Capital Markets Tribunal | Tribunal des marchés financiers | 22nd Floor 20 Queen Street West Toronto ON M5H 3S8 | 22e étage 20, rue Queen ouest Toronto ON M5H 3S8

Citation: *Ontario Securities Commission v XT.com*, 2025 ONCMT 2
Date: 2025-03-06
File No. 2025-02

ONTARIO SECURITIES COMMISSION
(Applicant)

-and-

XT.COM EXCHANGE and BZ LIMITED
(Respondents)

REASONS AND DECISION

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

Adjudicator:	Andrea Burke
Hearing:	In writing; final written submissions received January 20, 2025
Appearances:	Sean Grouhi — For the Ontario Securities Commission
	Application brought without notice to, and no one appearing for the respondents, XT.com Exchange and BZ Limited

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REASONS FOR DECISION

1. OVERVIEW

[1] The Ontario Securities Commission seeks inter-jurisdictional enforcement orders against the respondents, XT.com Exchange and BZ Limited, reciprocating orders made by the Québec Financial Markets Administrative Tribunal (or Tribunal administratif des marchés financiers du Québec) (**FMAT**) in a decision issued on September 20, 2023 (**Decision**).[1]

[2] The Commission brings this application without notice to the respondents under ss. 127(1) and 127(4.0.2) of the Ontario *Securities Act* (***Act***).[2] The Commission filed this application at the same time as a similar application involving other respondents with similar facts bearing Tribunal file number 2025-03. A separate decision was issued for that application.

[3] I find that it is in the public interest to make the orders requested by the Commission, imposing non-monetary sanctions similar to those in the Decision that restrict the respondents' future participation in the capital markets of Ontario.

2. BACKGROUND

[4] The FMAT found that:

a. XT.com Exchange is a company or group of companies established in the Republic of the Seychelles, that is owned and operated by BZ Limited, an entity incorporated under the laws of the Hong Kong Special Administrative Region of the People's Republic of China;[3]

b. the respondents offer various crypto asset-related products and programs by operating an online crypto asset trading platform through their website XT.com (the **XT Platform**);[4]

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[1] *Autorité des marchés financiers v XT.com Exchange (XT Exchange et XT.com)*, 2023 QCTMF 62 (**Decision**)

[2] RSO 1990, c S.5 (***Act***)

[3] Decision at paras 4, 6-9

[4] Decision at paras 14-18, 51

c. applying the criteria for an "investment contract" security established by the Supreme Court of Canada in *Pacific Coast Coin Exchange v Ontario Securities Commission*[5] to the relevant facts, a number of these products and programs are investment contract securities under Québec securities legislation;[6]

d. based on the relevant facts and their characteristics, the crypto futures contracts offered by the respondents are "contracts for difference" and derivatives under Québec securities legislation;[7]

e. applying the factors for determining whether a person is acting as a dealer set out in Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* to the relevant facts, the respondents acted as securities and derivatives dealers without being registered in any capacity, contrary to Québec securities legislation;[8] and

f. the respondents distributed securities without having filed a receipted prospectus and without an applicable exemption, contrary to Québec securities legislation.[9]

[5] The FMAT imposed sanctions on all of the respondents that included the following orders (paraphrased below):[10]

a. that they pay an administrative penalty of $2 million, jointly and severally;

b. pursuant to s. 264 of the Québec *Securities Act* (**QSA**), denying them the benefit of any exemptions available under the QSA;

c. pursuant to s. 265 of the QSA, prohibiting them from engaging in any activity, directly or indirectly, in respect of a transaction involving securities except for transactions to enable users of the XT Platform to

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[5] 1977 CanLII 37 (SCC), [1978] 2 SCR 112 at 127–128
[6] Decision at paras 48-137
[7] Decision at paras 156-199
[8] Decision at paras 210-252
[9] Decision at paras 138-155
[10] Decision at para 333

withdraw their assets in the possession or control of the respondents or third parties and to close their accounts there; and

d. pursuant to s. 266 of the QSA, prohibiting them from engaging in the business of securities adviser or acting 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 there.

3. ANALYSIS

3.1 Statutory Framework

[6] The Commission brings this application under ss. 127(1) and 127(4.0.2) of the *Act*. Subsection 127(4.0.2) was added to the *Act* as part of various amendments on December 4, 2023, that repealed and replaced s. 127(10), the prior provision that permitted the Tribunal to make inter-jurisdictional enforcement orders under s. 127(1) after giving the respondents an opportunity to be heard.[11]

[7] Subsection 127(4.0.2) provides that where a person or company is subject to a prior order of a specified list of securities regulators, the Tribunal may now make various orders listed in s. 127(1) without giving the person or company that is the subject to the order an opportunity to be heard. The addition of s. 127(4.0.2) was part of a number of other amendments that were clearly intended to streamline the process for the recognition by the Tribunal of orders and settlements made by other securities regulators, self-regulatory organizations, and exchanges, as well as for making orders in the public interest in circumstances where a person or company has been convicted by a court of offences relating to securities or derivatives.[12]

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[11] Bill 146, *An Act to implement Budget measures and to enact and amend various statutes,* 1st Sess, 43rd Leg, Ontario, 2023 (assented to 4 December 2023)**,** SO 2023, c 21, Schedule 10 (**Bill 146**)

[12] Bill 146; Explanatory note concerning Bill 146 at p ii; "Bill 146, An Act to implement Budget measures and to enact and amend various statutes", Second Reading, Ontario, Legislative Assembly, *Official Report of Debates (Hansard),* 43-1, No 108 (14 November 2023) at 6023 (Rick Byers); "Bill 146, An Act to implement Budget measures and to enact and amend various statutes", Third Reading, Ontario, Legislative Assembly, *Official Report of Debates (Hansard),* 43-1, No 116B (28 November 2023) at 6708 (Rick Byers)

3.2 Precondition in s. 127(4.0.2) is met

[8] In this case, the precondition in paragraph 2 of s. 127(4.0.2) of the *Act* for making the requested orders under s. 127(1) without giving the respondents an opportunity to be heard is clearly met. The respondents are subject to prior orders "imposing sanctions, conditions, restrictions or requirements" made by the FMAT, which is a "securities regulatory authority of another province or territory in Canada" as that term is defined in s. 127(10) of the *Act*. Further, s. 127(4.0.4) authorizes such orders even where, as is the case here, the prior order of a securities regulator predates the December 4, 2023 amendments to the *Act*. I am also satisfied that in these circumstances, including given the nature of the requested orders and the fact that the respondents did not participate in the hearing before the FMAT despite being properly notified of the proceeding,[13] it is appropriate to decide this application without giving the respondents an opportunity to be heard.

3.3 It is in the public interest to grant the requested orders

[9] Having found that the precondition in s. 127(4.0.2) is met, I now turn to consider whether it is appropriate to exercise the Tribunal's public interest jurisdiction to make the requested orders pursuant to s. 127(1). This public interest jurisdiction is informed by the purposes of the *Act* which include the protection of investors and fostering confidence in the capital markets.[14] Orders made under s. 127(1) are protective and preventative and are made to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets.[15] I must decide whether sanctions are necessary to protect the public interest in Ontario and then consider what the appropriate sanctions should be.[16]

[10] The guidance from past inter-jurisdictional enforcement decisions of the Tribunal brought pursuant to the former s. 127(10) is equally applicable to inter-jurisdictional enforcement applications brought under s. 127(4.0.2). I accept that

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[13] Decision at paras 24-26, 272

[14] *Act*, s 1.1

[15] *Aitkens (Re)*, 2022 ONCM 22 (***Aitkens***) at para 37, citing *Committee for Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission*), 2001 SCC 37 at paras 42-43

[16] *Aitkens* at para 38; *JV Raleigh Superior Holdings Inc (Re),* 2013 ONSEC 18 (***JV Raleigh***) at para 16

I should not look behind or attempt to second-guess the findings made by the FMAT.[17] I also accept that while it is a factor to be considered, a connection to Ontario is not a prerequisite to the Tribunal making a s. 127(1) order.[18] In this case, I note that the XT Platform was accessible throughout Canada.[19]

[11] Given the factual findings of the FMAT, I conclude that had the respondents engaged in the same conduct in Ontario, it would have constituted a breach of the registration and prospectus requirements under ss. 25(1) and 53(1) of the *Act*. I am therefore satisfied that it is in the public interest to make orders against the respondents under s. 127(1).[20]

[12] In deciding the appropriate terms of such orders, I have considered the various sanctioning factors that the FMAT considered in its decision as well as the FMAT's factual findings regarding those sanctioning factors. Like the FMAT, I have also considered the importance of general and specific deterrence.[21] The sanctioning factors that the FMAT considered are the same or similar to the factors that the Tribunal has referred to in other cases when making orders in the public interest under s. 127(1). The FMAT found:

a. the misconduct was serious;[22]

b. the respondents were experienced in financial markets;[23]

c. the misconduct was recurrent and ongoing since 2018;[24]

d. the respondents' operations are extensive, international and involve millions of investors;[25]

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[17] *Black (Re)*, 2014 ONSEC 16 at paras 24 and 34; *Aitkens* at para 38; *JV Raleigh* at para 16

[18] *Cook (Re)*, 2018 ONSEC 6 at para 9; *Hable (Re)*, 2018 ONSEC 11 at para 8, citing *Biller (Re)* at paras 32-35

[19] Decision at para 226

[20] *JV Raleigh* at para 16; *Rustulka (Re),* 2023 ONCMT 37 at para 20

[21] Decision at paras 263-275

[22] Decision at paras 276, 278

[23] Decision at para 283

[24] Decision at paras 279-282

[25] Decision at paras 280-283

e. the respondents chose not to comply with applicable securities legislation, which was an aggravating factor;[26]

f. the respondents failed to acknowledge the breaches or their seriousness, did not cooperate with the Québec Autorité des marchés financiers (the regulator), and continued to breach Québec securities laws even after the proceedings before the FMAT had been commenced;[27] and

g. there were no mitigating factors.[28]

[13] I note that the FMAT invoked two prior decisions of this Tribunal that feature similar facts in holding that in the circumstances permanent market participation prohibitions were appropriate.[29]

[14] While not necessarily a requirement, the proposed orders sought by the Commission align with the non-monetary sanctions ordered by the FMAT, to the extent possible under the *Act*.

4. CONCLUSION

[15] For the reasons set out above, I find that it is in the public interest to permanently limit the respondents' future participation in Ontario's capital markets in order to restrain potential future misconduct by them that could harm Ontario investors and in order to maintain the integrity of Ontario's capital markets. I therefore order the sanctions requested by the Commission, as follows:

a. pursuant to paragraph 2 of s. 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;

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[26] Decision at para 284

[27] Decision at paras 285-286

[28] Decision at para 287

[29] Decision at paras 289-295, referring to *Mek Global Limited (Re)*, 2022 ONCMT 15 at paras 5, 133 and *Polo Digital Assets, Ltd (Re)*, 2022 ONCMT 32 at paras 6, 151

b. pursuant to paragraph 2.1 of s. 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 s. 127(1) of the *Act*, any exemptions contained in Ontario securities law do not apply to the respondents permanently; and

d. pursuant to paragraph 8.5 of s. 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.

Dated at Toronto this 6th day of March, 2025

"*Andrea Burke*"

Andrea Burke