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## REASONS AND DECISION

### 1. OVERVIEW

- [1] In a decision on the merits dated August 26, 2024 (the **Merits Decision**),<sup>1</sup> the Capital Markets Tribunal found that Manticore Labs OÜ and Manticore Labs Inc. (collectively, **CoinField**) breached the *Securities Act* (the **Act**)<sup>2</sup> through unregistered trading, illegal distribution of securities, and by making false and misleading statements to investors. The Tribunal also found that CoinField engaged in additional conduct that would justify a sanctions order, namely failing to maintain safe custody of investors' assets and not allowing investors to withdraw their money.
- [2] The Ontario Securities Commission asks that we impose sanctions against CoinField pursuant to s. 127(1) of the *Act*, and that we order the respondents to jointly and severally pay the Commission's costs of the investigation and this proceeding. CoinField did not participate in this proceeding.
- [3] For the reasons set out below, we conclude that it is in the public interest to make an order permanently banning the respondents from participating in Ontario's capital markets, and requiring that they jointly and severally:
- a. pay an administrative penalty of \$2.4 million;
  - b. disgorge \$537,034.46; and
  - c. pay costs of \$89,538.30.

### 2. BACKGROUND

- [4] CoinField began operating its digital asset trading platform in 2018 and agreed to assist users to buy, manage, exchange and withdraw crypto assets or fiat currency from their accounts. The contracts between CoinField and its users were investment contracts and, therefore, securities.

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<sup>1</sup> *Manticore Labs OÜ (Re)*, 2024 ONCMT 19

<sup>2</sup> RSO 1990, c S.5 (**Act**)

- [5] The platform went offline in 2023 and became inaccessible. CoinField did not fulfill outstanding withdrawal requests, and investors lost their money.
- [6] The Tribunal found that CoinField illegally engaged in the business of trading in securities and disregarded the prospectus and registration requirements of the *Act*. Further, CoinField made false or misleading statements to investors about the safety and accessibility of their funds. The Tribunal further found that CoinField did not maintain safe custody of investor funds and that investors were unable to withdraw their funds. Ontario investors were among those who suffered harm.

### **3. ANALYSIS**

#### **3.1 Introduction**

- [7] 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 the capital markets.
- [8] In this case, 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. an administrative penalty of \$2.4 million on a joint and several basis;
  - c. disgorgement of \$537,034.46 on a joint and several basis; and
  - d. costs of \$89,538.30 on a joint and several basis.
- [9] We agree that the requested sanctions and costs are appropriate for the reasons below.

### **3.2 Sanctioning Factors**

[10] In determining the nature and duration of sanctions, the Tribunal has identified a non-exhaustive list of applicable factors.<sup>3</sup> We will focus on the factors that are most relevant to this case, namely, the seriousness of CoinField's misconduct, the need for deterrence, and the level of CoinField's activity in the marketplace.

[11] We find that there are no mitigating factors for CoinField's conduct. While CoinField made statements to securities regulators about its intention to seek registration, it never completed that process.

[12] For the reasons that follow, we find that significant sanctions are warranted.

#### **3.2.1 Seriousness of the misconduct**

[13] CoinField's misconduct was serious. It breached the registration and prospectus requirements of the *Act*, both of which are fundamental to investor protection. It further violated the *Act* by making false or misleading statements to reassure investors that their funds were safe. These false and misleading statements were harmful because a reasonable investor would consider them relevant when deciding whether to maintain (or exit) a trading relationship with CoinField. Further findings of significant misconduct, relevant to non-monetary sanctions, are that CoinField failed to maintain safe custody of investors' assets and did not allow investors to withdraw their money.

#### **3.2.2 Specific and general deterrence**

[14] CoinField's conduct points to a need for specific and general deterrence. Specific deterrence involves discouraging future misconduct by the respondents to an enforcement proceeding. General deterrence dissuades other like-minded individuals or entities from carrying out similar activities. Both specific and general deterrence are designed to protect Ontario investors from future misconduct.

[15] Other crypto asset trading platforms have sought to bring their operations into compliance with Ontario securities law. If we were to allow CoinField to escape

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<sup>3</sup> *Belteco Holdings Inc (Re)* (1998), 21 OSCB 7743 at 7746; *Erikson v Ontario (Securities Commission)*, 2003 CanLII 2451 at para 58; *MCJC Holdings Inc (Re)* (2002), 25 OSCB 1133 at 1135

the consequences of its misconduct without significant sanctions, it would create an unlevel playing field within Ontario's capital markets. Further, CoinField's trading and distribution of securities in violation of key investor protection provisions of Ontario securities law resulted in significant harm to members of the investing public in Ontario.

- [16] Virtual trading platforms, wherever based, need a strong message that they must comply with Ontario securities law when dealing with Ontario investors.<sup>4</sup> We agree with the Commission's argument that accepting appropriate regulatory supervision in Ontario will not put them at a competitive disadvantage, but rather represents the only acceptable path to access the Ontario capital markets.

### **3.2.3 CoinField's level of activity in the marketplace**

- [17] CoinField's activity in Ontario's capital markets was significant. Details of the total number of affected investors or investor losses are unavailable because CoinField did not provide this information to regulators when asked. However, we find that:

- a. in October 2022 there were at least 1,275 accounts linked to Ontario investors;
- b. in late 2022, Canadian dollar holdings for Canadian investors exceeded \$2.5 million; and
- c. between 2022 and 2024 there were 39 complaints from Ontario resident investors regarding CoinField.

### **3.3 Market Participation Bans**

- [18] The Commission requested that the Tribunal make several orders that would have the effect of removing CoinField from participating in Ontario capital markets permanently, including permanent restrictions on acquiring or trading securities, accessing exemptions from Ontario securities law, and becoming a registrant.

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<sup>4</sup> *Vantage Global Prime Pty Ltd (Re)*, 2021 ONSC 18 at para 18; *Polo Digital Assets 2022 ONCMT 32 (Polo Digital)* at para 98

- [19] The Commission argued that aggravating factors in this respect included failure to maintain custody of investor assets and ultimately shutting down the entire platform to investors, leaving them with no prospect of withdrawing funds from the CoinField platform.
- [20] We agree that the sanctioning factors noted above and, in particular, the serious misconduct of the respondents that resulted in harm to Ontario investors as well as the need for specific and general deterrence, support the imposition of these permanent market participation bans.
- [21] We also note that the imposition of these market participation bans is consistent with the outcome of recent crypto platform cases, such as *Mek Global Limited (Re)*<sup>5</sup> and *Polo Digital*.<sup>6</sup> Given the pressing need for general deterrence in the context of crypto platforms, we agree with the Commission that permanent market participation bans are appropriate.

### **3.4 Administrative Penalties**

- [22] The Commission seeks an administrative penalty of \$2.4 million to be paid jointly and severally by the respondents.
- [23] 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.
- [24] We agree with the Commission's submissions that an administrative penalty of \$2.4 million is appropriate in this case. The merits panel found that CoinField had committed multiple breaches of Ontario securities law, comprising unregistered trading, illegally distributing securities, and making misleading statements to investors as to the status of their investments on the CoinField platform. The factual circumstances of this case warrant significant administrative penalties.

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<sup>5</sup> 2022 ONCMT 15 (*Mek Global*)

<sup>6</sup> *Polo Digital* at paras 135-137

[25] The penalties requested by the Commission are generally proportionate to penalties assessed in other recent similar cases involving crypto platforms, such as *Polo Digital and Mek Global*.

[26] We agree with the Commission's submission that the breach of s. 44(2) of the *Act* involving misleading investors as to the status of their investments is particularly egregious from the perspective of harm caused to investors, and justifies the penalties requested.

### **3.5 Disgorgement**

[27] The Commission requests that the respondents be ordered to disgorge \$537,034.46 on a joint and several basis. Such an order is authorized by paragraph 10 of s. 127(1) of the *Act*, which refers to disgorgement of "any amounts obtained" as a result of non-compliance with Ontario securities law.

[28] The panel questioned the Commission concerning the methodology used to arrive at the figure requested. The panel had the benefit of testimony from the Commission's investigator regarding the calculations he did, allowing us to be confident that the amount represents amounts obtained from Ontario investors only. We accept the Commission's submission that these calculations were necessary because CoinField itself did not provide the Commission with the information about levels of Ontario investment.

[29] We accept that the amount of disgorgement requested represents a conservative figure, based on information provided to the Commission by only twenty-six Ontario investors, despite evidence that there were over one thousand Ontario investors in CoinField. We are satisfied that \$537,034.46 requested by the Commission is an ascertainable figure. Without reliable evidence regarding investments through the CoinField platform made by other Ontario investors, we are unable to make a larger finding of disgorgement. Ultimately, we agree that the serious misconduct in this case causing harm to investors warrants a disgorgement order.

### **3.6 Costs**

[30] Section 127.1 of the *Act* authorizes the Tribunal to order a respondent to pay the costs of an investigation or a hearing if the Tribunal is satisfied that the person



or company has not complied with Ontario securities law or has not acted in the public interest.

[31] The Commission seeks costs of \$89,538.30 against the respondents jointly and severally. This amount is comprised of \$88,781.25 for fees and \$757.05 for disbursements.

[32] The Commission provided us with appropriate documentation relating to the costs sought and made additional submissions about these amounts at the sanctions hearing. We find that the amount of time spent by the investigator investigating this matter and preparing affidavit evidence assisted the Tribunal. We also note that the Commission has not sought to recover for the time spent by the senior litigator involved in this case. We find the amounts reasonable and proportionate. Given the findings of multiple breaches of Ontario securities law by CoinField, we order that the costs requested be paid.

#### **4. CONCLUSION**

[33] For the reasons above, we order:

- i. pursuant to paragraph 2 of subsection 127(1) of the *Act* that trading in any securities or derivatives by the respondents shall cease permanently;
- ii. pursuant to paragraph 2.1 of subsection 127(1) of the *Act* that the acquisition of any securities by the respondents is prohibited permanently;
- iii. pursuant to paragraph 3 of subsection 127(1) of the *Act* that any exemptions contained in Ontario securities law do not apply to the respondents permanently;
- iv. pursuant to paragraph 8.5 of subsection 127(1) of the *Act* that the respondents be permanently prohibited from becoming or acting as a registrant or as a promoter;
- v. pursuant to paragraph 9 of subsection 127(1) of the *Act* that the respondents shall, jointly and severally, pay an administrative penalty to the Commission of \$2.4 million;

- vi. pursuant to paragraph 10 of subsection 127(1) of the *Act* that the respondents shall, jointly and severally, disgorge to the Commission the amount of \$537,034.46; and
- vii. pursuant to s. 127.1 of the *Act* that the respondents shall pay costs to the Commission in the amount of \$89,538.30, for which they shall be jointly and severally liable.

Dated at Toronto this 30th day of January, 2025

*"Mary Condon"*

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Mary Condon

*"Jane Waechter"*

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Jane Waechter

*"Sandra Blake"*

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Sandra Blake