

*Unofficial English Translation*

**FINANCIAL MARKETS  
ADMINISTRATIVE TRIBUNAL**

CANADA  
PROVINCE OF QUÉBEC  
MONTRÉAL

FILE NO.: 2023-009

DECISION NO.: 2023-009-001

DATE: September 20, 2023

---

**BEFORE THE ADMINISTRATIVE JUDGES: NICOLE MARTINEAU  
CHRISTINE DUBÉ**

---

**AUTORITÉ DES MARCHÉS FINANCIERS**

Applicant

v.

**XT.COM EXCHANGE**, a company or group of companies having an establishment located at the Oltajl Trade Centre – T\* Floor, Victoria Mahe, Republic of the Seychelles, also doing business as “**XT EXCHANGE**” and “**XT.COM**”

and

**BZ LIMITED**, a legal entity incorporated under the laws of the Hong Kong Special Administrative Region of the People’s Republic of China, having its place of business at Easey Commercial Building, suite 803, 8/F., 253-261 Hennessy Street, Wan Chai

Respondents

---

**DECISION**

---

## OVERVIEW

[1] The Financial Markets Administrative Tribunal (“Tribunal”) is of the opinion that a clear message should be sent to the owners and operators of crypto asset trading platforms<sup>1</sup> acting in contravention of securities legislation<sup>2</sup> that such a situation cannot be tolerated because it exposes the public to significant risks. Measures to protect the public and significant administrative penalties must be imposed for such breaches. Public confidence in the integrity and proper functioning of financial markets is at stake.

[2] In this case, a foreign crypto asset trading platform, accessible from Québec, on the XT.com website, is offering products and services without complying with securities legislation.

[3] The Autorité des marchés financiers (“Authority”) is the entity responsible for enforcing the *Securities Act*<sup>3</sup> and the *Derivatives Act*.<sup>4</sup> The Authority exercises the functions set out in this legislation in the manner provided in section 7 of the *Act respecting the regulation of the financial sector*.<sup>5</sup>

[4] XT.com Exchange (“XT Exchange”) is a company or group of companies that presents itself as a “global ecosystem”<sup>6</sup> and “*the leading crypto trading exchange infused with social trading capabilities*”.<sup>7</sup>

[5] According to a webpage on XT.com, XT Exchange offers its users professional crypto asset investment services, which are promoted as being the safest and most efficient.<sup>8</sup>

[6] XT Exchange claims it was founded in 2018.<sup>9</sup> It adds that it has an establishment in the Republic of the Seychelles<sup>10</sup> and its headquarters in Dubai, in the United Arab

---

<sup>1</sup> This notion of crypto assets is defined by the Office québécois de la langue française as follows: « Ensemble des valeurs dont les opérations sont enregistrées sur une chaîne de blocs », online: <<https://vitrinelinguistique.oqlf.gouv.qc.ca/fiche-gdt/fiche/26556537/cryptoactif>> (accessed August 2023). The notion of “blockchain” is defined by the Office québécois de la langue française as follows: « Base de données distribuée et sécurisée, dans laquelle sont stockées chronologiquement, sous forme de blocs liés les uns aux autres, les transactions successives effectuées entre ses utilisateurs depuis sa création », online: <<https://vitrinelinguistique.oqlf.gouv.qc.ca/fiche-gdt/fiche/26531717/chaine-de-blocs>> (accessed August 2023).

<sup>2</sup> The expression “securities legislation” is defined in *Regulation 14-101 respecting Definitions*, CQLR, c. V-1.1, r. 3, and includes in particular the *Securities Act* and the *Derivatives Act* as well as the regulations made pursuant to those Acts.

<sup>3</sup> CQLR, c. V-1.1.

<sup>4</sup> CQLR, c. I-14.01.

<sup>5</sup> CQLR, c. E-6.1.

<sup>6</sup> Exhibit D-7.

<sup>7</sup> Exhibit D-8.

<sup>8</sup> Exhibit D-11.

<sup>9</sup> Exhibit D-11.

<sup>10</sup> Exhibit D-10.

Emirates.<sup>11</sup> It also mentions that it has operations centres in Singapore, Europe and other countries and regions. It claims that “[...] *its business covers the world*”.<sup>12</sup>

[7] As stated on the home page of the XT.com website, XT Exchange is owned and operated by BZ Limited.<sup>13</sup>

[8] BZ Limited is a company incorporated under the laws of the Hong Kong Special Administrative Region of the People’s Republic of China in 2021.<sup>14</sup>

[9] In fact, XT Exchange and BZ Limited (the “respondents”) act as one and the same person.<sup>15</sup>

[10] For example, in an agreement with a third party, XT Exchange uses the name XT.COM or BZ Limited interchangeably.<sup>16</sup> Indeed, the preamble to the agreement refers to BZ Limited, whereas the signature page refers to XT.COM to describe the same entity.

[11] The Authority asks the Tribunal to issue a number of orders against the respondents, including cease trade orders in securities and derivatives, orders prohibiting engaging in the business of securities adviser or acting as investment fund manager, orders prohibiting any activity related to the offering or trading of a derivative, and orders prohibiting engaging in the business of derivatives adviser, and measures to ensure compliance with the law.

[12] It also asks the Tribunal to impose an administrative penalty of two million dollars (\$2,000,000) on the respondents jointly and severally.

[13] The Authority alleges that the respondents are entities that facilitate crypto asset transactions through the XT.com website, which is accessible from Québec and the rest of Canada.<sup>17</sup>

[14] According to the Authority, the following products and services are offered to the public by the respondents through the XT.com website:

- crypto asset contracts;
- non-fungible token (or “NFT”) contracts;
- products presented as “Futures Contracts”: “USDT-M Futures” and “Coin-M Futures”;
- performance programs (or “Savings”); and
- investment programs linked to proof-of-stake (or “Staking”) mechanisms.

---

<sup>11</sup> Exhibit D-11.

<sup>12</sup> Exhibits D-13 and D-14.

<sup>13</sup> Exhibit D-13.

<sup>14</sup> Exhibit D-17.

<sup>15</sup> Concept of person as defined in section 5.1 of the *Securities Act* and section 3 of the *Derivatives Act*.

<sup>16</sup> Exhibit D-9.

<sup>17</sup> Exhibits D-95 and D-111.

[15] Crypto asset contracts represent contractual rights attached to a crypto asset or a value-referenced crypto asset.

[16] Non-fungible token contracts allow investors to acquire contractual rights to multiple non-fungible tokens, such as virtual artworks.

[17] Futures Contracts are contracts or instruments whose market price, value, or delivery or payment obligations are derived from an underlying interest.

[18] Performance programs allow investors to deposit crypto assets into an account accessible through the XT.com website to generate returns.

[19] Investors also have the opportunity to participate in investment programs linked to blockchain validation mechanisms<sup>18</sup> through proof-of-stake.<sup>19</sup> The differences between these programs and performance programs concern the type of crypto assets available and the lockout period during which crypto assets cannot be removed.

[20] According to the Authority, the products and services offered by the respondents to the public on the XT.com website are securities within the meaning of the *Securities Act* or derivatives within the meaning of the *Derivatives Act*.

[21] The Authority maintains that the respondents distributed securities to the public without a prospectus and that they create or market derivatives for the public without being approved for this purpose by the Authority. The Authority also maintains that the respondents carry on the activity of securities and derivatives dealer without being registered as such with the Authority.

[22] Consequently, the Authority submits that the respondents' activities are in contravention of sections 11 and 148 of the *Securities Act* and sections 54 and 82 of the *Derivatives Act*.

[23] The Authority's application was submitted at the virtual hearings held on July 24, 25 and 28, 2023.

[24] At the hearing on July 24, 2023, Hongyu Liu, acting as translator for Tim Ma, mentions that he represents XT Exchange. He informs the Tribunal that they are present at the hearing as observers. With respect to BZ Limited, it is not represented by an officer or lawyer and does not provide a valid reason for its absence.

[25] The Authority's application is therefore not contested by the respondents.

---

<sup>18</sup> The Office québécois de la langue française defines "validation mechanisms" as follows: « Mécanisme qui vise à assurer la validité des blocs ajoutés sur une chaîne de blocs ainsi que les transactions qu'ils contiennent », online: <<https://vitrinelinguistique.oqlf.gouv.qc.ca/fiche-gdt/fiche/26552609/mecanisme-de-validation>> (accessed August 2023).

<sup>19</sup> The Office québécois de la langue française defines the concept of "proof-of-stake" as follows: « Mécanisme de validation de transactions qui repose sur la preuve de possession d'une quantité donnée de cryptomonnaie mise en garantie pour l'ajout d'un bloc à une chaîne de blocs », online: <<https://vitrinelinguistique.oqlf.gouv.qc.ca/fiche-gdt/fiche/26556545/preuve-denjeu-deleguee>> (accessed August 2023).

[26] Based on the evidence adduced by the Authority, the Tribunal finds that the respondents were duly notified of the originating pleading, in accordance with the special notification methods authorized by the Tribunal. The respondents were duly notified of the hearing dates. Pursuant to section 115.4 of the *Act respecting the regulation of the financial sector*,<sup>20</sup> the Tribunal makes an oral decision on July 24, 2023 to proceed with this matter by default.

[27] The Tribunal notes that Hongyu Liu and Tim Ma are not present at the hearings held on July 25 and 28, 2023.

[28] For the reasons stated below and based on the evidence adduced by the Authority, the Tribunal is of the opinion that the respondents distributed securities subject to the application of the *Securities Act*. This distribution was made in contravention of section 11 of the *Securities Act*, i.e. without having prepared a prospectus subject to a receipt by the Authority. The respondents also created and marketed derivatives, without being qualified by the Authority, in contravention of section 82 of the *Derivatives Act*. In carrying on their activities, the respondents acted as securities and derivatives dealers, without being registered in any capacity with the Authority, in contravention of section 148 of the *Securities Act* and section 54 of the *Derivatives Act*.

[29] Accordingly, the Tribunal allows, in the public interest, the Authority's application and decides to implement all the orders it seeks.

## **REGULATION OF CRYPTO ASSET TRADING PLATFORMS**

[30] The popularity of crypto assets is generating numerous offers to the public of financial products and services in Québec, elsewhere in Canada and internationally.

[31] In 2018, the Authority published a notice to remind any person intending to create or market a derivative linked to cryptocurrencies or other innovative assets that they are subject to the *Derivatives Act* and obligated to qualify, register and report transactions. In addition, the Authority invited investors to verify the registration of persons with whom they do business as a dealer and to act cautiously when trading cryptocurrency-related derivatives.<sup>21</sup>

[32] Concurrently, the Canadian Securities Administrators ("CSA"),<sup>22</sup> like many regulators around the world, are working to put in place a regulatory framework adapted to crypto asset trading platforms. The CSA publishes several notices on the application of securities legislation to those platforms. Although the CSA's notices are not legally

---

<sup>20</sup> Section 115.4 of the *Act respecting the regulation of the financial sector* states: "If a duly notified party does not appear at the time set for the hearing and has not provided a valid excuse for the party's absence, or chooses not to be heard, the Tribunal may proceed with hearing the matter and render a decision."

<sup>21</sup> See Exhibit D-108.

<sup>22</sup> Canada's provincial (including the Authority) and territorial securities regulators have joined forces to improve, coordinate and harmonize capital market regulation. They seek consensus on policies that impact the capital market and its participants and collaborate on the implementation of regulatory programs.

binding, they are the result of a concerted analytical effort by CSA staff and provide guidance on the interpretation and application of securities legislation.

[33] On January 16, 2020, the CSA provided guidance on certain factors considered in determining whether securities legislation applies to any entity facilitating transactions related to crypto assets, including their purchase and sale, through *CSA Staff Notice 21-327 - Guidance on the Application of Securities Legislation to Entities Facilitating the Trading of Crypto Assets* (“CSA Staff Notice 21-327”).<sup>23</sup>

[34] CSA Staff Notice 21-327 specifies that a transaction on a crypto asset may be subject to securities legislation if it does not result in the obligation to deliver the relevant crypto asset and take delivery immediately.

[35] The CSA notes that crypto asset platforms operating from abroad who have Canadian users must review obligations under securities legislation in Canada. The CSA warns that it ultimately intends to take or pursue enforcement action against entities facilitating crypto asset transactions that do not comply with securities legislation.

[36] Since CSA Staff Notice 21-327 was issued, the CSA has issued additional Notices providing additional guidance on how securities legislation applies to crypto asset trading platforms.<sup>24</sup> Among other things, the CSA sets out dealer registration requirements specific to crypto asset platforms and specifies their expectations for compliance with regulatory obligations, particularly with respect to advertising and the use of social media.<sup>25</sup>

[37] The CSA recognizes the specific significant risks posed by unregistered foreign crypto asset trading platforms to the protection of Canadian investors. For example, in light of recent insolvencies of foreign platforms, on February 22, 2023, the CSA issued a notice to enhance the protection of Canadian investors by requiring crypto asset trading platforms that continue to operate in Canada during their registration process to issue enhanced pre-registration commitments.<sup>26</sup>

---

<sup>23</sup> Canadian Securities Administrators, *CSA Staff Notice 21-327 Guidance on the Application of Securities Legislation to Entities Facilitating the Trading of Crypto Assets*, January 16, 2020, online: <[https://www.autorites-valeurs-mobilieres.ca/uploadedFiles/Industry\\_Resources/21-327\\_CSAnote.pdf](https://www.autorites-valeurs-mobilieres.ca/uploadedFiles/Industry_Resources/21-327_CSAnote.pdf)> (accessed August 2023).

<sup>24</sup> See *Joint Canadian Securities Administrators / Investment Industry Regulatory Organization of Canada Staff Notice 21-329 Guidance for Crypto Asset Trading Platforms: Compliance with Regulatory Obligations*, March 29, 2021, online: <[https://www.osc.ca/sites/default/files/2021-03/csa\\_20210329\\_21-329\\_compliance-regulatory-requirements.pdf](https://www.osc.ca/sites/default/files/2021-03/csa_20210329_21-329_compliance-regulatory-requirements.pdf)> (accessed August 2023).

<sup>25</sup> See *Joint Canadian Securities Administrators / Investment Industry Regulatory Organization of Canada Staff Notice 21-330: Guidance for Crypto-Trading Platforms: Requirements relating to Advertising, Marketing and Social Media Use*, September 23, 2021, online: <[https://www.osc.ca/sites/default/files/2021-09/csa\\_20210923\\_21-330\\_crypto-trading-platforms.pdf](https://www.osc.ca/sites/default/files/2021-09/csa_20210923_21-330_crypto-trading-platforms.pdf)> (accessed August 2023).

<sup>26</sup> See *Canadian Securities Administrators Staff Notice 21-332 Crypto Asset Trading Platforms: Pre-Registration Undertakings Changes to Enhance Canadian Investor Protection*, February 22, 2023, online: <[https://www.osc.ca/sites/default/files/2023-02/csa\\_20230222\\_21-332\\_crypto-trading-platforms-pre-reg-undertakings.pdf](https://www.osc.ca/sites/default/files/2023-02/csa_20230222_21-332_crypto-trading-platforms-pre-reg-undertakings.pdf)> (accessed August 2023).

[38] At this point, several crypto asset trading platforms are registered in Canada<sup>27</sup> and several platforms have entered into a pre-registration commitment.<sup>28</sup>

## QUESTIONS

[39] As part of its analysis, the Tribunal must answer the following questions:

- 1) Are the products and services offered to the public by the respondents through the XT.com website investment contracts subject to the scheme of securities regulation set out in the *Securities Act*?
- 2) Did the respondents distribute securities in contravention of section 11 of the *Securities Act* by not having prepared a prospectus subject to a receipt issued by the Authority?
- 3) Are the products and services offered to the public by the respondents on the XT.com website derivatives within the meaning of the *Derivatives Act*?
- 4) Did the respondents create or market derivatives without being qualified by the Authority in contravention of section 82 of the *Derivatives Act*?
- 5) Did the respondents act as a securities and derivatives dealer in contravention of section 148 of the *Securities Act* and section 54 of the *Derivatives Act* by not being registered with the Authority?
- 6) If applicable, what administrative measures and administrative penalty must the Tribunal impose on the respondents?

[40] Upon completing its analysis, the Tribunal replies in the affirmative to the first five (5) questions and decides, in the public interest, to make the orders sought by the Authority in its amended application.

## ANALYSIS

**Question 1: Are the products and services offered to the public by the respondents through the XT.com website investment contracts subject to the scheme of securities regulation set out in the *Securities Act*?**

[41] The Tribunal replies in the affirmative to this question. It considers that it has been shown by a preponderance of evidence that some of the products and services offered to the public by the respondents through the XT.com website constitute investment contracts subject to the scheme of securities regulation set out in the *Securities Act*.

---

<sup>27</sup> See Canadian Securities Administrators, *Crypto Trading Platforms Authorized to Do Business with Canadians*, online: <<https://www.securities-administrators.ca/crypto-trading-platforms-regulation-and-enforcement-actions/crypto-trading-platforms-authorized-to-do-business-with-canadians/>> (accessed August 2023).

<sup>28</sup> See Canadian Securities Administrators, *Crypto Trading Platforms That Have Filed Pre-Registration Undertakings*, online: <<https://www.securities-administrators.ca/crypto-trading-platforms-regulation-and-enforcement-actions/crypto-trading-platforms-that-have-filed-pre-registration-undertakings/>> (accessed August 2023).

[42] The *Securities Act* is a law of public order whose objective is to protect the public.<sup>29</sup>

[43] To ensure this protection, case law has established that the *Securities Act* must be given a broad interpretation.<sup>30</sup>

[44] The *Securities Act* applies to every form of investment described in its section 1, including the investment contract provided for in paragraph 7 of that section, defined as follows:

“An investment contract is a contract whereby a person, having been led to expect profits, undertakes to participate in the risk of a venture by a contribution of capital or loan, without having the required knowledge to carry on the venture or without obtaining the right to participate directly in decisions concerning the carrying on of the venture.”

[45] According to section 2 of the *Securities Act*,<sup>31</sup> the scheme of securities regulation applies to the other forms of investment listed in section 1, including the investment contract. This section provides that everything must be done with the necessary modifications.

[46] Therefore, the term “securities” must include investment contracts for the purposes of the *Securities Act*.

[47] The definition of an investment contract was incorporated into the *Securities Act* in 1982 and has remained unchanged since.

[48] In *Pacific Coast*,<sup>32</sup> the Supreme Court of Canada sets out criteria for determining whether something is an investment contract. It is based on the test set out by the United States Supreme Court in *Howey*:<sup>33</sup>

“The Supreme Court of the United States in *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946), with the foregoing in mind laid down the test:

“Does the scheme involve ‘an investment of money in a common enterprise, with profits to come solely from the efforts of others?’”

. . .

“The word ‘solely’ in that test has been criticized and toned down by many jurisdictions in the United States. It is sufficient to refer to *SEC v. Koscot Interplanetary, Inc.*, and to *SEC v. Glen W. Turner Enterprises, Inc.* As mentioned in the *Turner* case, to give a strict interpretation to the word “solely” (at p. 482) “would not serve the purpose of the legislation. Rather we adopt a more realistic test, whether the efforts made by those other than the

<sup>29</sup> *Brosseau v. Alberta Securities Commission*, [1989] 1 S.C.R. 301.

<sup>30</sup> *Pacific Coast Coin Exchange v. Ontario Securities Commission*, [1978] 2 S.C.R. 112, 127–128.

<sup>31</sup> Section 2 of the *Securities Act* mentions: “The scheme of securities regulation established by this Act and the regulations applies, with the necessary modifications, to the other forms of investment listed in section 1, subject to any express exemption”.

<sup>32</sup> *Pacific Coast Coin Exchange v. Ontario Securities Commission*, [1978] 2 S.C.R. 112, 127–128.

<sup>33</sup> *S.E.C. v. W. J. Howey Co.*, 328 U.S. 293 (1946).



investor are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise". In the same case of *Turner*, the expression "common enterprise" has been defined to mean (p. 482) "one 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." These refinements of the test, I accept."

[49] The concept of an investment contract must be interpreted according to these criteria established by the Supreme Court of Canada.

[50] In this case, the Authority conducted cyber investigations and conducted undercover operations on the XT.com website using Québec IP addresses.

[51] According to the results of the Authority's investigations, the respondents offer products and services to the public through the XT.com website, including the following:

- crypto asset contracts;
- non-fungible token (or "NFT") contracts;
- performance programs (or "Savings"); and
- investment programs linked to proof-of-stake (or "Staking") mechanisms.

[52] In order to determine whether these products and services constitute investment contracts, the Tribunal will consider each of the criteria in the definition of an investment contract based on the evidence presented by the Authority.

### **Analysis of the criteria for defining an investment contract**

#### **"a contract whereby a person undertakes"**

[53] The first criterion of an investment contract requires a contractual commitment between an investor and the respondents, which can take various forms.

[54] The respondents offer the public, through the XT.com website, the products and services listed above.<sup>34</sup>

[55] In this case, the undertaking is:

- 1) the creation of an account by the investor on the XT.com website;
- 2) its acceptance (i) of the terms contained and developed by the respondents in the document entitled "User Agreement",<sup>35</sup> (ii) of a privacy policy<sup>36</sup> and (iii) of the terms contained in the document entitled "XT Investment Activities Service Agreement"<sup>37</sup> when he wishes to commit to performance programs (or "Savings") as well as investment programs related to proof-of-stake (or "Staking") mechanisms; and

---

<sup>34</sup> Exhibit D-14.

<sup>35</sup> Exhibit D-13.

<sup>36</sup> Exhibit D-29.

<sup>37</sup> Exhibit D-77.

3) the acquisition by the investor of one of the four (4) products and services described above.

[56] The Tribunal considers that the first criterion of the definition of an investment contract provided for in the *Securities Act* is met for each of the four (4) products and services described above.

“having been led to expect profits”

[57] For the products and services offered by the respondents to constitute an investment contract, profits must be expected by investors.

[58] According to case law, profits need not necessarily come from the promoter of the venture for an offer made to the public to be considered an investment contract.

[59] In *Battah*,<sup>38</sup> the Tribunal mentioned that the word “*bénéfice*” (profit) in the definition of investment contract [TRANSLATION] “must pertain to the advantage or gain that one draws from participating in a venture, but all in relation to the other criteria of the investment contract. [...]”

[60] In that same decision,<sup>39</sup> the Tribunal reiterates that a profit may be strictly fiscal in nature and paid directly to investors without direct participation by the promoter of the venture.

[61] In *Infotique Tyra*,<sup>40</sup> the Court of Appeal of Quebec quotes the trial judge who mentions the following:

[TRANSLATION] “The evidence as well as a very limited knowledge of the business world undoubtedly tells us that investors signed this undertaking because of the expected profit. The Act does not provide specific means for obtaining it. It was never stated in this definition that the expected profit must necessarily be linked to the profits made by Infotique Tyra Inc. Profit may just as well be either a loss of earnings or, as in this case, a substantial reduction in tax payable.”

[62] In light of the above, the profit does not necessarily have to be handed over by the promoter of a venture.

[63] In this case, the respondents, through the XT.com website, suggest to investors that the products and services offered can appreciate in value, that they can earn income from them and thus benefit from future profits.

[64] The respondents state the following on the XT.com website with respect to “Digital assets”: “*The trading is continuous throughout the day without limits on rise and fall and the prices are in large fluctuation.*”<sup>41</sup>

---

<sup>38</sup> *Autorité des marchés financiers c. Battah*, 2012 QCBDR 81.

<sup>39</sup> *Autorité des marchés financiers c. Battah*, 2012 QCBDR 81.

<sup>40</sup> *Infotique Tyra inc. c. Québec (Commission des valeurs mobilières)*, 1994 CanLII 5940.

<sup>41</sup> Exhibit D-13.

[65] Investors can therefore expect a profit by acquiring the products and services offered by the respondents.

[66] For crypto asset contracts, the XT.com website promotes profit by mentioning that owning crypto assets can lead to profits from the appreciation of their value over time.<sup>42</sup>

[67] When an investor purchases a crypto asset contract, that investor may subsequently obtain other products and services offered by the respondents on the XT.com website, including non-fungible token (or “NFT”) contracts, “Futures Contracts”, “Savings” programs and investment programs related to proof-of-stake (or “Staking”) validation mechanisms.

[68] The investor can then expect to make a profit through the acquisition of crypto asset contracts and other products and services acquired as a result of the acquisition.

[69] For non-fungible token (NFT) contracts, investors can expect to make a profit through the use of the “NFT Staking” service, as depicted on the XT.com website,<sup>43</sup> which would allow investors to earn rewards and other profits from their non-fungible token (or “NFT”) contracts.<sup>44</sup>

[70] Investors also have the option of putting their non-fungible token (or “NFT”) contracts up for sale on the XT.com website, including by auctioning them off.<sup>45</sup>

[71] For performance programs (or “Savings”), the XT.com website promotes expectation of profit for both “XT Flexible Savings” programs and “Fixed Savings” programs.

[72] The following representations are made for “XT Flexible Savings” programs: “*Save and earn. Principal guaranteed.*” For “Fixed Savings” programs it is mentioned that: “*The simple way to Save & Earn.*”<sup>46</sup>

[73] The annual return on “Fixed Savings” programs is up to 180% and the annual return on “XT Flexible Savings” programs is up to 15%.<sup>47</sup>

[74] As part of its undercover operations, the Authority invested a sum of one (1) USDT<sup>48</sup> in a flexible savings return program for a 30-day lock-up period.<sup>49</sup>

[75] According to the XT.com website, this investment was expected to yield an annual return of 8%.<sup>50</sup>

---

<sup>42</sup> Exhibit D-51.

<sup>43</sup> Exhibit D-109.

<sup>44</sup> Exhibit D-109, p. 2.

<sup>45</sup> Exhibit D-60.

<sup>46</sup> Exhibit D-75.

<sup>47</sup> Exhibit D-75, p. 16.

<sup>48</sup> Also called Tether. This is a cryptocurrency that claims to be stable, and that aims to reflect the value of the U.S. dollar.

<sup>49</sup> Exhibit D-76.

<sup>50</sup> Exhibit D-76.

[76] A few days later, a return lower than that represented appears in the Authority's account.<sup>51</sup>

[77] For investment programs related to proof-of-stake (or "Staking") validation mechanisms, the XT.com website promotes an expectation of profit for both "New Coin Staking" and "PoS Staking".

[78] The XT.com website mentions: "*Pledge to deposit, easy to earn*" in connection with "New Coin Staking" and "*Save and earn. Principal guaranteed*" in connection with "PoS Staking".<sup>52</sup>

[79] The estimated returns, as presented, are up to 9.144% for "PoS Staking"<sup>53</sup> investments and up to 7,448.97% for "New Coin Staking"<sup>54</sup> investments.

[80] As part of its undercover operations, the Authority invested a sum of one (1) USDT in a "PoS Staking" type program for a term of 30 days.<sup>55</sup>

[81] According to representations made on the XT.com website, this investment was expected to yield an annual return of 2.88%.<sup>56</sup>

[82] Approximately one month later, the Authority's return on this investment was lower than expected.<sup>57</sup>

[83] In brief, in this case, profits come from the increase in the value of the products and the returns resulting from the use of the services acquired by the investors. Although the respondents do not have control over this value, it is a profit within the meaning of the definition of an investment contract.

[84] As the four (4) products and services described above and offered to the public by the respondents point to a benefit, whether directly from the respondents or not, the Tribunal finds that the second criterion of the definition of an investment contract is met for each of them.

"to participate in the risk of a venture by a contribution of capital or loan"

*"A contribution of capital or loan"*

[85] In this case, the investor's contribution consists of the deposit of crypto assets or the payment of an amount in fiat currency (or "fiat").<sup>58</sup>

---

<sup>51</sup> A return of 0.006177239 USDT was posted on the XT.com website for this initial investment of one (1) USDT; Exhibit D-78.

<sup>52</sup> Exhibit D-79.

<sup>53</sup> Exhibit D-81.

<sup>54</sup> Exhibit D-82, p. 3.

<sup>55</sup> Exhibit D-78.

<sup>56</sup> Exhibit D-78.

<sup>57</sup> A return of 0.002367 USDT was posted on the Authority's account; Exhibit D-83.

<sup>58</sup> Including the Canadian dollar, for example.

[86] For crypto asset contracts, investors can purchase them in at least four ways, using fiat currency or crypto assets:

i) through the deposit of crypto assets;<sup>59</sup>

ii) through “P2P Trading”,<sup>60</sup> which is a peer-to-peer market that allows investors to trade rights in crypto assets with each other;<sup>61</sup>

iii) through “Third Party Trading”;<sup>62</sup> which allows investors to acquire rights to crypto assets by using the services of third party entities identified on the XT.com website to make the required payments;<sup>63</sup> and

iv) through the “Trading” service, which allows the exchange of contractual rights on crypto assets that they have acquired, in order to acquire contractual rights on other crypto assets.<sup>64</sup>

[87] The amount investors must spend to exchange their crypto asset contract for another crypto asset contract varies depending on the crypto asset chosen.<sup>65</sup>

[88] When acquiring crypto asset contracts, investors must pay transaction fees for each cash transaction.<sup>66</sup>

[89] As part of its undercover operations, the Authority was able to obtain a crypto asset contract.

[90] To that end, the Authority made a contribution consisting of the deposit of crypto assets on the XT.com website, i.e. Bitcoin fractions (or “BTC”).<sup>67</sup> The Authority received an email confirming the deposit of crypto assets.<sup>68</sup>

[91] That same day, the Authority obtained contractual rights tot Tether (or “USDT”) crypto assets through a contribution made from the contractual rights it held on fractions of a BTC.<sup>69</sup>

[92] For the acquisition of contractual rights to non-fungible tokens (or “NFTs”), such as virtual works of art, investors must pay a sum in crypto assets or fiat currency, the value of which varies according to the one they select.<sup>70</sup>

[93] As part of its undercover operations, the Authority was able to purchase contractual rights to a non-fungible token (or “NFT”) through a contribution of 0.018 Ether

---

<sup>59</sup> Exhibit D-35.

<sup>60</sup> Exhibit D-38.

<sup>61</sup> Exhibits D-40 to D-42.

<sup>62</sup> Exhibit D-39.

<sup>63</sup> Exhibits D-43 and D-44.

<sup>64</sup> Exhibits D-45 and D-46.

<sup>65</sup> Exhibit D-47.

<sup>66</sup> Exhibit D-48.

<sup>67</sup> Exhibit D-36.

<sup>68</sup> Exhibit D-37.

<sup>69</sup> Exhibit D-50.

<sup>70</sup> Exhibit D-55.

(“ETH”).<sup>71</sup> This non-fungible token acquired by the Authority was deposited into an Authority account accessible on the XT.com website.<sup>72</sup> Despite this purchase, the transfer of ownership is not reflected on the applicable blockchain.<sup>73</sup>

[94] Transaction fees are charged when an investor sells a non-fungible token (or “NFT”) contract.<sup>74</sup>

[95] The contribution in the case of participation in one of the performance (or “Savings”) programs, whether for the “XT Flexible Savings” programs or the “Fixed Savings” programs, involves the deposit of crypto assets into an account accessible through the XT.com website to generate returns.<sup>75</sup>

[96] In the case of “XT Flexible Savings” programs, deposited crypto assets could be withdrawn by investors at any time. In the case of “Fixed Savings” programs, crypto assets would be subject to a lock-up period during which they cannot be removed and which may vary depending on the program chosen.<sup>76</sup>

[97] As part of its undercover operations, the Authority was able to make an investment by contributing one (1) USDT to a “Fixed Savings” program for a 30-day lock-up period.<sup>77</sup>

[98] Contributions in the case of participation in one of the investment programs linked to proof-of-stake (or “Staking”) validation mechanisms involve the investor pledging crypto assets for varying durations ranging from a few hours in the context of “New Coin Staking” type programs, to 30 or 90 days in the case of “PoS Staking” type programs.<sup>78</sup>

[99] As part of its undercover operations, the Authority was able to invest in a “PoS Staking” type program for a term of 30 days through a contribution of one (1) USDT.<sup>79</sup>

[100] Thus, the evidence shows that in order to obtain the four products and services offered by the respondents through the XT.com website, investors must make a contribution.

*“the venture”*

[101] In *PlexCoin*,<sup>80</sup> which deals with cryptocurrency offered to the public through websites and social media, the Tribunal determines that the venture consists of the following:

---

<sup>71</sup> Exhibit D-56.

<sup>72</sup> Exhibits D-57 and D-58.

<sup>73</sup> Exhibit D-59.

<sup>74</sup> Exhibit D-60.

<sup>75</sup> Exhibit D-75.

<sup>76</sup> Exhibit D-75.

<sup>77</sup> Exhibit D-76.

<sup>78</sup> Exhibits D-80 and D-81.

<sup>79</sup> Exhibit D-78.

<sup>80</sup> *Autorité des marchés financiers v. PlexCorps*, 2017 QCTMF 88, upheld by the Court of Québec in *Lacroix v. Autorité des marchés financiers*, 2020 QCCQ 1467.

[TRANSLATION] “Thus, in what is proposed to the investor, “the venture” is the entire arrangement offered to the investor, including its creation, promotion, the issuing of PlexCoin to the public, its marketing, the management of the related bonus returns, management of its liquidity, its security and the establishment of a viable market for that cryptocurrency”.

[102] Counsel for the Authority summed up the venture in this matter very well in mentioning that it consists [TRANSLATION] “of a turnkey solution that allows investors to hope to earn passive profits by assessing the value of the crypto assets over which they hold rights as well as by the efficient use of crypto assets by the respondents in order to generate the returns represented, while dependent on the work of the latter to ensure their custody, said efficient use, and ultimately the success of said venture”.

[103] According to the Tribunal, the venture proposed to the investors by the respondents is broken down as follows:

- the creation and management of products and services offered on the XT.com website;
- the creation, development and establishment of a web-based platform where investors can obtain the products and services offered by the respondents;
- the design, management and updating of the XT.com website;
- the offer to generate passive profits online;
- the promotion of the products and services offered by the respondents;
- the acceptance and execution of transactions through the XT.com website;
- the custody of crypto assets over which investors hold contractual rights;
- the use of crypto assets over which investors have contractual rights to generate the represented returns;
- the selection of suppliers of services and equipment; and
- the management of the respondents’ human resources.

[104] The Tribunal notes that, according to *Pacific Coast*,<sup>81</sup> which refers to *Howey*,<sup>82</sup> it is necessary to determine whether the scheme offered to investors involves “an investment of money in a common enterprise, with profits to come solely from the efforts of others.”

[105] Also in *Pacific Coast*,<sup>83</sup> the Supreme Court of Canada states the following about the common enterprise:

---

<sup>81</sup> *Pacific Coast Coin Exchange v. Ontario Securities Commission*, [1978] 2 S.C.R. 112, 128 and 129.

<sup>82</sup> *S.E.C. v. W. J. Howey Co.*, 328 U.S. 293 (1946).

<sup>83</sup> *Pacific Coast Coin Exchange v. Ontario Securities Commission*, [1978] 2 S.C.R. 112, 129.

“In my view, the test of common enterprise is met in the case at bar. I accept respondent’s submission that such an enterprise exists when it is undertaken for the benefit of the supplier of capital (the investor) and of those who solicit the capital (the promoter). In this relationship, the investor’s role is limited to the advancement of money, the managerial control over the success of the enterprise being that of the promoter; therein lies the community. In other words, the “commonality” necessary for an investment contract is that between the investor and the promoter. There is no need for the enterprise to be common to the investors between themselves.”

[106] In the case at hand, the Tribunal is of the opinion that such a commonality of interest exists. The sole role of the investors is to advance funds, while the respondents alone assume managerial control over the venture.

[107] The Tribunal is of the opinion that the offer made to the public by the respondents is a participation in a common enterprise that is a “venture” within the meaning of the definition of an investment contract.

“the risk”

[108] The Tribunal is of the opinion that the following risks, developed in the Tribunal’s case law,<sup>84</sup> are present in this case:

- the choice to invest in one business over another;
- the lack of investor knowledge and control over “the carrying on of the venture”;
- the risk that every investor will be totally dependent on the respondents’ efforts to make profits;
- the risk that investors will not receive the expected profits;
- the risk of losing an investment if the respondents cease their activities for any reason;
- the risk of inability to access the platform;
- the risk of platform intrusion as well as the risk of technological obsolescence; and
- the risk to the privacy of investors’ personal information.

---

<sup>84</sup> *Autorité des marchés financiers c. Opération Phoenix inc.*, 2021 QCTMF 23; *Autorité des marchés financiers c. Gestion Itradecoins inc.*, 2020 QCTMF 57; *Autorité des marchés financiers c. Technologies Crypto inc.*, 2019 QCTMF 5.



[109] CSA Staff Notice 21-327<sup>85</sup> outlines the risks faced by users of certain crypto asset trading platforms. It mentions that immediate delivery of crypto assets may not be mandatory:

“Potentially, there will be ongoing reliance and dependence of the user on the Platform until the transfer to a user-controlled wallet is made. Until then, the user would not have ownership, possession and control of the crypto assets without reliance on the Platform. The user would be subject to ongoing exposure to insolvency risk (credit risk), fraud risk, performance risk and proficiency risk on the part of Platform.”

[110] In this case, since the respondents do not immediately deliver the products to the investors, the investors do not obtain possession of them. Consequently, they are exposed to the risks associated with the custody of crypto assets by the respondents or third parties acting for them.

[111] Thus, investors must accept the terms of a user agreement<sup>86</sup> that covers several risks. In particular, it mentions the following:

“Digital asset trading has extremely high risks and is not suitable for most people [...]. The company reserves the right to cancel or permanently freeze your account and hold you and your authorized agent accountable. This website reserves the right to modify, suspend or terminate the services of the website at any time. This website does not need to inform you before exercising the right to modify or suspend services [...].”

[112] Investors who engage in performance programs (or “Savings”) or investment programs linked to proof-of-stake (or “Staking”) validation mechanisms must agree to the terms of a document entitled “XT Investment Activities Service Agreement”<sup>87</sup> available on the XT.com website.

[113] This document lists risks associated with the use of the platform. It mentions that the money invested in these programs will be used for other purposes. It also specifies that investors accept the risks associated with their investment and that XT.com may suspend or terminate investment activities.

[114] The Tribunal is of the opinion that investors participate in the risks of the venture in which they engage, including crypto asset contracts, non-fungible token (or “NFT”) contracts, performance programs (or “Savings”) and investment programs related to proof-of-stake (or “Staking”) validation mechanisms.

[115] The Tribunal considers that the third criterion of the definition of an investment contract is met.

---

<sup>85</sup> Canadian Securities Administrators, *CSA Staff Notice 21-327 Guidance on the Application of Securities Legislation to Entities Facilitating the Trading of Crypto Assets*, January 16, 2020, online: <[https://www.osc.ca/sites/default/files/pdfs/irps/csa\\_20200116\\_21-327\\_trading-crypto-assets.pdf](https://www.osc.ca/sites/default/files/pdfs/irps/csa_20200116_21-327_trading-crypto-assets.pdf)> (accessed August 2023).

<sup>86</sup> Exhibit D-13.

<sup>87</sup> Exhibit D-77.

“without having the required knowledge to carry on the venture or without obtaining the right to participate directly in decisions concerning the carrying on of the venture”

[116] While only one of these two criteria is necessary to determine whether the respondents' offer to investors is an investment contract, the Tribunal finds that both criteria are met.

*“without having the required knowledge to carry on the venture”*

[117] It is recognized in both the Tribunal's case law<sup>88</sup> and that of other Canadian securities commissions<sup>89</sup> that solicitation through the Internet is primarily directed at unsophisticated and vulnerable investors.

[118] The venture currently proposed to investors requires very specialized knowledge and expertise that the general public solicited through the Internet does not have.

[119] The evidence presented by the Authority shows that, when an investor is registered on the XT.com website, no information is requested to determine whether that investor has expertise or knowledge related to the carrying on of the venture. Anyone, except those residing in non-listed countries, may register on this website and make certain transactions there.

[120] The Tribunal is of the opinion that investors do not have the knowledge required to carry on the venture. Therefore, the fourth criterion of the investment contract definition is met.

“or without obtaining the right to participate directly in decisions concerning the carrying on of the venture”

[121] The right to directly participate in decisions regarding the carrying on of the venture assumes that the investor participates at all stages thereof.<sup>90</sup>

[122] In this case, investors have no right to participate in decisions regarding the carrying on of the venture.

[123] Their role is limited to creating an account on the XT.com website to obtain the products and services offered by the respondents, accepting the terms and conditions developed by the respondents,<sup>91</sup> carrying out the transactions they desire and waiting for their expected profits.

---

<sup>88</sup> *Autorité des marchés financiers c. Opération Phoenix inc.*, 2021 QCTMF 23; *Autorité des marchés financiers c. Gestion Itradecoins inc.* 2020 QCTMF 57; *Autorité des marchés financiers c. Creunite*, 2018 QCTMF 8; *Autorité des marchés financiers c. Pichette*, 2017 QCTMF 138; *Autorité des marchés financiers c. Romain*, 2015 QCBDR 128.

<sup>89</sup> *First Federal Capital (Canada) Corp. (Re)*, 27 OSCB 1603.

<sup>90</sup> *Autorité des marchés financiers c. Battah*, 2012 QCBDR 81.

<sup>91</sup> Exhibits D-13 and D-77.

[124] Investors must rely entirely on the decisions made by the respondents with respect to the carrying on of the venture described above.

[125] Moreover, according to the evidence adduced, the respondents reserve the unilateral right to modify, suspend or terminate their services at any time:

- “*This website reserves the right to modify, suspend or terminate the services of this website at any time*”,<sup>92</sup>
- “*XT.com reserves the right to suspend or terminate XT Investment Activities services. If necessary, XT.com can suspend and terminate XT Investment Activities services at any time*”.<sup>93</sup>

[126] The respondents do not even have to inform the investor before exercising their right to modify, suspend or terminate those services.<sup>94</sup>

[127] The evidence shows that investors have no control over the carrying on of the venture. Indeed, despite an operation on crypto assets carried out as part of the Authority’s undercover operations, the transfer of ownership is not reflected in the relevant blockchain.<sup>95</sup>

[128] Thus, investors must rely entirely on the respondents’ representations and hope that they maintain an up-to-date record of their assets.

[129] Investors depend entirely on the expertise, decisions and efforts of the respondents to make a return on their investment.

[130] The Tribunal finds that investors do not have the right to directly participate in decisions regarding the carrying on of the venture. The fifth criterion of the definition of an investment contract is met.

“The economic reality”

[131] Beyond the criteria of the statutory definition of an investment contract, the Tribunal must examine, according to the teachings of the Supreme Court of Canada, the economic reality behind the investment offer made to the public for which substance prevails over form.

[132] In *Pacific Coast*,<sup>96</sup> the Supreme Court of Canada states the following:

“Such remedial legislation must be construed broadly, and it must be read in the context of the economic realities to which it is addressed. Substance, not form, is the governing factor. As noted in *Tcherepnin v. Knight*, at p. 336:

---

<sup>92</sup> Exhibit D-13.

<sup>93</sup> Exhibit D-77.

<sup>94</sup> Exhibits D-13 and D-77.

<sup>95</sup> Exhibit D-59.

<sup>96</sup> *Pacific Coast Coin Exchange v. Ontario Securities Commission*, [1978] 2 S.C.R. 112, 127–128.

... in searching for the meaning and scope of the word 'security' in the Act, form should be disregarded for substance and the emphasis should be on economic reality.

In the search for the true meaning of the expression "investment contract", another guideline must also be present in the forefront of our thinking. In the words of the Supreme Court of the United States in *SEC v. W.J. Howey Co.*, any definition must permit (at p. 299):

... the fulfillment of the statutory purpose of compelling full and fair disclosure relative to the issuance of 'the many types of instruments that in our commercial world fall within the ordinary concept of a security.'...It embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits."

(References omitted)

[133] According to the Tribunal, the economic reality of this venture is an investment that could yield profits.

[134] The evidence presented by the Authority shows that crypto asset contracts and non-fungible token (or "NFT") contracts over which investors acquire a contractual right are retained by the respondents or third parties acting for them, without an obligation to deliver them immediately to investors and without an obligation to take delivery immediately by the investors.

[135] Thus, investors are dependent on the respondents to deliver what they have acquired.

[136] Investors must also depend on the respondents and rely on them to generate profits.

### **General conclusion on the concept of an investment contract**

[137] In light of all of the above, the Tribunal finds that crypto asset contracts, non-fungible token (or "NFT") contracts, performance programs (or "Savings") and investment programs related to proof-of-stake (or "Staking") validation mechanisms offered to the public by the respondents through the XT.com website constitute investment contracts, subject to the securities regime set out in the *Securities Act*.

### **Question 2: Did the respondents distribute securities in contravention of section 11 of the *Securities Act* by not having prepared a prospectus subject to a receipt issued by the Authority?**

[138] The Tribunal answers this question in the affirmative. It considers that it has been shown by a preponderance of evidence that the respondents distributed securities in contravention of section 11 of the *Securities Act*, i.e. without having prepared a prospectus subject to the a receipt by the Authority.

[139] Every person intending to distribute securities shall prepare a prospectus that shall be subject to a receipt issued by the Authority.<sup>97</sup>

[140] The Authority may, on the conditions it determines, exempt a person from the obligation to prepare a prospectus subject to a receipt. Such an exemption is only granted when the Authority considers that it does not undermine the protection of investors.<sup>98</sup> The Authority exercises the discretion conferred on it on the basis of the public interest.<sup>99</sup>

[141] Following the approach detailed in CSA Staff Notices 21-327, 21-329, 21-330 and 21-332, the Authority and the other CSAs have exempted some crypto asset trading platforms from the prospectus requirement but imposed a series of conditions to ensure the protection of investors.<sup>100</sup>

[142] The definition of distribution<sup>101</sup> includes “the endeavour to obtain, or the obtaining, by an issuer, of subscribers or acquirers of his securities”.

[143] In *Doyon*,<sup>102</sup> the Court of Appeal of Quebec confirmed that the mere fact of searching for or finding subscribers or purchasers of its securities constitutes distribution.

[144] In this case, the respondents did not file a declaration of exempt distribution or a prospectus and did not receive a prospectus receipt or an exemption from making such a deposit.<sup>103</sup>

[145] The Authority’s evidence shows that the respondents distributed securities, i.e. investment contracts, when they searched for or found investors through the XT.com website.

[146] According to the evidence adduced by the Authority, the products and services offered to the public by the respondents through the XT.com website were all available from Québec.

[147] The Authority’s undercover operations showed that with a Québec IP address, it is possible to obtain products and services in Québec offered by the respondents.<sup>104</sup>

[148] On April 11, 2023, the Authority received an email via the email address “inforequests@xt.com”. It was notified by XT Exchange and/or BZ Limited that the XT.com website would not be available to Canadian users:

---

<sup>97</sup> Section 11 of the *Securities Act*.

<sup>98</sup> Section 263 of the *Securities Act*.

<sup>99</sup> Section 316 of the *Securities Act*.

<sup>100</sup> See Canadian Securities Administrators, *Crypto Trading Platforms Authorized to Do Business with Canadians*, online: <<https://www.securities-administrators.ca/crypto-trading-platforms-regulation-and-enforcement-actions/crypto-trading-platforms-authorized-to-do-business-with-canadians/>> (accessed August 2023).

<sup>101</sup> Section 5 of the *Securities Act*.

<sup>102</sup> *Doyon c. Autorité des marchés financiers*, 2017 QCCA 1157.

<sup>103</sup> Exhibits D-16 and D-19.

<sup>104</sup> Exhibits D-36, D-50, D-56, D-76, D-78 and D-95.

“[...] it is our company policy not to allow access to Canadian users. We have blocked and implemented restrictions on Canadian IP addresses to prevent them from accessing our platform. Therefore, we deny any allegations of violation of the [LVM] or [LID] in Quebec”.<sup>105</sup>

[149] To verify the veracity of these representations, the Authority took steps on the same day to open a new account on the XT.com website from a Québec IP address.<sup>106</sup>

[150] Those attempts by the Authority proved unsuccessful because the respondents XT Exchange and/or BZ Limited by all indications took steps to prevent new customers from accessing their products and services from a Québec IP address.<sup>107</sup>

[151] Canada is no longer on the list of countries that can be selected as a country of residence by individuals wishing to open an account on the XT.com website.<sup>108</sup>

[152] A new version of the document entitled “User Agreement” was posted online on May 8, 2023. It states that “*XT prohibits the use of its services by anyone located in the United States, Canada, Hong Kong [...]*”.<sup>109</sup> A similar reference was not included in the document entitled “XT Investment Activities Service Agreement” dated July 25, 2023.<sup>110</sup>

[153] Notwithstanding the above, on May 9, 2023, the Authority was still able to log into the account it had previously created on the XT.com website with a Québec IP address. However, the XT.com website identifies that the person logging into the account is located in “*Montreal-Quebec-Canada*”.<sup>111</sup>

[154] On May 24, 2023, still under the same fictitious identity, the Authority was again able to log in to the account in question, with an address recognized on the XT.com website as being located in “*Montreal-Quebec-Canada*” and transact through that account.<sup>112</sup> It even managed to conduct two securities transactions there.<sup>113</sup>

[155] The Tribunal is of the opinion that the respondents proceeded and continue to proceed with the distribution of securities, in contravention of section 11 of the *Securities Act*, without having prepared a prospectus subject to a receipt issued by the Authority.

---

<sup>105</sup> Exhibit D-87.

<sup>106</sup> Exhibit D-96.

<sup>107</sup> Exhibit D-96.

<sup>108</sup> Exhibit D-96.

<sup>109</sup> Exhibit D-97.

<sup>110</sup> Exhibit D-111.

<sup>111</sup> Exhibit D-94.

<sup>112</sup> Exhibit D-95.

<sup>113</sup> Exhibit D-95.

**Question 3: Are the products and services offered to the public by the respondents on the XT.com website derivatives within the meaning of the *Derivatives Act*?**

[156] The Tribunal answers this question in the affirmative. “USDT-M Futures” and “Coin-M Futures” offered to the public by the respondents on the XT.com website constitute derivatives within the meaning of the *Derivatives Act*.

[157] Section 1 of the *Derivatives Act* provides that the Act “*seeks to foster honest, fair, efficient and transparent derivatives markets and to protect the public from unfair, improper or fraudulent practices[...]*”.

[158] Section 2 of the *Derivatives Act* states the purpose of the Act:

“2. The purposes of the Act are, more specifically,

1° to govern derivatives offering and trading and related activities;

2° to provide for oversight of the activities of derivatives market professionals so as to ensure that their conduct is honest, fair and responsible; [...]

4° to regulate market participants and regulated entities so as to ensure compliance with the principles set out in this Act and with the obligations deriving from those principles; [...].”

[159] The *Derivatives Act* provides a framework for derivatives trading in order to promote efficiency in the derivatives market and the protection of investors.

[160] The *Derivatives Act* applies to derivatives or derivative instruments within the meaning of section 3 of the Act, namely:

“‘derivative’ means an option, a swap, a futures contract, a contract for difference or any other contract or instrument whose market price, value or delivery or payment obligations are derived from, referenced to or based on an underlying interest, or any other contract or instrument designated by regulation or considered equivalent to a derivative on the basis of criteria determined by regulation;”.

[161] This definition of “derivative” is worded in very broad terms.

[162] The *Derivatives Act* does not specifically define the concept of “futures contract” or the concept of “contract for difference” found in the definition of a derivative. However, the Tribunal uses the following lessons to explain these concepts and determine the nature of the products offered by the respondents on the XT.com website.

**Futures contracts**

[163] The Authority’s financial glossary<sup>114</sup> contains the following definition of the concept of a futures contract:

---

<sup>114</sup> Online: <[https://lautorite.qc.ca/en/general-public/financial-glossary#glossary\\_F](https://lautorite.qc.ca/en/general-public/financial-glossary#glossary_F)> (accessed August 2023).

“There are two types of contracts: futures and forward contracts.

In both cases, the parties involved assume a legal obligation to buy or sell a specific quantity of an asset (such as oil, wheat or financial products such as a stock market index) at a predetermined price and date.

The characteristics of futures are selected by the exchange. A clearing house acts as an intermediary between the buyer and the seller and ensures compliance with the contract terms, so there is no counterparty risk.

Conversely, the characteristics of forward contracts are selected by the parties who sign these contracts. In general, there is no clearing house involved to guarantee the credit of the parties involved. The parties involved can therefore choose the contract maturity date, its duration, the quantity of the asset delivered, the place of exchange, etc.”

[164] The Supreme Court of Canada, in *MacDonald v. Canada*,<sup>115</sup> states that a forward contract is “an agreement for the purchase/sale of an asset at an agreed future date.” This decision indicates that it is a “type of derivative contract that creates an obligation for one party to sell, and another party to buy, an underlying asset at a pre-determined future date and at a pre-determined price.” The Court specifies that forward contracts “can be settled by physical delivery of the underlying asset or ‘cash settled’ by one party paying the other based on whether the Forward Price is higher or lower than the market price on the Forward Date.”

[165] The evidence shows that quarterly or other periodic “USDT-M Futures” and “Coin-M Futures” offered to the public by the respondents on the XT.com website are considered forward contracts because of their characteristics explained below.

[166] First, quarterly or other periodic “USDT-M Futures” and “Coin-M Futures”, like the other “Futures Contracts” offered on the XT.com website, are contracts involving two parties: a “maker” and a “taker”.<sup>116</sup>

[167] Quarterly or other periodic “USDT-M Futures” and “Coin-M Futures” are intended for the purchase and sale of assets, i.e. crypto assets, at a future date. It forces one party to sell, and another to buy, a crypto asset on a pre-determined date and at a pre-determined price.<sup>117</sup>

[168] According to the evidence, terms are available on the XT.com website for these contracts, namely quarterly terms, which expire on the last Friday of each quarter, and bi-quarterly terms, in which contracts are generated on the third Friday from the last day of each quarter and expire on the last Friday of each semester.<sup>118</sup>

---

<sup>115</sup> *MacDonald v. Canada*, 2020 SCC 6, at paras. 4 and 5.

<sup>116</sup> Exhibit D-63.

<sup>117</sup> Exhibit D-63.

<sup>118</sup> Exhibits D-63 and D-66.



[169] Weekly, bi-weekly, monthly and bi-monthly terms are also available.<sup>119</sup>

[170] The evidence also shows that, like other “Futures Contracts” offered on the XT.com website, quarterly or other periodic “USDT-M Futures” and “COIN-M Futures” allow investors to take a long or short position.<sup>120</sup>

[171] Finally, it has been demonstrated that, like other “Futures Contracts” offered on the XT.com website, the quarterly or other periodic “USDT-M Futures” and “COIN-M Futures” can be traded with a margin and leverage.<sup>121</sup>

[172] Finally, quarterly or other periodic “USDT-M Futures” and “Coin-M Futures” do not provide for rollover since they expire on their own.<sup>122</sup>

[173] Based on the evidence presented by the Authority, the Tribunal is of the opinion that quarterly or other periodic “USDT-M Futures” and “Coin-M Futures” constitute futures contracts. The Tribunal finds that they therefore constitute derivatives within the meaning of section 3 of the *Derivatives Act*.

[174] The Tribunal wishes to clarify that the *Derivatives Act* applies to standardized derivatives and over-the-counter derivatives within the meaning of section 3 of that Act, namely:

“standardized derivative” means a derivative that is traded on a published market, whose intrinsic characteristics are determined by that market and whose trade is cleared and settled by a clearing house;”

“over-the-counter derivative” means any derivative other than a standardized derivative;

[175] Quarterly or other periodic “USDT-M Futures” and “Coin-M Futures” are not traded on a published market. Their intrinsic characteristics are not determined by a published market. They are not cleared or settled by a clearing house. Thus, the Tribunal finds that they are not standardized derivatives. Therefore, they are over-the-counter derivatives and therefore forward contracts.

### **Contracts for difference**

[176] AMF France, in its savings area, explains the concept of a “contract for difference” in the following terms:<sup>123</sup>

[TRANSLATION] “CFDs (‘contracts for difference’) are financial products that make it possible to bet on increases or decreases in an ‘underlying interest’ without ever holding it. When you place orders on CFDs, you are trading on

---

<sup>119</sup> Exhibit D-63.

<sup>120</sup> Exhibits D-64 and D-65.

<sup>121</sup> Exhibits D-64 and D-65.

<sup>122</sup> Exhibit D-66.

<sup>123</sup> Online: <https://www.amf-france.org/fr/espace-epargnants/comprendre-les-produits-financiers/produits-complexes/cfd?1654924812> (accessed August 2023).

a 'derivative' product. This means that you do not own the values on which you speculate.

For example, the underlying interest could be an index, a currency pair (one currency for another) or an equity. The buyer of a CFD bets, that is, takes a position, on the rise of the underlying interest, while the seller bets on a fall, knowing that a CFD mostly changes like its underlying interest. At the close of the position, you win or lose the difference between the purchase price of the CFD and its sale price.”

[177] The Investment Dealers Association of Canada, now known as the Canadian Investment Regulatory Organization (“CIRO”), sets out the characteristics of difference contracts.<sup>124</sup> The contract for difference is explained as follows:

“A Contract-for-Difference (CFD) is a derivative product that allows investors to speculate or hedge on the underlying security movements, without the need for ownership and physical settlement of the underlying security. CFDs are generally traded over-the-counter (OTC) and mirror the economic performance of the underlying security based on its price movement.”

[178] The Ontario Securities Commission (“OSC”) in *VRK Forex & Investments Inc.*<sup>125</sup> defined the contract for difference as follows:

“A CFD is a financial instrument that allows investors to obtain leveraged exposure to assets such as equities, commodities, or currencies, without the need for ownership and physical delivery of the underlying asset. CFDs are offered to investors through online trading platforms operated by CFD providers and are generally traded ‘over the counter’ (i.e., not on an exchange).

CFDs have no standard term to expiry or contract size. CFDs allow investors to take long or short positions and are effectively renewed at the close of each day if desired.

Generally, CFDs are traded on a leveraged basis, which amplifies both the potential for profit and the risk of loss for investors. The Oanda and Vantage platforms were no exception. They permitted investors to engage in highly leveraged trading in their online accounts, with leverage ratios ranging between 10:1 and 500:1, with most trading at 50:1 leverage.”

[179] In addition, in *eToro (Europe) Limited*,<sup>126</sup> the OSC confirmed the application of the concept of a contract for difference to contracts whose underlying interests are crypto assets. The OSC reports on some of the features of contracts for difference as follows:

---

<sup>124</sup> Investment Dealers Association of Canada, *Regulatory Analysis of Contracts for Differences (CFDs)*, June 6, 2007, p. 2, online: <[https://www.iiroc.ca/sites/default/files/2021-08/CF983987-B0A4-49C8-81DF-CF5EDC640E99\\_en.pdf](https://www.iiroc.ca/sites/default/files/2021-08/CF983987-B0A4-49C8-81DF-CF5EDC640E99_en.pdf)> (accessed August 2023).

<sup>125</sup> *VRK Forex & Investments Inc (Re)*, 2022 ONSEC 1.

<sup>126</sup> *eToro (Europe) Limited*, 2018 ONSEC 49, paras. 6 and 7.

“eToro’s online trading platform (the eToro Platform) allowed Ontario investors to trade contracts for differences (CFDs). A CFD typically involves a contract between two parties, a seller and a buyer, that creates payment rights and obligations based on the price movements of an underlying asset. CFDs allow participants to take long or short positions in relation to the price movements of underlying assets, but without acquiring ownership of the underlying asset.

Ontario investors used the eToro Platform to trade CFDs that were based on exposure to underlying assets which included cryptocurrencies and stocks. eToro was the counterparty to the CFD trades, and the holders of the Ontario Accounts were therefore exposed to the conduct and credit of this offshore entity that lacked Ontario regulatory oversight.”

[180] Therefore, the Tribunal agrees with the following characteristics of a contract for difference presented by the Authority’s counsel:

- it is a contract between two parties;
- it creates obligations and payment rights, based on the value of an underlying interest;
- it allows investors to speculate on changes in the price of an underlying interest;
- the underlying interest may include an equity, commodity or currency, and it can also be a crypto asset;
- investors do not have to own the underlying interest as such or take delivery of it physically;
- it has no expiry date or fixed volume;
- it allows investors to take a long or short position;
- positions taken by investors are continuously renewed unless the investors intervene; and
- it can be negotiated with leverage.

[181] The evidence shows that “USDT-M Futures” and “COIN-M Futures” that have an indefinite (or “perpetual”) term offered to investors by the respondents on the XT.com website constitute contracts for difference because of their characteristics explained below.

[182] “USDT-M Futures” and “COIN-M Futures” that have an indefinite (or “perpetual”) term are contracts that involve two parties: a maker and a taker.<sup>127</sup>

---

<sup>127</sup> Exhibit D-63.

[183] These products create obligations and payment rights, based on the value of an underlying interest, i.e. the value of a crypto asset, allowing investors to speculate on that value.<sup>128</sup>

[184] Like other “Futures Contracts” offered on the XT.com website, it is shown that investors who purchase “USDT-M Futures” or “COIN-M Futures” that have an indefinite (or “perpetual”) term do not acquire ownership of the crypto assets that represent the underlying interest.<sup>129</sup>

[185] Also, investors who buy “USDT-M Futures” or “COIN-M Futures” that have an indefinite (or “perpetual”) term do not have to take delivery of the crypto assets that represent the underlying interest.<sup>130</sup>

[186] “USDT-M Futures” and “COIN-M Futures” that have an indefinite (or “perpetual”) term allow investors to take a long or short position, which are continuously renewed, unless investors intervene.<sup>131</sup>

[187] It is shown that “USDT-M Futures” and “Coin-M Futures” that have an indefinite (or “perpetual”) term are subject to a turnover process that has the effect of extending positions that have been open for more than 8 hours or 16 hours as the case may be.<sup>132</sup>

[188] “USDT-M Futures” and “Coin-M Futures” that have an indefinite (or “perpetual”) term do not have a fixed expiration date or volume.<sup>133</sup>

[189] In addition, it is also shown that “USDT-M Futures” and “COIN-M Futures” that have an indefinite (or “perpetual”) term can be leveraged.<sup>134</sup>

[190] Thus, based on the evidence adduced by the Authority, the Tribunal finds that “USDT-M Futures” and “COIN-M Futures” that have an indefinite (or “perpetual”) term constitute contracts for difference. The Tribunal finds that they therefore constitute derivatives within the meaning of section 3 of the *Derivatives Act*.

[191] In addition, as with forward contracts offered on the XT.com website, contracts for difference are not traded on a published market. Their intrinsic characteristics are not established by a published market and are not cleared or settled by a clearing house. Thus, the Tribunal finds that they are not standardized derivatives, and therefore they are over-the-counter derivatives.

---

<sup>128</sup> Exhibits D-51 and D-63.

<sup>129</sup> Exhibit D-51.

<sup>130</sup> Exhibits D-51 and D-65.

<sup>131</sup> Exhibits D-65, D-66 and D-73.

<sup>132</sup> Exhibit D-66.

<sup>133</sup> Exhibits D-66 and D-73.

<sup>134</sup> Exhibits D-64 and D-65.

**Other contracts or instruments constituting derivatives within the meaning of the *Derivatives Act***

[192] The evidence shows that, in addition to being assimilated treated as contracts for difference or forward contracts, as the case may be, the “Futures Contracts” offered on the XT.com website, and more specifically “USDT-M Futures” and “Coin-M Futures”, are also assimilated as “*any other contract or instrument whose market price, value or delivery or payment obligations are derived from, referenced to or based on an underlying interest*”, within the meaning of the definition of “derivative” provided for in section 3 of the *Derivatives Act* for the reasons explained below.

The first component: the existence of a contract or instrument

[193] The respondents propose to the public through the XT.com website to purchase “Futures Contracts”, including “USDT-M Futures” and “Coin-M Futures”.<sup>135</sup> As with the other products and services offered by the respondents, investors are required to create an account on the XT.com website before they can obtain them, and they must also accept the terms and conditions set out in the “User Agreement”.<sup>136</sup> These two steps constitute the contractual commitment. Therefore, the first component, which is the existence of a contract, is satisfied.

The second component: the existence of a market price, value or delivery or payment obligations, which are referenced to or based on an underlying interest

[194] The price an investor must pay to acquire a “Futures Contract”, be it a “USDT-M Future” or a “Coin-M Future”, is based on an underlying interest.

[195] Indeed, as indicated on the XT.com website, the price of “Futures Contracts” is calculated based on the market price of the underlying crypto assets on the spot market plus a premium.<sup>137</sup>

[196] As indicated on the XT.com website, investors who purchase “Futures Contracts” do not therefore acquire ownership of the underlying crypto assets, but rather speculate about the market price or value of the underlying interest. However, the fact remains that the price of “Futures Contracts” is set according to the price or value of this underlying interest.<sup>138</sup> The Tribunal is of the opinion that the second component is satisfied.

[197] As both components are satisfied, the Tribunal is of the opinion that “Futures Contracts”, including “USDT-M Futures” and “Coin-M Futures” consist of “any other contract(s) or instrument(s) whose market price, value or delivery or payment obligations depend on an underlying interest”. Thus, the Tribunal finds that they are, again, derivatives within the meaning of section 3 of the *Derivatives Act*.

---

<sup>135</sup> Exhibit D-34.

<sup>136</sup> Exhibit D-13.

<sup>137</sup> Exhibit D-51.

<sup>138</sup> Exhibit D-51.

[198] In addition, as previously mentioned, “Futures Contracts” offered on the XT.com website are not traded on a published market. Their intrinsic characteristics are not established by a published market and are not cleared or settled by a clearing house. Thus, the Tribunal reiterates that they are not standardized derivatives, and therefore they are over-the-counter derivatives.

#### **General conclusion on the determination of derivatives**

[199] The evidence shows that “USDT-M Futures” and “Coin-M Futures” are assimilated to either forwards or contracts for difference. It is also demonstrated that they constitute “any other contract(s) or instrument(s) whose market price, value or delivery or payment obligations depend on an underlying interest”. Thus, the Tribunal finds that “USDT-M Futures” and “Coin-M Futures” are derivatives within the meaning of section 3 of the *Derivatives Act*. In addition, the Tribunal specifies that they are over-the-counter derivatives.

#### **Question 4: Did the respondents create or market derivatives without being qualified by the Authority in contravention of section 82 of the *Derivatives Act*?**

[200] The Tribunal answers this question in the affirmative. The respondents created and marketed derivatives without being qualified by the Authority, in contravention of section 82 of the *Derivatives Act*.

[201] To be able to create or market derivatives, a person must be a regulated entity recognized by the Authority or qualified by the Authority.

[202] Section 82 of the *Derivatives Act* provides for the requirement to obtain approval as follows:

“A person, other than a regulated entity, who creates or markets a derivative must be qualified by the Authority, as prescribed by regulation, before the derivative is offered to the public.

The person must also have the marketing of the derivative authorized by the Authority, subject to the conditions prescribed by regulation.

The Authority may refuse to qualify a person if it considers it necessary for the protection of the public, or may impose restrictions or conditions on a person’s qualification.”

[203] The evidence shows that the respondents created and marketed derivatives in Québec,<sup>139</sup> namely the “Futures Contracts”, that is to say the “USDT-M Futures” and the “Coin-M Futures”, through the XT.com website.

---

<sup>139</sup> See undercover operations carried out by the Authority, Exhibits D-72 and D-73.

[204] The respondents are not regulated entities within the meaning of section 3 of the *Derivatives Act*.<sup>140</sup> They cannot therefore avail themselves of the exception to the qualification requirement set out in section 82 of the *Derivatives Act*.

[205] Furthermore, they have not been recognized by the Authority.<sup>141</sup> This obligation to recognize regulated entities is provided for in the first paragraph of section 12 of the *Derivatives Act*.

[206] This recognition requires regulated entities to adhere to a strict regulatory framework for the protection of the public.

[207] The respondents were never authorized to act in any capacity under the *Derivatives Act*.<sup>142</sup>

[208] Moreover, since the XT.com website does not require any qualification of users, the exemption provided for in section 7 of the *Derivatives Act* for transactions in over-the-counter derivatives involving only qualified counterparties within the meaning of that Act cannot apply.

[209] Given that the respondents are not recognized regulated entities, that they were never qualified<sup>143</sup> and that they were never authorized or exempted, the Tribunal finds that the respondents contravened section 82 of the *Derivatives Act* by creating and marketing derivatives.

**Question 5: Did the respondents act as a securities and derivatives dealer in contravention of section 148 of the *Securities Act* and section 54 of the *Derivatives Act* by not being registered with the Authority?**

[210] The Tribunal answers this question in the affirmative. The respondents acted as a securities and derivatives dealer in contravention of section 148 of the *Securities Act* and section 54 of the *Derivatives Act*, without being registered with the Authority.

[211] Section 148 of the *Securities Act* provides that a person must be registered as a dealer to act as such.

[212] Section 5 of the *Securities Act* defines “dealer” as follows:

“In this Act, unless the context indicates otherwise, [...]”

---

<sup>140</sup> Section 3 of the *Derivatives Act*: “an exchange, an alternative trading system not registered as a dealer, or another published market, a clearing house, a settlement system, a matching service utility, an information processor, a trade repository, a self-regulatory organization or any person the Authority, where it considers it necessary for the proper operation of the market, designates as a regulated entity in accordance with the rules prescribed by regulation”.

<sup>141</sup> Exhibits D-16 and D-19.

<sup>142</sup> Exhibits D-15 and D-18.

<sup>143</sup> Exhibits D-16 and D-19.

“dealer” means a person engaging in or holding themselves as engaging in the business of

- (1) trading in securities as principal or agent;
- (2) distributing a security for their own account or for another’s account; or
- (3) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of an activity described in paragraph 1 or 2; [...]

[213] Section 54 of the *Derivatives Act* provides that a person must be registered as a dealer to carry on business as such.

[214] Section 3 of the *Derivatives Act* defines “dealer” as follows:

“For the purposes of this Act, unless the context indicates otherwise, [...]

“dealer” means a person who engages or purports to engage in the business of

- (1) derivatives trading on the person’s own behalf or on behalf of others; or
- (2) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of an activity described in paragraph 1; [...]

[215] The evidence shows that the respondents distribute securities, in addition to deeds, advertising and soliciting for the purpose of distributing securities. The evidence also shows that the respondents offer the public the opportunity to trade in derivatives.

[216] The respondents are not registered in any capacity under the *Securities Act* or the *Derivatives Act*.<sup>144</sup>

[217] Moreover, since the XT.com website does not require any qualification of users, the exemption provided for in section 7 of the *Derivatives Act* for transactions involving over-the-counter derivatives involving only qualified counterparties within the meaning of that Act cannot apply.

[218] In the *Policy Statement to Regulation 31-103, Registration Requirements, Exemptions and Ongoing Registrant Obligations* (“Policy Statement 31-103”), the CSA sets out relevant factors for determining whether a person is acting as a dealer and is therefore required to register.<sup>145</sup>

[219] These factors are as follows:

- engaging in activities similar to a registrant;
- intermediating trades or acting as a market maker;

---

<sup>144</sup> Exhibits D-15 and D-18.

<sup>145</sup> Section 1.3 of the *Policy Statement to Regulation 31-103 Respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations*, online: <<https://lautorite.qc.ca/fileadmin/lautorite/reglementation/valeurs-mobilieres/31-103/2023-01-01/2023janv01-31-103-ig-vconsolidee-en.pdf>> (accessed August 2023).



- directly or indirectly carrying on the activity with repetition, regularity or continuity;
- being, or expecting to be, remunerated or compensated; or
- directly or indirectly soliciting.

[220] Although Policy Statement 31-103 does not have the force of law, the Tribunal may consider the criteria referred to in it to determine whether a person or corporation acted as a dealer without being registered.<sup>146</sup>

[221] The factors set out in Policy Statement 31-103 are all equally relevant in determining whether a natural person or a company is engaged in the business of trading in securities or derivatives.<sup>147</sup>

[222] Let us therefore consider the factors that may require registration as a dealer identified in Policy Statement 31-103 in light of the respondents' activities demonstrated by the Authority.

#### **Engaging in activities similar to a registrant**

[223] The evidence shows that the respondents facilitate crypto asset transactions through the XT.com website, which is accessible from Québec.<sup>148</sup>

[224] As noted above, investors have the opportunity to acquire securities and derivatives offered by the respondents through the XT.com website.

[225] It should be noted that several crypto asset trading platforms are duly registered in Canada<sup>149</sup> and several platforms have entered into a pre-registration commitment.<sup>150</sup> The activities carried on by the respondents are similar to those.

[226] The Tribunal finds that by operating and making available to the Québec and Canadian public the XT.com website, which is in fact a securities and derivatives trading

---

<sup>146</sup> *Autorité des marchés financiers v. Kam*, 2012 QCBDR 148.

<sup>147</sup> *Autorité des marchés financiers c. Gouin*, 2019 QCTMF 66.

<sup>148</sup> According to Exhibit D-111, Canada does not appear as a country excluded from products and services offered by the platform. As a result, it appears that products and services can be offered in Québec. In addition, Exhibit D-95 illustrates an undercover operation carried out by the Authority on May 24, 2023, in which it is shown that the products and services offered on the XT.com website are still available to the Authority.

<sup>149</sup> See Canadian Securities Administrators, *Crypto Trading Platforms Authorized to Do Business with Canadians*, online: <<https://www.securities-administrators.ca/crypto-trading-platforms-regulation-and-enforcement-actions/crypto-trading-platforms-authorized-to-do-business-with-canadians/>> (accessed August 2023).

<sup>150</sup> See Canadian Securities Administrators, *Crypto Trading Platforms That Have Filed Pre-Registration Undertakings*, online: <<https://www.securities-administrators.ca/crypto-trading-platforms-regulation-and-enforcement-actions/crypto-trading-platforms-that-have-filed-pre-registration-undertakings/>> (accessed August 2023).

platform, the respondents are in every way carrying on activities similar to those of certain persons registered as dealers.

[227] The Tribunal is of the opinion that in this case, the analysis could be achieved based on the first factor identified in Policy Statement 31-103. This factor is satisfied given the very nature of the respondents' activities, which are similar to those of certain crypto asset trading platforms registered in Canada.

[228] However, the Tribunal believes it is useful to consider the other factors set out in Policy Statement 31-103.

### **Intermediating trades or acting as a market maker**

[229] The evidence shows that the respondents act as intermediaries between sellers and purchasers of securities and derivatives.

[230] The respondents specify as follows their role as intermediaries and not counterparties in transactions carried out on the XT.com website: *"this website does not itself act as a buyer or seller in buying and selling digital assets."*<sup>151</sup>

[231] The User Agreement specifies that the investors authorize the respondents to carry out transactions on their behalf: *"[...] Your submission represents that you authorize the website to coordinate your transaction on your behalf. The website will automatically coordinate the transaction at the price of your authorization without advanced notification to you."*<sup>152</sup>

[232] In addition, for crypto asset contracts, the "P2P Trading" service offered on the XT.com website is a peer-to-peer market where investors can trade crypto asset contracts with each other.<sup>153</sup>

[233] It has been shown that following the deposit of crypto assets or the purchase of crypto asset contracts by "P2P Trading" or "Third Party Trading" services on the XT.com website, investors can also exchange, through the "Trading" service, the contractual rights they acquired to acquire contractual rights to other crypto assets.<sup>154</sup>

[234] Furthermore, for non-fungible token (or "NFT") contracts, the "Marketplace" page on the XT.com website for these contracts demonstrates that buyers and sellers can deal with each other.<sup>155</sup>

[235] Investors who have obtained contractual rights to non-fungible tokens (or "NFTs") can sell them directly on the XT.com website, including by auctioning them off.<sup>156</sup>

---

<sup>151</sup> Exhibit D-13.

<sup>152</sup> Exhibit D-13.

<sup>153</sup> Exhibits D-40, D-41 and D-42.

<sup>154</sup> Exhibits D-45 and D-46.

<sup>155</sup> See in particular Exhibits D-55 and D-56.

<sup>156</sup> Exhibit D-60.

[236] According to the XT.com website, interactions between sellers and buyers of “Futures Contracts” are possible through the platform.<sup>157</sup>

[237] Thus, the Tribunal finds that the respondents act as intermediaries between sellers and purchasers of securities and derivatives.

**Directly or indirectly carrying on the activity with repetition, regularity or continuity**

[238] Although it has been several months since the XT.com website has been available to new Québec users, the evidence shows that the respondents still make it available on an ongoing basis to Québec and Canadian investors already registered on the platform.<sup>158</sup> The Tribunal must conclude that they carry on the activity of trading on a repetitive, regular and continuous basis. Moreover, as will be shown below, the scale of their activities is quite significant.

[239] Globally, more than 3 million users are registered on the XT.com website, of which 300,000 are active monthly users.<sup>159</sup>

[240] In addition, 30 million users are part of the “ecosystem” linked to the XT.com website.<sup>160</sup>

[241] The XT.com website supports more than 500 tokens and 800 trading pairs and offers several services related to crypto asset trading.<sup>161</sup>

[242] The respondents are enjoying a certain popularity on social media, with many followers on Twitter and Facebook as well as many members on Reddit.<sup>162</sup>

[243] The XT.com website is in the “Top 10” of the largest crypto asset trading platforms ranked by transaction volume<sup>163</sup> and in the “Top 40” ranking on the “Coinmarketcap” website.<sup>164</sup>

[244] The respondents argue that their activities extend worldwide.<sup>165</sup>

[245] Thus, the Tribunal finds that the respondents engage in the activity of trading securities and derivatives on a repetitive, regular and continuous basis with Québec and Canadian investors.

---

<sup>157</sup> Exhibit D-73.

<sup>158</sup> See the Authority’s undercover operation of May 24, 2023 in Exhibit D-95 as well as Exhibit D-111, where Canada is not a country excluded from products and services offered by the XT.com website.

<sup>159</sup> Exhibit D-11.

<sup>160</sup> Exhibit D-11.

<sup>161</sup> Exhibit D-11.

<sup>162</sup> Exhibit D-12.

<sup>163</sup> Exhibit D-20.

<sup>164</sup> Exhibit D-10.

<sup>165</sup> Exhibit D-11.

**Being, or expecting to be, remunerated**

[246] The respondents charge investors various fees when they trade on the XT.com website.<sup>166</sup>

[247] Those fees generally take the form of a commission.<sup>167</sup>

[248] The Authority had to pay costs as part of its undercover operations.<sup>168</sup>

[249] Accordingly, the Tribunal finds that the respondents are remunerated for their services to the investors.

**Directly or indirectly soliciting**

[250] According to the evidence presented, the respondents engage in direct or indirect soliciting through the promotion of crypto asset contracts, non-fungible token (or “NFT”) contracts, products presented as “Futures Contracts”, namely, “USDT-M Futures” and “Coin-M Futures”, performance programs (or “Savings”) and investment programs related to proof-of-stake (or “Staking”) validation mechanisms through the XT.com website.

[251] Thus, in light of the evidence adduced by the Authority, the Tribunal finds that the respondents are soliciting by operating the XT.com website.

**General conclusion on the dealer activity**

[252] Given that the respondents’ activities fall within the definitions of dealer under the *Securities Act* and the *Derivatives Act*, that all factors that may require registration as a dealer under Policy Statement 31-103 are satisfied, and that the respondents are not registered in any capacity under the *Securities Act* or the *Derivatives Act*, the Tribunal finds that the respondents are acting as a securities and derivatives dealer in contravention of section 148 of the *Securities Act* and section 54 of the *Derivatives Act*.

**Question 6: What administrative measures and administrative penalty must the Tribunal impose on respondents?**

[253] The Tribunal finds that, because of the nature and seriousness of the breaches committed, all orders sought by the Authority should be implemented.

[254] Accordingly, the Tribunal decides to impose protective, preventive and dissuasive measures against the respondents as well as an administrative penalty of \$2,000,000 jointly and severally.

[255] The Tribunal also decides to order the respondents and any person operating the XT.com website to cease any activity in respect of a transaction in securities and derivatives, to deny the respondents any exemption under the *Securities Act* and the *Derivatives Act*, to prohibit the respondents and any person operating the XT.com website from acting as a securities and derivatives adviser or as an investment fund manager, to

---

<sup>166</sup> Exhibits D-48, D-53, D-60, D-61 and D-74.

<sup>167</sup> *Idem*.

<sup>168</sup> See, in particular, Exhibits D-60, D-73 and D-95.

order them to block access to the XT.com website and to require them to notify users of the XT.com website that the website will no longer be accessible to them.

[256] However, the Tribunal allows transactions and activities so that users of the XT.com website can withdraw their assets in the possession or control of the respondents or third parties and close their accounts there.

[257] Since the Tribunal finds that the respondents are in contravention of the *Securities Act* and the *Derivatives Act*, it must determine what administrative measures should be imposed, the nature of those measures and their scope.

[258] The purpose of an administrative measure is not to remedy a violation of the law or to punish the party who contravenes the *Securities Act* and the *Derivatives Act*. Rather, the aim is to prevent future wrongdoing that may harm the public interest.<sup>169</sup> The administrative measure must essentially be a deterrent.<sup>170</sup>

[259] In determining what administrative measures are required in the public interest, the Tribunal takes into account a series of criteria developed in *Demers*,<sup>171</sup> which is still regularly referred to by the Tribunal.<sup>172</sup>

[260] While these criteria are not exhaustive, they are always appropriate. They must be assessed on a case-by-case basis, depending on the circumstances of each case, and each of these criteria, taken individually, may have its own and relative importance based on the relevant facts of the case.

[261] The analysis of the criteria to be considered in determining administrative measures is not done in the abstract, but by taking into account the main trends reflected in capital markets and the use of new technologies.

[262] For example, over the past several years, there has been an increase in investment solicitations through the Internet, particularly through social media. There is also an increase in projects involving crypto assets that are increasingly of interest to investors whom the Tribunal has a duty to protect by imposing administrative measures against offenders.

---

<sup>169</sup> *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37, para. 39.

<sup>170</sup> *Cartaway Resources Corp. (Re)*, 2004 SCC 26.

<sup>171</sup> *Autorité des marchés financiers c. Demers*, 2006 QCBDRVM 17, pp. 29 and 30.

<sup>172</sup> These criteria are the following: [TRANSLATION] “The type and number of penalties and the severity of the offender’s actions, the offender’s prior conduct. The tribunal may consider conduct and sanctions imposed in other jurisdictions, the vulnerability of solicited investors, the losses suffered by the investors, the profits realized by the offender, the offender’s experience, the offender’s position and status in committing the alleged acts, the extent of the offender’s activities in financial markets, the intentional nature of the actions taken, the risk that the offender poses to investors and financial markets if allowed to continue its activities, the damage to market integrity caused by the offender’s conduct, the fact that the sanction may, depending on the seriousness of the action taken, constitute a deterrent to the offender but also to those who might be tempted to emulate it, the degree of the offender’s repentance, mitigating factors and sanctions imposed in similar circumstances.”

**The need to dissuade the respondents and any other entity that might be tempted to imitate them**

[263] The respondents operate a platform where securities and derivatives are traded. The principles and objectives of securities legislation, namely investor protection, proper operation of markets and investor confidence in those markets, apply and must be duly respected.<sup>173</sup>

[264] Counsel for the Authority rightly states that [TRANSLATION] “entities that facilitate the trading of crypto assets in contravention of securities legislation endanger the Québec and Canadian public by exposing them to significant risks while creating a situation of inequity for entities that seek to operate, or that operate, in accordance with that same legislation.”

[265] It should be noted that in 2018, the Authority warned investors about the risks associated with cryptocurrency trading, and that since 2020 all CSA have expressed their position on the application of securities legislation to crypto asset trading platforms through the publication of Notices 21-327, 21-329, 21-330 and 21-332. The latter February 2023 Notice reflects the CSA’s concerns about the compliance of crypto asset platforms following recent insolvencies of certain platforms. The CSA is strengthening its requirements for platforms being registered. In addition, the CSA warns offenders.

[266] In this case, the Authority contacted the respondents directly on behalf of the CSA on November 24, 2022 to formally remind them of the requirements of the securities legislation in force in Québec and Canada concerning entities that facilitate crypto asset transactions and to ask them to provide certain information.<sup>174</sup>

[267] On December 6, 2022, given the lack of response from the respondents, the Authority contacted them again to give them additional time to respond to its communication of November 24, 2022. The Authority also warned them that in the absence of a response to this communication, the XT.com website may be subject to a warning.<sup>175</sup>

[268] On December 7, 2022, a representative of the respondents contacted the Authority to request that it resend the November 24, 2022 communication, which the Authority did that same day.<sup>176</sup>

---

<sup>173</sup> The International Organization of Securities Commissions (IOSCO) so states in its report entitled *Issues, Risks and Regulatory Considerations Relating to Crypto-Asset Trading Platforms, Final Report*, online: <<https://www.iosco.org/library/pubdocs/pdf/IOSCOPD649.pdf>>, p. 4-5 (accessed August 2023): “Accordingly, while aspects of the underlying technology and operation of CTPs may be novel, if a CTP trades a crypto-asset that is a security and it falls within a regulatory authority’s jurisdiction, the basic principles or objectives of securities regulation (investor protection, ensuring fair, efficient and transparent markets and investor confidence in markets) should apply”.

<sup>174</sup> Exhibit D-2.

<sup>175</sup> Exhibit D-3.

<sup>176</sup> Exhibit D-4.

[269] As the respondents did not respond to the Authority's requests, the Authority published a warning on its website on January 4, 2023 with regard to XT Technical Pte Ltd, also doing business under the name XT.com and with regard to the XT.com website,<sup>177</sup> which is relayed by the CSA.<sup>178</sup>

[270] On March 30, 2023, the Authority initiated the proceedings that are the subject of this decision.

[271] The Authority took numerous steps to inform the respondents of the proceedings brought against them.<sup>179</sup>

[272] Thus, despite the fact that the respondents were duly informed of the proceedings brought by the Authority, they chose not to challenge it. On the first day of the hearing of this case, an XT Exchange representative and a person acting as a translator are present and the XT Exchange representative confirms to the Tribunal that he will not be making a presentation and will be attending the hearing only as an observer. No representative of the respondents was present on the other hearing days in this case and the respondents did not justify their absence.

[273] With respect to BZ Limited, it is not represented by an officer or a lawyer and has not provided a valid reason for its absence.

[274] The respondents' non-cooperation with the Authority and the respondents' lack of consideration of the proceedings brought by the Authority show that they voluntarily disregard their obligations under securities legislation. Moreover, this demonstrates a lack of respect for the regulators responsible for enforcing this legislation.

[275] It is imperative that administrative measures send a clear message to operators and owners of crypto asset trading platforms operating in Québec and Canada that compliance with securities legislation is the only available option.

### **The severity of the respondents' actions**

[276] The Tribunal finds that failure to prepare a prospectus for the distribution of securities, failure to be qualified to create and market derivatives, and failure to be registered as a dealer constitute serious breaches of securities legislation.

[277] The core prospectus, qualification and registration requirements set out in securities legislation are intended to protect investors in financial markets.

[278] As mentioned above, despite having been informed of this procedure, the respondents continue to contravene securities legislation.<sup>180</sup> They even go as far as appearing to advertise themselves as offering users the safest, most efficient and most

---

<sup>177</sup> Exhibit D-5.

<sup>178</sup> Exhibit D-6.

<sup>179</sup> Exhibits D-89 to D-93 and D-103, D-106 and D-107.

<sup>180</sup> Exhibits D-95 and D-111.

professional digital asset investment services,<sup>181</sup> while the lack of regulatory oversight by the Authority deprives investors of the protection afforded by the Authority.

### **Respondents' experience in financial markets**

[279] The XT.com website has been operating since 2018.<sup>182</sup>

[280] The respondents mention that they have operations worldwide.<sup>183</sup>

[281] The XT.com website has millions of users.<sup>184</sup>

[282] This website is in the "Top 10" of the largest crypto asset trading platforms ranked by transaction volume<sup>185</sup> and in the "Top 40" ranking that appears on the "*Coinmarketcap*"<sup>186</sup> website.

[283] The Tribunal finds that the XT.com website, operated by the respondents, is an important player in the global crypto asset market and, accordingly, the Tribunal finds that the respondents have experience in financial markets.

[284] In addition, the Tribunal highlights as an aggravating factor that the respondents have significant international activities, which implies that they must have known that such activities are subject to regulatory oversight and voluntarily chose not to comply with securities legislation applicable in Canada.

### **Lack of mitigating factors**

[285] The respondents did not acknowledge the breaches or their seriousness. The respondents did not cooperate with the Authority or seek to comply with securities legislation.

[286] Although the respondents were duly informed of the Authority's procedure, they persist in contravening securities legislation.

[287] Although in recent months the respondents have no longer accepted new users of the platform who have an IP address in Canada,<sup>187</sup> the evidence shows that Canadian users registered prior to this change can continue to negotiate products and use the services offered by the XT.com website.<sup>188</sup>

[288] The Tribunal therefore notes that there is no mitigating factor in this case.

---

<sup>181</sup> Exhibit D-11.

<sup>182</sup> Exhibit D-11.

<sup>183</sup> Exhibit D-11.

<sup>184</sup> Exhibit D-11.

<sup>185</sup> Exhibit D-20.

<sup>186</sup> Exhibit D-10.

<sup>187</sup> Exhibits D-96 and D-98.

<sup>188</sup> Exhibit D-95.



### Sanctions imposed in similar circumstances

[289] In *Mek Global Limited*,<sup>189</sup> Ontario's Capital Markets Tribunal imposed an administrative penalty of \$2,000,000, jointly and severally, on Mek Global Limited and PhoenixFin Pte. Ltd., for facts very similar to those in this case, in addition to imposing a cease trades order in securities and derivatives and a denial of the benefit of an exemption.

[290] In that case, Ontario's Capital Markets Tribunal used several factors to determine the appropriate administrative measures to be taken against entities operating a crypto asset trading platform in contravention of securities legislation. As in this case, the factors considered include the seriousness of contravening the law, the offender's experience in financial markets, the recurrent and ongoing nature of the conduct, and the lack of recognition of the seriousness of the contravention by the offenders.

[291] Mek Global Limited and PhoenixFin Pte Ltd. were neither present at the hearing nor represented.

[292] As in this case, the crypto asset trading platform is an important player in the global crypto asset market. It claims to have more than 760 million cumulative transactions and more than US\$223 billion in cumulative transaction volume. It has more than 6 million users worldwide and supports 53 national currencies, including the Canadian dollar.<sup>190</sup>

[293] In *Polo Digital Assets, Ltd (Re)*,<sup>191</sup> a crypto asset trading platform similar to the one before the Tribunal, offered the opportunity to trade over 200 crypto assets and about 9,300 Ontarians created an account. It had no registration and had not submitted a prospectus to the Ontario Securities Commission.

[294] Regarding the scale of the platform's activities, the Ontario's Capital Markets Tribunal states:

“Staff advises that, based on this source, on May 4, 2021, the platform was listed as the 13<sup>th</sup> largest global crypto trading platform for “spot” transactions and 30<sup>th</sup> for derivatives, with a reported 24-hour trading volume of more than USD 529 million and USD 36 million, respectively. Further, using this same source, Staff advises that on March 16, 2022, the platform was ranked as 22<sup>nd</sup> for “spot” platforms and 36<sup>th</sup> for derivatives, with reported 24-hour trading volumes of USD 22 million and USD 7 million, respectively.”<sup>192</sup>

[295] Ontario's Capital Markets Tribunal has issued an order to disgorge the amount representing income earned from Ontario account holders since the inception of this platform. The Tribunal also imposed an administrative penalty of 1.5 million dollars. In particular, it issued a cease trades order in securities and derivatives and a refusal of exemption.

---

<sup>189</sup> *Mek Global Limited (Re)*, 2022 ONCMT 15.

<sup>190</sup> *Mek Global Limited (Re)*, 2022 ONCMT 15, para. 9.

<sup>191</sup> 2022 ONCMT 32.

<sup>192</sup> *Polo Digital Assets, Ltd (Re)*, 2022 ONCMT 32, para. 10. See also paragraph 103.

### **Administrative measures and administrative penalty imposed on the respondents**

[296] In this regard, section 93 of the *Act respecting the regulation of the financial sector* provides that the Tribunal shall exercise its discretion in the public interest when making determinations with respect to matters brought under the Acts listed in Schedule 1 to the Act, which includes the *Securities Act* and the *Derivatives Act*. This discretion is exercised in particular to protect investors, but also to promote efficiency in the markets and public confidence.<sup>193</sup>

[297] Where the Tribunal recognizes a contravention of the *Securities Act* or a regulation thereunder, it may impose an administrative penalty of up to \$2,000,000 for each contravention and have the payment collected by the Authority.<sup>194</sup>

[298] The Tribunal may also impose an administrative penalty of up to \$2,000,000 for each contravention of the *Derivatives Act* and have the payment collected by the Authority.<sup>195</sup>

[299] The Authority asks the Tribunal to impose an administrative penalty of \$2,000,000 on the respondents jointly and severally for the breaches noted.

[300] The Tribunal is of the opinion that joint and several liability is necessary in this case in the public interest and because the respondents act as one and the same person within the meaning of section 5.1 of the *Securities Act* and section 3 of the *Derivatives Act*.

[301] The Tribunal must impose an administrative penalty that is high enough to serve as a deterrent. The Supreme Court of Canada, in *Guindon*,<sup>196</sup> indicated that an administrative penalty can be a substantial amount to deter non-compliance with an administrative scheme. The Court refers to a decision of the Court of Appeal for Ontario confirming the imposition of significant administrative penalties imposed by the Ontario Securities Commission. The Supreme Court of Canada adds that “the amount of the penalty should reflect the objective of deterring non-compliance with the administrative or regulatory scheme.”

[302] The Tribunal is of the view that this case, as in *Mek Global*, requires that a significant administrative penalty of \$2,000,000 be imposed jointly and severally on the respondents because their choice to not comply with securities legislation should not be tolerated. The protection of investors and the efficiency in the markets is at stake. In addition, the imposition of such a penalty must discourage other crypto asset trading platforms that would contravene securities legislation and must be designed to encourage them to comply.

---

<sup>193</sup> *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 SCR 557, 589.

<sup>194</sup> Section 273.1 of the *Securities Act*.

<sup>195</sup> Section 134 of the *Derivatives Act*.

<sup>196</sup> *Guindon v. Canada*, 2015 SCC 41, at para. 77. The Supreme Court referred to *Rowan v. Ontario Securities Commission*, 2012 ONCA 208, 110 O.R. (3d) 492 at para. 49.

[303] The Tribunal notes that it considers that the XT.com website is an important player in the crypto asset market and that the breaches committed by the respondents are very serious. Also, even after being informed of the procedures undertaken by the Authority, they continued to commit the breaches alleged against them and refused to cooperate with it.

[304] In addition to an administrative penalty, the Tribunal may make cease trade orders in securities,<sup>197</sup> cease trade orders in derivatives or relating to the offering or trading of derivatives,<sup>198</sup> orders prohibiting any activity to advise under the *Securities Act* or to act as an investment fund manager<sup>199</sup> and orders prohibiting any activity to advise on derivatives.<sup>200</sup>

[305] Acting as a dealer without the required registrations, failure to be qualified to create and market derivatives, and failure to prepare a prospectus are serious breaches of securities legislation and undermine public confidence in the markets and their integrity. Through these breaches, the respondents put investors at risk.

[306] As noted earlier by the Tribunal, these fundamental obligations under securities legislation are intended to protect the public in financial markets.

[307] The efficiency in the markets depend on investors confidence in regulated entities such as exchanges, certain other published markets as well as clearing houses, other stakeholders such as dealers, dealer-listed trading platforms, advisers and portfolio managers, and regulatory and self-regulatory organizations.

[308] The first line of defence of financial markets rests on the integrity of the professionals who work with and on behalf of investors.<sup>201</sup> By registering dealers and advisers, the CSA ensures that they comply with obligations set out in a strict regulatory framework to ensure the protection of the public with whom they do business.

[309] In the Tribunal's opinion, the cease trade orders in securities and derivatives or transactions related to the offering or trading of a derivative, the prohibitions on acting as a securities and derivatives adviser or as investment fund manager sought are justified in order to prevent the respondents from acting in Québec's financial markets.

[310] Such prohibition orders may be made under sections 265 and 266 of the *Securities Act*, which provide that the Tribunal may order a person to cease any activity in respect of a transaction in securities and prohibit a person from acting as a securities adviser or as an investment fund manager.

---

<sup>197</sup> Section 265 of the *Securities Act*.

<sup>198</sup> Section 131 of the *Derivatives Act*.

<sup>199</sup> Section 266 of the *Securities Act*.

<sup>200</sup> Section 132 of the *Derivatives Act*.

<sup>201</sup> *Métivier c. Association canadienne des courtiers en valeurs mobilières (ACCOVAM)*, 2005 QCBDRVM 6.

[311] Pursuant to section 131 of the *Derivatives Act*, the Tribunal may order to cease all activities for the purpose of trading in derivatives or related to the offering or trading of a derivative. Under section 132 of that Act, the Tribunal may prohibit a person from carrying on business as a derivatives adviser.

[312] These orders are essential in this case to protect the investors and prevent, in particular, that other transactions be carried out by the respondents to the detriment of the investors.

[313] The Tribunal reiterates that the power to act in markets is a privilege and not a right.<sup>202</sup> In the circumstances of this case and because of the breaches committed, the respondents cannot benefit from this privilege.

[314] The Tribunal considers it appropriate to provide exceptions to these orders in order to allow users of the XT.com website to remove assets in the possession or control of the respondents or third parties and to close their accounts.

[315] Without these exceptions, the Tribunal is concerned that investors who have used the platform on the XT.com website will be unable to recover their assets or crypto assets.

[316] In addition, these prohibitions must apply to the respondents, as well as to any other person operating the XT.com website.

[317] Indeed, the structure of the group represented by the respondents could be subject to change. Entities could be added to them and transactions related to the XT.com website could be transferred to them. Because of the serious breaches of securities legislation committed by the respondents, this preventive measure is necessary.

[318] Under section 264 of the *Securities Act* and section 130 of the *Derivatives Act*, the Tribunal may deny the benefit of an exemption to any person who has contravened these Acts.

[319] In this case, the respondents contravened several fundamental obligations of the securities legislation, such as failing to register as a dealer, failing to prepare a prospectus and failing to obtain qualification from the Authority.

[320] In the Tribunal's view, in order to protect the public interest and investors in particular, it is justified to deny the respondents the benefit of any exemptions provided for in the *Securities Act* and the *Derivatives Act*.

[321] In *Vaillancourt*, the Tribunal insisted on the justification for these exemptions:

[TRANSLATION] “[21] The use of such exemptions from complying with certain obligations aimed at protecting the public interest and investors can be justified, in particular, when stakeholders in Place financière have an excellent record of compliance with the spirit and letter of the *Securities Act* and its regulations. Otherwise, i.e. if offenders – who moreover have a defiant attitude towards the obligations provided for by this law – are allowed to

---

<sup>202</sup> *British Columbia Securities Commission v. Branch*, [1995] 2 S.C.R. 3, at para. 77.

benefit from such exemptions, market integrity, investors and potential investors are clearly put at risk.”<sup>203</sup>

[322] To protect the public interest, it is necessary to ensure that respondents cannot benefit from the privilege of a lighter surveillance framework by using an exemption. They must strictly comply with the basic registration, prospectus and qualification obligations set out in the *Securities Act* and the *Derivatives Act*.

[323] Finally, the Tribunal may, at the request of the Authority, take any measures necessary to ensure compliance with the provisions set out in the *Securities Act* and the *Derivatives Act*.<sup>204</sup> It may also prohibit or subject to restrictions on solicitation of transactions of a given value.<sup>205</sup>

[324] The respondents have used and continue to use the XT.com website for registered users to commit breaches of securities legislation, including acting as a securities and derivatives dealer without being registered.

[325] Thus, to prevent them from proceeding in this way, it is necessary for the Tribunal to order them and any person operating the XT.com website to block access to this website.

[326] The Authority requests that the blocking of the XT.com website become effective within two months of this decision in order for the respondents to comply with this order. The Tribunal considers that this period is reasonable under the circumstances.

[327] This will allow users of the platform who hold assets there to remove them and close their account.

[328] In order to facilitate this process, the Tribunal considers it necessary to order the respondents to notify users of the XT.com website, within a maximum of two days of this decision, that it will cease to be available to them two months after this decision.

[329] The respondents must also inform those users, also within a maximum of two days after this decision, that they must withdraw their assets held on this website and close their account as soon as possible.

[330] Despite the fact that the XT.com website will be inaccessible to Québec investors within two months of this decision, investors will still have the option of withdrawing their assets in the possession or control of the respondents or third parties given the Tribunal’s findings that provide for an exception to this effect in the prohibition orders.

---

<sup>203</sup> *Autorité des marchés financiers c. Vaillancourt*, 2019 QCTMF 26, para. 21

<sup>204</sup> Section 94 of the *Act respecting the regulation of the financial sector*.

<sup>205</sup> Section 270 of the *Securities Act*.

[331] Given that the respondents have contravened and continue to contravene securities legislation, and for the reasons set out above, the Tribunal makes all orders sought by the Authority.<sup>206</sup>

[332] These orders are necessary in the public interest to stop the respondents' activities in contravention of securities legislation and thereby protect investors.

[333] After considering the evidence and arguments presented to it, as well as the case law, the Tribunal decides to order the following penalty and administrative measures against the respondents as protective, preventive and dissuasive measures.

**FOR THESE REASONS**, the Financial Markets Administrative Tribunal, pursuant to sections 93, 94 and 97, para. 2<sup>o</sup>(7) of the *Act respecting the regulation of the financial sector*,<sup>207</sup> sections 264, 265, 266, 270 and 273.1 of the *Securities Act*,<sup>208</sup> and sections 130, 131, 132 and 134 of the *Derivatives Act*.<sup>209</sup>

**ALLOWS** the application by the Autorité des marchés financiers;

Order pursuant to section 265 of the *Securities Act*

**PROHIBITS** XT.COM Exchange, also doing business as “XT EXCHANGE” and “XT.COM”, BZ Limited and any other person operating the XT.com website from engaging in any activity, directly or indirectly, in respect of a transaction involving securities except for transactions to permit users of the XT.com website to withdraw their assets in the possession or control of XT.COM Exchange, BZ Limited or third parties, and to close their account there;

Order pursuant to section 264 of the *Securities Act*

**DENIES** XT.COM Exchange, also doing business as “XT EXCHANGE” and “XT.COM”, and BZ Limited, the benefit of any exemption under the *Securities Act* or regulations;

Order pursuant to section 266 of the *Securities Act*

**PROHIBITS** XT.COM Exchange, also doing business as “XT EXCHANGE” and “XT.COM”, BZ Limited, and any other person operating the XT.com website 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.com website to withdraw their assets in the possession or control of XT.COM Exchange, BZ Limited or third parties, and to close their accounts there;

Order pursuant to section 131 of the *Derivatives Act*

---

<sup>206</sup> The Tribunal allowed an amendment to a finding on the prohibition of derivative transactions at the hearing of July 28, 2023. The following words were added to this conclusion: [TRANSLATION] “or related to the offering or negotiation of a derivative”.

<sup>207</sup> CQLR, c E-6.1.

<sup>208</sup> CQLR, c. V-1.1.

<sup>209</sup> CQLR, c. I-14.01.

**PROHIBITS** XT.COM Exchange, also doing business as “XT EXCHANGE” and “XT.COM”, BZ Limited and any other person operating the XT.com website from engaging in any activity for the purpose of carrying out, directly or indirectly, a derivative transaction or transaction related to the offering or trading of a derivative, except for transactions to permit users of the XT.com website to withdraw their assets in the possession or control of XT.COM Exchange, BZ Limited or third parties, and to close their account there;

Order pursuant to section 130 of the *Derivatives Act*:

**DENIES** XT.COM Exchange, also doing business as “XT EXCHANGE” and “XT.COM”, BZ Limited and any other person operating the XT.com website the benefit of any exemption under the *Derivatives Act*;

Order pursuant to section 132 of the *Derivatives Act*:

**PROHIBITS** XT.COM Exchange, also doing business as “XT EXCHANGE” and “XT.COM”, BZ Limited and any other person operating the XT.com website from engaging in the activity of derivatives adviser, except for those activities strictly necessary to enable users of the XT.com website to withdraw their assets in the possession or control of XT.COM Exchange, BZ Limited or third parties, and to close their accounts there;

Orders pursuant to section 273.1 of the *Securities Act* and section 134 of the *Derivatives Act*

**IMPOSES** on XT.COM Exchange, also carrying on business as “XT EXCHANGE” and “XT.COM”, and on BZ Limited, all acting as one person within the meaning of section 5.1 of the *Securities Act* and section 3 of the *Derivatives Act*, an administrative penalty of two million dollars (\$2,000,000), jointly and severally, for having, by their acts or omissions, contravened or assisted in the performance of contraventions of sections 11 and 148 of the *Securities Act* and sections 54 and 82 of the *Derivatives Act*;

**AUTHORIZES** the Autorité des marchés financiers to collect payment of the administrative penalty imposed;

Orders pursuant to section 94 of the *Act respecting the regulation of the financial sector* and section 270 of the *Securities Act*:

**ORDERS** XT.COM Exchange, also doing business as “XT EXCHANGE” and “XT.COM”, BZ Limited and any other person operating the XT.com website, two (2) months after this decision and for the future, to block access to the XT.com website;

**ORDERS** XT.COM Exchange, also doing business as “XT EXCHANGE” and “XT.COM”, and BZ Limited to notify users of the XT.com website no later than two (2) days after receiving notification of this decision that it will cease to be accessible to them two (2) months after the date of this decision and for the future, and that they must therefore withdraw any assets held therein and close their account as soon as possible.

---

**Mtre. Nicole Martineau**  
**Administrative Judge**

---

**Mtre. Christine Dubé**  
**Administrative Judge**

Mtre. François Lavigne-Massicotte  
(Litigation Services, Autorité des marchés financiers)  
For the Autorité des marchés financiers

Hearing dates: July 24, 25 and 28, 2023