

Citation: 2023 BCSECCOM 167

Notice of Hearing

David Smillie and 1081627 B.C. Ltd. operating as ezBtc (collectively, 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. The Respondents perpetrated a fraudulent scheme relating to securities by lying to customers about a crypto asset trading platform the Respondents claimed to operate and by diverting approximately \$13 million in customer assets for their own purposes.
2. By engaging in the conduct as set out in this Notice of Hearing, from December 2016 through September 2019 (the Relevant Period), the Respondents contravened section 57(b) of the Act, as it then was.

Background

3. Smillie was the incorporator and director of 1081627 B.C. Ltd., which was incorporated in British Columbia on July 4, 2016 and throughout the Relevant Period operated as “ezBtc.” The company was dissolved on October 31, 2022.
4. ezBtc purported to run a crypto asset trading platform and advertised offline storage for customer holdings (Cold Storage).
5. Smillie resided in British Columbia and remained the sole director of ezBtc throughout the Relevant Period.
6. Neither Smillie nor ezBtc have ever been registered under the Act.

Misconduct

Fraud

7. The Respondents operated an online exchange accessible at ez-btc.ca, which purportedly allowed customers to buy and sell various crypto assets (the Platform).

The agreements between ezBtc and its customers relating to crypto assets were futures contracts, which were securities under the Act.

8. Platform customers opened accounts and deposited crypto assets, including bitcoin and altcoins such as Ether, into approximately 13,000 ezBtc wallet addresses.
9. From 2016 to 2019, ezBtc customers deposited over 2,300 bitcoin and over 600 Ether into ezBtc addresses on the Platform.
10. ezBtc transferred 935.47 of the incoming customer bitcoin and 159 of the incoming customer Ether to two online crypto gambling sites without customer authorization.
11. The Canadian dollar equivalent value of bitcoin and Ether fluctuated greatly throughout the relevant period. As of July 1, 2019, the value of the fraudulently transferred crypto assets was approximately \$13 million.
12. The Respondents told customers and potential customers that ezBtc stored “over 99% of their bitcoin and Altcoins in cold storage.” In fact, ezBtc did not use Cold Storage and did not retain custody of customer assets. During the Relevant Period, ezBtc’s daily bitcoin balance did not exceed 11, and its daily Ether balance did not exceed 20.
13. The Platform displayed holdings in crypto assets to customers within their accounts. In reality, the majority of those holdings did not exist as ezBtc did not maintain sufficient assets to cover customer holdings.
14. As a result, many customers were not able to withdraw the crypto assets they believed were held on the Platform.

Contraventions by ezBtc are attributable to Smillie

15. Smillie was the directing mind of ezBtc and therefore contravened the same section of the Act that it did, pursuant to section 168.2 (1) 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 June 27, 2023, at 9:00 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 Respondents 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 them.

Peter J Brady
Apr 18 2023 8:07 AM -07:00

- ¶ 6 Peter J. Brady
Executive Director