

Citation: 2023 BCSECCOM 543

Notice of Hearing

NetCents Technology Inc. and Clayton Leigh Moore

(together, the Respondents)

Section 161 of the *Securities Act*, RSBC 1996, c. 418

- ¶ 1 The British Columbia Securities Commission (Commission) will hold a hearing (Hearing) at which the Executive Director will tender evidence, make submissions and apply for orders against the Respondents under sections 161, 162 and 174 of the *Securities Act*, RSBC 1996, c. 418 (the Act), based on the following facts:

Summary

1. NetCents Technology Inc. (NetCents) created a security and sold it without a prospectus and without relying on an exemption from the requirement to file a prospectus. NetCents also made misrepresentations while promoting the sale of its security.
2. NetCents then created an exchange where people could buy and sell the security it created. It operated the exchange as a business without seeking or receiving recognition of the exchange from the Commission.
3. By engaging in the conduct set out in this Notice of Hearing, NetCents contravened sections 61, 50(1)(d) and 25 of the Act.
4. If NetCents did not contravene section 25 of the Act by operating an unrecognized exchange, in the alternative, it carried on business as an alternative trading system (ATS) and contravened sections 6.1, 6.3 and 6.9 of National Instrument 21-101 *Marketplace Operation* (NI 21-101).
5. NetCents' contraventions are attributable to Clayton Leigh Moore (Moore) by operation of section 168.2 of the Act

Background

6. NetCents is a payment processing company incorporated and headquartered in Vancouver, British Columbia. Its shares traded on the Canadian Securities Exchange (CSE) from March 2016 until May 2021, when the CSE suspended its listing after the Commission issued a cease trade order with respect to its securities for failure to file certain financial disclosure.

7. NetCents has never been registered or recognized under the Act in any capacity.
8. Moore is the founder, CEO and a director of NetCents. During the relevant period he resided in Vancouver.

Misconduct

Illegal distribution

9. NetCents created a crypto-asset that it named the NetCents Coin (the Coin) and, between September 19, 2017 and December 14, 2017, sold the Coin to approximately 500 investors, within and outside British Columbia, for total proceeds of approximately \$3,341,040. Those proceeds have been preserved since November 27, 2018 pursuant to a Commission order to freeze property under section 151(2) of the Act.
10. In the circumstances that the investors acquired the Coin, it was an investment contract, and therefore a security as defined in the Act.
11. NetCents sold the Coin, in each instance, without a prospectus and without relying on an exemption from the requirement to file a prospectus. Because the Coin was a security, each sale was a distribution contrary to section 61 of the Act.

Misrepresentations

12. NetCents engaged in investor relations activities by publishing news releases and YouTube videos and by making statements on websites it maintained.

Claims about the NCC Organization or the NCC Foundation

13. NetCents published a document titled *The NetCents Coin White Paper* (White Paper) on its website at www.net-cents.com from October 10, 2017 until at least December 19, 2017.
14. The White Paper claimed that NetCents was working with an independent non-profit organization, named the NetCents Coin Organization (NCC Organization) to assist with the launch of the Coin, which was being issued by NCC Organization. The White Paper further claimed that NCC Organization would manage the network of nodes for Coin transaction authorizations and that all proceeds from sales of the Coin would remain in NCC Organization's treasury reserve account for the benefit of all Coin holders.
15. From November 6, 2017 until at least March 22, 2018 NetCents maintained another website at www.netcentscoinfoundation.com which purported to be NCC Organization's website (Foundation Website).

16. The Foundation Website claimed it was a non-profit organization based in Zug, Switzerland named the NetCents Coin Foundation (NCC Foundation), whose mission was to develop, administer, promote and maintain the Coin on behalf of its community. The Foundation Website further claimed that the two of its key roles were to release treasury Coins according to a release schedule and administer NCC Foundation's reserve account.
17. In fact, neither the NCC Organization nor the NCC Foundation, nor any similar independent entity existed during the distribution period and therefore could not have done any of the things NetCents claimed they did.
18. All of the proceed from sales of the Coin went to NetCents.

News releases about Coin sales

19. The White Paper claimed that the first five releases of the Coin would each be in tranches of \$5 million, with an initial value of USD \$1 per Coin and that the value of the Coin would increase 100% after each of the first four tranches.
20. NetCents issued a news release on November 27, 2017 which stated that, as of that date, the first tranche of Coins had been completely sold and that half of the second tranche of Coins, which were being sold at USD \$2 per Coin, had also already been purchased.
21. NetCents issued another news release on November 30, 2017 which stated that the first and second tranches of the Coin had been completely sold out and that, on that date, the third tranche of the Coin was selling and the Coin's value had quadrupled.
22. In fact, neither the first nor second tranches of the Coin had been sold out before either news release.

Monthly income claim on YouTube

23. NetCents published and maintained a video titled "This is NetCents" on YouTube from January 19, 2017 until at least September 29, 2019.
24. The video stated that NetCents had "a monthly revenue of \$100,000 and growing." In fact, NetCent's own financial disclosure indicated that its revenue for the entire fiscal year 2017 was less than \$100,000.

Knowledge

25. NetCents and Moore knew or ought reasonably have known that the statements on its websites, and in the new releases and YouTube video were misrepresentations contrary to section 50(1)(d) of the Act, as it was written at that time.

Unrecognized exchange

26. On December 4, 2017, NetCents established an online exchange named the NC Exchange (the Exchange) where customers opened accounts and submitted orders to buy and sell the Coin.
27. NetCents charged buyers and sellers a 0.25% commission for each Coin transaction on the Exchange. It earned approximately \$10,200 in compensation from Coin transactions from December 4, 2017 – February 24, 2019.
28. NetCents did not apply to the Commission, pursuant to section 24 of the Act, to have the Exchange recognized as an exchange before it started operating as a business or any time after, and the Commission never recognized the Exchange pursuant to that section.
29. By carrying on business as an exchange without seeking or receiving recognition from the Commission, NetCents contravened section 25 of the Act.

Alternative pleading to unrecognized exchange allegation

30. In the alternative, if the Exchange was not an exchange that had to be recognized before it could start operating as a business, it was an alternative trading system (ATS) as defined in section 1.1 of NI 21-101.
31. The Exchange was not registered as a dealer and was not a member of a self-regulatory organization. NetCents therefore contravened:
 - (a) section 6.1 of NI 21-101 by carrying on business as an ATS;
 - (b) section 6.3 of NI 21-101 by executing trades of the Coin; and
 - (c) section 6.9 of NI 21-101 by using the word “exchange” in its name.

Contraventions attributable

32. Moore authorized, permitted, or acquiesced in each of NetCents’s contraventions. He therefore contravened those same provisions by operation of section 168.2 of the Act.

Hearing Process

- ¶ 2 The Respondents or their counsel are required to attend at the 12th Floor Hearing Room, 701 West Georgia Street, Vancouver, British Columbia, on **Tuesday, February 20, 2024, at 9 a.m.** if they wish to be heard before the Commission sets a date for the Hearing. Relevant information gathered by Commission Staff in the investigation of this matter will be disclosed to the Respondent upon request to the Executive Director.
- ¶ 3 At the Hearing, the Respondents may be represented by counsel, make submissions and tender evidence. The Respondents are requested to advise the Commission of their intention to attend the Hearing by informing the Hearing Office at PO Box 10142,

Pacific Centre, 701 West Georgia Street, Vancouver, BC V7Y 1L2 phone: (604) 899-6500; email: hearingoffice@bcsc.bc.ca.

- ¶ 4 If the Respondents or their counsel do not appear at the Hearing, the Executive Director may apply to have questions of liability and sanction heard at the same time. Determinations adverse to the Respondents may be made in their absence.
- ¶ 5 Orders made against the Respondents in this matter may automatically take effect against them in other Canadian jurisdictions, without further notice to the Respondents.

Peter J Brady
11/17/2023 | 3:38 PM PST

- ¶ 6 Peter J. Brady
Executive Director