

ONTARIO SECURITIES COMMISSION

Applicant

-and-

XT.COM EXCHANGE and BZ LIMITED

Respondents

APPLICATION FOR ENFORCEMENT PROCEEDING
(Subsections 127(1) and 127(4.0.2) of the *Securities Act*, RSO 1990, c S.5)

A. OVERVIEW

1. The Applicant, the Ontario Securities Commission (the **Commission**), requests that the Capital Markets Tribunal (the **Tribunal**) make orders in the public interest against the Respondents without providing them an opportunity to be heard, reciprocating orders made by the Tribunal administratif des marchés financiers du Québec¹ (the **FMAT**).

2. The FMAT decided that the Respondents acted as securities dealers and distributed securities, contrary to the prospectus and registration requirements under Québec securities legislation, through operating an online crypto asset trading platform through their website, XT.com (the **XT Platform**), which is accessible from Canada. Accordingly, it imposed sanctions on them for their breaches of Québec securities legislation.

3. The XT Platform facilitates transactions relating to crypto assets, including buying and selling contractual rights to crypto assets. The XT Platform is subject to Ontario securities law, including the registration and prospectus requirements under the Ontario *Securities Act*² (the **Act**), which serve as important safeguards for investors. The requested orders are necessary to restrain potential future misconduct by the Respondents that exposes Ontario investors to unacceptable risks and creates an uneven playing field within the crypto asset trading platform sector.³

¹ In English, the Québec Financial Markets Administrative Tribunal.

² [RSO 1990, c S.5](#).

³ Several online crypto asset trading platforms are duly registered in Ontario. The Canadian Securities Administrators, of which the Commission is a member, maintains a list of [“Crypto Trading Platforms Authorized to Do Business with Canadians”](#) on its website.

B. GROUNDS

The FMAT Proceeding and Decision

4. On September 20, 2023, the FMAT released its written decision, following three days of virtual hearings held on July 24, 25 and 28, 2023 (the **Decision**). The Respondents did not contest the enforcement application of the Québec Autorité des marchés financiers, despite the Respondents having been duly notified of the originating pleading, in accordance with the special notification methods authorized by the FMAT. At the hearing on July 24, 2023, Hongyu Liu (**Liu**), acting as translator for Tim Ma (**Ma**), stated that Ma represented XT Exchange and that the two individuals attended the hearing as observers. Ma and Liu did not attend the hearings held on July 25 and 28, 2023. No officer or lawyer appeared on behalf of BZ Limited, which did not provide a valid reason for its absence.

5. The FMAT held that some of the products and services that the Respondents offer on the XT Platform are investment contract securities, and that the Respondents, among other contraventions of Québec securities legislation, acted as securities dealers without registration and distributed securities without a prospectus, in each case, without an applicable exemption.

The FMAT's Orders

6. The sanctions the FMAT imposed on the Respondents in the Decision include the following:

- (a) that they pay an administrative penalty of \$2 million, jointly and severally, for having breached Québec securities legislation;
- (b) that any exemptions available under Québec securities legislation cease to apply to them;
- (c) that they be banned from carrying on any business for the purpose of trading in securities, except for activities strictly necessary to enable users of the XT Platform to withdraw their assets and close their accounts there; and
- (d) that they be banned from carrying on the business of securities adviser or acting as an investment fund manager, except for activities strictly necessary to enable users of the XT Platform to withdraw their assets and close their accounts there.

The FMAT's Findings

7. The Commission relies on the following findings of fact made by the FMAT:

The Respondents

- (a) XT.com Exchange is a company or group of companies having an establishment in the Republic of the Seychelles (also doing business as “XT Exchange” and “XT.com”) (collectively, **XT Exchange**).
- (b) BZ Limited is a legal entity incorporated under the laws of the Hong Kong Special Administrative Region of the People’s Republic of China, which owns and operates XT Exchange.

The XT Platform

- (c) The products and services offered through the XT Platform include the following:
 - (i) Contracts representing contractual rights attached to a crypto asset or a value-referenced crypto asset (**Crypto Asset Contracts**);
 - (ii) Non-fungible token (**NFT**) contracts, which allow investors to acquire contractual rights to multiple non-fungible tokens, such as virtual artworks (**NFT Contracts**);
 - (iii) Products referred to in the Decision as “USDT-M Futures” and “Coin-M Futures” that have an indefinite (or “perpetual”) term (collectively, **Crypto Futures Contracts**). These are contracts involving two parties, which create obligations and payment rights based on the value of an underlying interest. The Crypto Futures Contracts do not have a fixed expiry date or volume and can be leveraged. Investors who purchase Crypto Futures Contracts do not have to take delivery of the crypto assets that represent the underlying interest;
 - (iv) Performance programs, which allow investors to deposit crypto assets into an account accessible through the XT Platform to generate financial returns (**Savings Programs**); and
 - (v) Investment programs linked to proof-of-stake blockchain validation mechanisms (**Staking Programs**). Savings Programs and Staking

Programs differ in the type of crypto assets available and the lockout period during which crypto assets cannot be removed.

- (d) Users of the XT Platform can obtain Crypto Asset Contracts in at least four ways, using crypto assets or fiat currency (**fiat**), including:
 - (i) through depositing crypto assets;
 - (ii) by using the “P2P Trading” service, which is a peer-to-peer market that allows investors to trade rights in crypto assets with each other;
 - (iii) by using the services of third parties identified on the XT Platform to make the required payments to acquire rights to crypto assets; and
 - (iv) by using the “Trading” service, which allows exchanging contractual rights on crypto assets that investors have acquired to acquire contractual rights on other crypto assets.
- (e) Users of the XT Platform can expect to make a profit from the increase in the value of the products and the returns resulting from the use of the services acquired by the investors. For instance, investors can sell NFT Contracts on the XT Platform at a profit or make a profit through the use of the “NFT Staking” service, which allows investors to earn rewards and other profits from their NFT Contracts. The XT Platform promotes expectations of profits for Savings and Staking Programs, with advertised annual returns for XT Flexible and Fixed Savings Programs of up to 15% and 180%, respectively, and estimated returns of 9.144% for PoS Staking and 7,448.97% for New Coin Staking investments.
- (f) The Respondents maintain custody of the crypto assets over which investors hold contractual rights on the XT Platform. Since the subjects do not immediately deliver the crypto assets, investors do not obtain possession of the crypto assets deposited or traded on the XT Platform.
- (g) The Respondents are responsible for using the crypto assets over which investors have contractual rights to generate the represented returns.
- (h) The Respondents are also responsible for the following efforts in relation to the XT Platform:

- (i) the creation, development and establishment of the XT Platform, as well as its design, management and updating;
 - (ii) the creation and management of the products and services offered;
 - (iii) the offer to generate passive profits online;
 - (iv) the promotion of the products and services offered;
 - (v) the acceptance and execution of transactions through the XT Platform;
 - (vi) the selection of suppliers of services and equipment; and
 - (vii) the management of the Respondents' human resources.
- (i) The Crypto Asset Contracts, NFT Contracts, Savings Programs and Staking Programs constitute investment contract securities. The Crypto Futures Contracts constitute contracts for difference.
 - (j) The Respondents acted as intermediaries between sellers and purchasers of securities and derivatives.
 - (k) The Respondents charge investors various fees when they trade on the XT Platform, which generally take the form of commissions.
 - (l) The Respondents carried on trading activity on a repetitive, regular and continuous basis with Québec and Canadian investors.
 - (m) The XT Platform, has had more than 3 million registered users globally, including 300,000 active monthly users, and has supported more than 500 tokens and 800 trading pairs.

Jurisdiction of the Tribunal

8. The FMAT, which is a “securities regulatory authority of another province or territory in Canada”, as defined in subsection 127(10) of the Act, issued orders imposing sanctions on the Respondents. Pursuant to paragraph 2 of subsection 127(4.0.2) of the Act, the Tribunal may make any of the orders described in paragraphs 1 to 8.5 of subsection 127(1) of the Act against the Respondents without giving the Respondents an opportunity to be heard.

9. Each of the Crypto Asset Contracts, NFT Contracts, Crypto Futures Contracts, Savings Programs and Staking Programs offered by the Respondents on the XT Platform is a security under the Act.

C. ORDER SOUGHT

The Commission requests that the Tribunal make the following orders:

- (a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by or of the Respondents shall cease permanently, except for transactions to permit users of the XT Platform to withdraw their assets in the possession or control of the Respondents or third parties, and to close their accounts on the XT Platform;
- (b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the Respondents are permanently prohibited from acquiring any securities, except for transactions to permit users of the XT Platform to withdraw their assets in the possession or control of the Respondents or third parties, and to close their accounts on the XT Platform;
- (c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to the Respondents permanently;
- (d) pursuant to paragraph 8.5 of subsection 127(1) of the Act, the Respondents are permanently prohibited from becoming or acting as an adviser or as an investment fund manager, except for those activities strictly necessary to enable users of the XT Platform to withdraw their assets in the possession or control of the Respondents or third parties, and to close their accounts on the XT Platform; and

(e) such other order or orders as the Tribunal considers appropriate.

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ONTARIO SECURITIES COMMISSION

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