BRITISH COLUMBIA SECURITIES COMMISSION
Securities Act, RSBC 1996, c. 418

Citation: Re LiquiTrade Ltd., 2024 BCSECCOM 406 Date: 20240917

LiquiTrade Ltd.

Panel	Gordon Johnson	Vice Chair
	Judith Downes	Commissioner
	James Kershaw	Commissioner
Submissions completed	August 19, 2024	
Decision date	September 17, 2024	

Parties

Jillian Dean	For the Executive Director
Amir Ghorbani	

Decision

I. Introduction

[1] This is the sanctions portion of a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418 (Act). The findings of this panel on liability made on July 3, 2024, reported at 2024 BCSECCOM 292, are part of this decision.

[2] We found that LiquiTrade Ltd. (LiquiTrade):

a) traded in derivatives in British Columbia without being registered to do so, contrary to section 34 of the *Securities Act,* RSBC 1996 c. 418 (the Act); and

b) carried on business as an exchange in British Columbia that is not recognized by the British Columbia Securities Commission (the Commission), contrary to section 25 of the Act.

[3] Since publication of our findings the executive director provided further evidence in the form of an affidavit from the investigator and made written submissions on the appropriate sanctions to be imposed in this case.

[4] LiquiTrade did not make submissions on sanctions or otherwise participate in the sanctions process.

[5] This is our decision with respect to sanctions.

II. Position of the executive director

[6] The executive director submits that it is in the public interest that we impose the following sanctions against LiquiTrade:

a) permanent orders under sections 161(1)(b)(ii), 161(1)(c), and 161(1)(d)(v) of the Act prohibiting LiquiTrade from trading in securities or derivatives, from relying on

exemptions under the Act and from engaging in certain promotional activities; and

b) an administrative penalty of $500,000 under section 162 of the Act.

[7] The executive director is not seeking disgorgement against LiquiTrade.

[8] The executive director filed an affidavit from the investigator (Investigator) in support of his submissions. In the affidavit, the Investigator affirmed that:

a) LiquiTrade's terms of use had changed since he testified at the liability hearing and that Canada had been added to a list of countries from which LiquiTrade does not accept users;

b) On July 11, 2024, he was unsuccessful in his attempt to create a new account at LiquiTrade with a Canadian telephone number;

c) On July 22, 2024, he created an account at LiquiTrade using an email address with an internet protocol (IP) location of Vancouver, BC, without a telephone number and was unable to obtain a deposit address connected to that account;

d) On July 22, 2024, he created an account at LiquiTrade using virtual private network software to make it appear as if his IP location was in Sydney, Australia, and was able to obtain a cryptocurrency deposit address; and

e) A report from Inca Digital, Inc., commissioned by the Ontario Securities Commission on April 26, 2022, found that 0.79% of all visits to the LiquiTrade website from web traffic information and social media sites were from Canadians.

III. Analysis

A. Factors

[9] Section 161(1) orders are protective and preventative in nature and prospective in orientation. This means that, when it crafts its orders, the Commission aims to protect investors, promote the fairness and efficiency of the capital markets, and preserve public confidence in those markets.

[10] In *Re Eron Mortgage Corporation*, [2000] 7 BCSC Weekly Summary 22, at page 24, the Commission provided a non-exhaustive list of factors relevant to making orders under sections 161 and 162 of the Act:

> In making orders under sections 161 and 162 of the Act, the Commission must consider what is in the public interest in the context of its mandate to regulate trading in securities. The circumstances of each case are different, so it is not possible to produce an exhaustive list of all of the factors that the Commission considers in making orders under sections 161 and 162, but the following are usually relevant:
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> - the seriousness of the respondent's conduct,
> - the harm suffered by investors as a result of the respondent's conduct,
> - the damage done to the integrity of the capital markets in British Columbia by the respondent's conduct,
> - the extent to which the respondent was enriched,

- factors that mitigate the respondent's conduct,
- the respondent's past conduct,
- the risk to investors and the capital markets posed by the respondent's continued participation in the capital markets of British Columbia,
- the respondent's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers,
- the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets,
- the need to deter those who participate in the capital markets from engaging in inappropriate conduct, and
- orders made by the Commission in similar circumstances in the past.

[11] The sanctions must be sufficient to ensure that both the respondent and others will be deterred from similar misconduct. They must also be proportionate to the misconduct of the respondent and the circumstances surrounding the misconduct. See: *Re Braun*, 2019 BCSECCOM 65 and *Davis v. British Columbia (Securities Commission)*, 2018 BCCA 149.

B. Application of the factors

Seriousness of the conduct, integrity of the capital markets

[12] The prices of many crypto assets are highly volatile and investments in such assets carry a high degree of risk. In addition, some markets and platforms for trading in crypto assets have fewer controls than others. The Commission, in coordination with other securities regulators in Canada, has sought to mitigate many of those risks by imposing various requirements of entities which, among other things, facilitate trades in crypto assets for local residents. Those requirements and risk mitigation measures are of no value if they are ignored.

[13] As was noted in *Re SBC Financial Group Inc.*, 2018 BCSECCOM 267, section 34 is a cornerstone of the Act because it relates directly to protecting the investing public in the purchase and sale of securities. Contraventions of section 34 are inherently serious.

[14] LiquiTrade claimed to offer users a regulated exchange and it made its services available to investors in British Columbia while evading the regulatory oversight of the Commission. We find that conduct to be serious.

Harm to investors

[15] There is no evidence that any individual investor lost funds as a result of LiquiTrade's conduct.

[16] The executive director concedes that it appears likely the number of British Columbia users of LiquiTrade was relatively small. Based on the evidence obtained by the Investigator regarding the total of LiquiTrade's activity in all of Canada, the executive director appears to have quite correctly made that concession, as well as the related concession that any enrichment LiquiTrade received by way of fees charged in British Columbia was likely nominal.

Enrichment of the respondents

[17] As noted above, it is likely that any enrichment obtained by LiquiTrade was nominal.

Aggravating factors

[18] There are no aggravating factors.

Mitigating factors

[19] The evidence from the Investigator, which is summarized above, supports a conclusion that, since the Notice of Hearing was issued in this proceeding, LiquiTrade has changed its policies and practices in order to exclude British Columbia-based investors from using its exchange. The executive director accepts that this factor has some moderate value as a mitigating factor and we agree.

[20] The executive director notes that, based upon the Investigator's experience, if a British Columbia investor masks his or her local IP address and uses an Australian IP address then access to LiquiTrade's trading functions becomes available. Because such access is available, and also because LiquiTrade has not communicated about its efforts to prevent local residents from trading on its exchange, the executive director suggests that there are limits on how much weight should be placed on this mitigating factor. We agree that the mitigating factor or LiquiTrade's subsequent change of behavior is a moderate mitigating factor. However, we emphasize that we are not expressing a conclusion about whether a failure by LiquiTrade to preclude British Columbia residents from accessing its exchange using a masked IP address is a breach of the Act.

Past misconduct

[21] LiquiTrade does not have a history of misconduct.

Specific and general deterrence

[22] The purpose of deterrence is to discourage future misconduct from the individual wrongdoer, specifically, and society, generally. The panel in *Re Smith*, 2021 BCSECCOM 486, at paragraph 22, described specific and general deterrence as:

> Specific deterrence and general deterrence are related but not identical concepts. Specific deterrence discourages this respondent from participating in future misconduct. General deterrence discourages others from participating in misconduct similar to that in the subject case. Both goals are legitimate in the crafting of a sanction which properly balances all of the factors which are relevant in any particular case.

[23] In *Cartaway Resources Corp. (Re)*, 2004 SCC 26, at paragraph 55, the Supreme Court of Canada stated that, in the capital markets, general deterrence "has a proper role to play in determining whether to make orders in the public interest and, if they choose to do so, the severity of those orders."

[24] An appropriately severe penalty provides general deterrence to similar potential respondents. The panel in *Re Alexander*, 2007 BCSECCOM 773, stated, at paragraph 46:

> Part of the Commission's mandate is to deter future misconduct by those against whom orders have been made. Any penalty which will effectively speak to all participants in the capital markets must be relatively severe to be meaningful. As the Alberta Securities Commission said in *Re Capital Alternatives Inc.*, 2007 ABASC 482 (at paras 29-30):

> ... Stated simply, an administrative penalty sends the message, to the particular respondent and to other market participants, that future conduct similar to that being sanctioned is not tolerated and will come at a direct financial cost ...

[25] However, our orders must be proportionate to the misconduct and the circumstances surrounding it (see: *Davis v. British Columbia Securities Commission*, 2018 BCCA 149) The Alberta Court of Appeal in *Walton v. Alberta (Securities Commission)*, 2014 ABCA 273, noted:

> 154 ... [Specific and general deterrence] are legitimate considerations, but at the end of the day the sanction must be proportionate and reasonable for each appellant. The pursuit of general deterrence does not warrant imposing a crushing or unfit sanction on any individual appellant. …
>
> 156 … [A]ny further administrative penalty must still be proportionate to the offence, and fit and proper for the individual offender. An administrative penalty focused purely on general deterrence of an unidentified and amorphous sector of the public could easily become disproportionate to the circumstances of the individual involved.

[26] We agree with the following submissions from the executive director regarding specific and general deterrence:

a) LiquiTrade did not express any remorse for its conduct, and has not participated in this proceeding. There must be a strong message of specific deterrence in these circumstances.

b) The proposed sanctions will send a strong deterrent message to the crypto asset trading sector that disregarding British Columbia securities law will not be tolerated. The Ontario Capital Markets Tribunal has held that this message is particularly important for foreign trading platforms, and in the context of the inherent risks associated with the crypto trading sector.

c) Further, a significant penalty will ensure the playing field within British Columbia's capital markets remains even. Other crypto asset trading platforms operating in the province have taken steps to bring their businesses into compliance with British Columbia securities law. It is important to ensure that compliant firms operating with appropriate restrictions and regulatory supervision are not placed at a competitive disadvantage against those that flout our regulatory system.

d) The sanctions that the executive director seeks are necessary to ensure that LiquiTrade and others will be deterred from engaging in similar misconduct in the future.

[27] We recognize that LiquiTrade's change in conduct since the date of the Notice of Hearing provides some mitigation of the need for specific deterrence. Of course this belated change in conduct does not explain why LiquiTrade did not comply with the Act from the beginning.

Prior orders in similar cases

[28] The executive director notes that this is the first case of its kind in British Columbia. The executive director has reviewed precedents in other jurisdictions and has identified the following precedents as being most applicable:

Case	Jurisdiction	Breaches	Sanction
Autorité des marchés financiers v. Coinex Global Limited, 2023 QCTMF 75 (CanLII)	Quebec	Acting as a securities/derivatives dealer without being registered and creating and marketing derivatives without being qualified	• $2 million administrative penalty • Permanent market prohibitions
Autorité des marchés financiers v. XT.com Exchange (XT Exchange et XT.com), 2023 QCTMF 62	Quebec	Acting as a securities/derivatives dealer without being registered and creating and marketing derivatives without being qualified	• $2 million administrative penalty • Permanent market prohibitions
Mek Global Limited (Re), 2022 ONCMT 15 (CanLII)	Ontario	Unregistered trading, illegal distribution	• $2 million administrative penalty • Permanent market prohibitions
Polo Digital Assets, Ltd (Re), 2022 ONCMT 32	Ontario	Unregistered trading, illegal distribution	• $1.5 million administrative penalty • Permanent market prohibitions

[29] The executive director's submissions included a very balanced and thoughtful comparison between the conduct of LiquiTrade and the conduct of the respondents in the *CoinEx*, *XT.com Exchange*, *Mek Global Limited* and *Polo Digital* cases. In those cases, the respondents had facilitated high levels of trading activity in Canadian provinces which they had chosen not to register in. Those respondents also, at least to some extent, elected to continue their operations in breach of the relevant legislation in each case even after enforcement proceedings were commenced against them. The executive director expanded on these distinctions as follows:

a) The *CoinEx* platform responded to the AMF's warning about enforcement proceedings as follows: "although your proposal was very professionnal [sic], we felt that it was not suitable for our current situation." As of the sanction decision, the CoinEx platform was continuing to operate in Quebec. This was a significant aggravating factor.

b) The *XT* platform had stopped accepting new registrations from Canadian users by the time of the sanctions decision, but continued to allow existing users to freely use the services offered on the website. This was noted as an aggravating factor.

c) The *Mek Global Limited* respondents continued to allow full access to Ontarian investors as of the time of the sanction hearing. They had made untrue statements to investors about its engagement with the proceeding and commitment to compliance with local laws. These were found to be aggravating factors.

d) Like the *XT* respondent, the *Polo Digital* respondents took some steps to restrict access to Ontarian users. Staff were nonetheless able to access the existing account and make trades. The *Polo Digital* respondents took the most steps of any of these platforms, and their efforts were acknowledged but given only "diminished weight" as a mitigating factor given the limited success of their efforts.

[30] We find the executive director's comparisons between his precedent cases and the circumstances of this matter appropriate. The conduct in each of the cases provided was more severe than LiquiTrade's and we must take that into account when balancing the factors to determine appropriate sanctions.

IV. Appropriate sanctions

Administrative penalties

[31] Section 162 of the Act provides the following:

> (1) If the commission, after a hearing,
>
> (a) determines that a person has contravened,
>
> (i) …a provision of this Act…
>
> (b) considers it to be in the public interest to make the order,
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> the commission may order the person to pay the commission an administrative penalty of not more than $1 million for each contravention.

[32] We are obligated to consider every factor relevant to sanctions. We have found that LiquiTrade committed a serious contravention of the Act. However, as the executive director submitted, its contravention was not as serious as the precedent cases provided.

[33] The executive director submits that an administrative penalty of $500,000 is appropriate. Considering all of the factors we have mentioned above, we agree.

Market prohibitions

[34] Although LiquiTrade has belatedly changed its behavior, LiquiTrade initially chose to ignore our regulatory framework which has been built around the registration requirements in section 34 of the Act. LiquiTrade chose to work outside of important requirements which are designed to mitigate some risks faced by investors in this province. This misconduct by LiquiTrade was serious. In order to protect the public from the potential that LiquiTrade will resume facilitating the use of its services by local residents, it is necessary to impose prohibitions of continuing duration. We conclude that the prohibitions sought by the executive director are appropriate.

V. Orders

[35] Considering it to be in the public interest, and pursuant to sections 161 and 162 of the Act, we order that:

1. LiquiTrade is permanently prohibited:

    a) under section 161(1)(b)(ii) of the Act, from trading in or purchasing any securities or derivatives,

    b) under section 161(1)(c) of the Act, from relying on any exemptions set out in the Act, the regulations or a decision;

    c) under section 161(1)(d)(v) of the Act, from engaging in promotional activities by or on behalf of

        i. an issuer, security holder or party to a derivative, or

        ii. another person that is reasonably expected to benefit from the promotional activity; and

2. LiquiTrade pay to the Commission an administrative penalty of $500,000 under section 162 of the Act.

September 17, 2024

For the Commission

Gordon Johnson
Vice Chair

Judith Downes
Commissioner

James Kershaw
Commissioner

NOTICE: The orders made against the respondent in this matter may automatically take effect against them in other Canadian jurisdictions, without further notice to them.