansz  
Jane Waechter

**Hearing:** October 7 and December 5, 2024

**Appearances:** Alvin Qian For the Ontario Securities Commission

Ran He For Phemex Limited

No one appearing for Phemex Technology Pte. Ltd.

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## REASONS AND DECISION

### 1. INTRODUCTION

- [1] These are our reasons for finding that Phemex Limited (**Phemex**) and Phemex Technology Pte. Ltd. breached ss. 25(1) and 53(1) of the *Securities Act*<sup>1</sup> (the **Act**) by engaging in the business of unregistered trading in securities and by distributing securities without a prospectus.
- [2] Phemex, a company incorporated in the British Virgin Islands, and Phemex Technology, a Singapore company, operated an online crypto asset trading platform that sold securities to Ontario investors.
- [3] Phemex commenced voluntary liquidation on August 24, 2023, and remains an active corporation. Phemex Technology has dissolved and was struck off the Register of Companies in Singapore effective September 4, 2023. Phemex Technology was a wholly-owned subsidiary of Phemex.
- [4] At the merits hearing on October 7, 2024, Phemex and the Commission filed a Statement of Agreed Facts dated September 26, 2024. The Commission filed the affidavit of its primary investigator in this matter and called him as a witness. Neither respondent called a defence. Phemex conceded the statutory breaches in its opening statement.
- [5] Oral argument took place on December 5, 2024. The Commission filed written submissions. Phemex declined to file written submissions and did not appear for oral argument. Phemex Technology did not participate in the hearing.

### 2. FACTS

- [6] The Statement of Agreed Facts and the uncontradicted affidavit of the investigator establish that Phemex and Phemex Technology operated an online crypto trading platform and related mobile apps under the tradename "Phemex". The trading platform was accessible on the web and through mobile apps available from the Google and Apple stores.

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<sup>1</sup> RSO 1990, c S.5

- [7] The Phemex platform operated in Ontario from November 25, 2019, to January 6, 2023. At least 117 Ontario investors used the platform to deposit and trade in crypto asset products with a total trading volume of over 74 million USDT (equivalent in value to over USD\$74 million). The respondents earned 39,712.43 USDT in fees.
- [8] Investors created accounts by entering into contracts enabling them to access the Phemex platform by an online application process which sought but did not require Know Your Client information such as name, phone number and address. By contract with Phemex, investors were able to use the Phemex platform for crypto asset “spot” trading, which allowed them to buy and sell crypto assets for potential profit (**Crypto Contracts**). The crypto assets available on the Phemex platform included Bitcoin and Ethereum.
- [9] Investors on the Phemex platform were also contractually able to trade in “perpetual contracts”, which allowed them to buy and sell futures contracts whose values were determined by the platform with reference to the spot value of the underlying crypto assets (**Crypto Futures**). Investors were also able to engage in leveraged trading in Crypto Futures, including at a 100:1 ratio on Bitcoin and Ethereum margined Crypto Futures. The Phemex platform charged investors trading fees both for spot trading and for trading Crypto Futures.
- [10] A member of the Commission’s investigation team opened an account on the Phemex platform by providing only an email address. The investigator:
- a. opened the account while physically located in Ontario;
  - b. used an Ontario IP address;
  - c. used that IP address to deposit Bitcoins and Ether into the OSC account;  
and
  - d. traded Crypto Contracts.
- [11] During the material time, the respondents maintained custody of the crypto assets deposited and traded on the Phemex platform and maintained custody of crypto wallets they controlled. Investors did not have possession or control of the crypto assets they deposited into their accounts and traded on the Phemex

platform. Investors saw a crypto balance displayed in their account on the Phemex platform.

[12] To take possession of crypto assets reflected in their account balance, investors had to request a withdrawal and were dependent on the respondents to satisfy their withdrawal requests by delivering crypto assets to an investor-controlled wallet.

[13] On or about January 7, 2023, after being contacted by the Commission regarding their activities in Ontario, the respondents implemented a restriction based on IP addresses to prevent Ontario residents from accessing the Phemex platform.

[14] The respondents have never been registered with the Commission in any capacity nor have they obtained an exemption from the registration requirement. The respondents have also never filed a prospectus with the Commission nor obtained an exemption from the prospectus requirement.

### **3. ISSUES AND ANALYSIS**

[15] The issues we need to decide are:

- a. Does the Tribunal have jurisdiction to adjudicate the allegations against Phemex Technology, a dissolved corporate entity?
- b. Are Crypto Contracts and Crypto Futures “securities” within the meaning of the *Act*?
- c. Did the respondents engage in unregistered trading, contrary to s. 25(1) of the *Act*?
- d. Did the respondents engage in illegal distributions of securities, contrary to s. 53(1) of the *Act*?
- e. Did the respondents engage in other conduct that would justify an order under s. 127(1) of the *Act*?

#### **3.1 Jurisdiction**

[16] As a preliminary issue, we must determine whether this Tribunal has the jurisdiction to make findings against Phemex Technology, a dissolved corporation. The corporation was dissolved on September 4, 2024, shortly before the Statement of Allegations in this proceeding was issued.

[17] We agree with the Commission that this Tribunal has the jurisdiction to determine whether the actions of Phemex Technology in Ontario breached the *Act* while it was a functioning corporation, and its dissolution does not distract from our ability to exercise our jurisdiction to make findings against it.

### **3.2 Are Crypto Contracts and Crypto Futures “securities”?**

[18] We consider it well-established in the Tribunal’s jurisprudence that Crypto Contracts and Crypto Futures, such as those traded on the Phemex platform, are investment contracts and therefore “securities” within the meaning of the *Act*. In *Mek Global Limited (Re)*,<sup>2</sup> *Polo Digital Assets, Ltd. (Re)*<sup>3</sup> and *Manticore Labs OÜ (Re)*,<sup>4</sup> the Tribunal applied the investment contract analytical framework set out in the Supreme Court of Canada decision *Pacific Coast Coin Exchange v Ontario Securities Commission*<sup>5</sup> and determined that Crypto Contracts and Crypto Futures were investment contracts. We take the same approach.

[19] Specifically, a deposit of fiat currency or crypto assets for the purpose of trading crypto products on the Phemex platform is an investment of money. Such an investment of money is made with the expectation of profit from the trading of the Crypto Contracts or Crypto Futures on the Phemex platform. Finally, investors are engaged in a common enterprise with the crypto trading platform and mobile apps and are dependent on the significant efforts of the respondents for the success or failure of their investments. More particularly, investors are dependent on the actions, custody arrangements, and solvency of the respondents for the success of their investments.

[20] We find that the Crypto Contracts and Crypto Futures on the Phemex platform constitute investment contracts and are securities within the meaning of the *Act*. We need not deal with the Commission’s submissions that the Crypto Contracts on the Phemex platform are securities under other parts of the definition of “securities” in the *Act*.

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<sup>2</sup> 2022 ONCMT 15

<sup>3</sup> 2022 ONCMT 32

<sup>4</sup> 2024 ONCMT 19 (*Manticore Labs*)

<sup>5</sup> 1997 CanLII 37 (SCC) at 114-115

### **3.3 Did the respondents contravene s. 25(1) of the Act?**

- [21] The registration requirement is a cornerstone of Ontario’s securities regulatory regime, designed to ensure that those who engage in the business of trading in securities are proficient and solvent, and that they act with integrity. Unregistered trading defeats these necessary legal protections and undermines investor protection and the integrity of the capital markets.<sup>6</sup>
- [22] Section 25(1) of the *Act* requires those engaged in the business of trading in securities to be registered. The *Act* defines “trade” or “trading” as including: (a) “any sale or disposition of a security for valuable consideration...(e) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of the foregoing”.
- [23] We find that Phemex and Phemex Technology engaged in the business of trading in securities without being registered in any capacity and without an exemption from the registration requirement. The central purpose of the Phemex platform was to facilitate the trading in securities.
- [24] The Phemex platform was a global crypto trading platform. Phemex made the platform available to the investing public in Ontario through its website and made statements designed to solicit investors to sign onto the platform and use the platform to engage in trading activity. Phemex Technology developed and operated the mobile apps through which investors could engage in all the trading activity available on the Phemex platform. All of this was clearly done for a business purpose. The respondents charged the investors fees for the trading activity that they facilitated on the Phemex platform.
- [25] Therefore, we find that the respondents have breached s. 25(1) of the *Act*.

### **3.4 Did the respondents contravene s. 53(1) of the Act?**

- [26] The prospectus requirement is fundamental to protecting investors by ensuring they have full disclosure of the information necessary to assess the risks of an investment and make an informed decision whether to invest.

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<sup>6</sup> *Manticore Labs* at para 18

- [27] Subsection 53(1) of the *Act* prohibits trading in a security without filing a prospectus if the trade would be a distribution of the security. The *Act* defines “distribution” to include “a trade in securities of an issuer that have not been previously issued,” and “acts in furtherance of” trading are included in the definition.
- [28] The respondents’ sale of Crypto Contracts and Crypto Futures were “distributions” because the respondents newly issued or created them. The Crypto Contracts were issued to the investors when they deposited crypto assets on the Phemex platform, when investors engaged in “spot” trades on the platform, when the investors opened new positions in Crypto Futures, and when the investors closed existing positions.
- [29] The respondents made these distributions of securities without filing a prospectus or obtaining an exemption from such filing. Phemex made these distributions by operating the Phemex platform through its website. Phemex Technology made similar distributions by operating the mobile apps to facilitate trading on the Phemex platform.
- [30] Therefore, we find that the respondents have breached s. 53(1) of the *Act*.

### **3.5 Did the respondents engage in additional conduct that would justify an order under s. 127(1) of the Act?**

- [31] As we have found that both respondents have breached substantive provisions of the *Act*, the respondents have engaged in conduct that justifies an order under s. 127(1) of the *Act*. The respondents have acted in a manner contrary to the fundamental purposes and principles of the *Act*. The Commission did not allege additional misconduct to justify any further finding under s. 127(1).

## **4. CONCLUSION**

- [32] Given our conclusion that the respondents have breached ss. 25(1) and 53(1) of the *Act*, we direct the parties to contact the Registrar by 4:30 p.m. on January 10, 2025, to arrange for a case management hearing in preparation for a hearing regarding sanctions and costs. The case management hearing is to take place on a date that is mutually convenient, that is fixed by the Registrar, and that is no later than January 24, 2025.



[33] If the parties are unable to present a mutually convenient date for the case management hearing to the Registrar, then each party may submit to the Registrar, for consideration by a panel of the Tribunal, one-page written submissions regarding a date for the case management hearing. Any such submissions shall be submitted by 4:30 p.m. on January 10, 2025.

Dated at Toronto this 18th day of December, 2024

*"Cathy Singer"*

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Cathy Singer

*"Russell Juriansz"*

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Russell Juriansz

*"Jane Waechter"*

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Jane Waechter