

## Crypto Gone Wrong: Failed Crypto Company's Early Co-operation Leads to More Lenient Sanctions

June 10, 2020

The operators of First Class Crypto Inc. (FCCI), a failed crypto-asset mining venture, have agreed to monetary penalties, disgorgement and market bans in a settlement approved by the Ontario Securities Commission (OSC) in connection with certain violations of the *Securities Act* (the Act), including making false and misleading statements to prospective investors.

### Key Takeaways

- The OSC emphasized a heightened concern for the protection of investor interests and, in particular, the importance of maintaining accurate and complete books and records in the crypto asset sector.
- The OSC demonstrated its continued willingness to enter into settlements where respondents co-operate in seeking an early resolution of allegations and proactively facilitate the return of funds to investors harmed by their actions.

### Summary and Background

On May 28, 2020, the OSC approved a settlement involving FCCI and its principals, Jonathan Harris, Mitchell Carnie and Neill Kloss (the Individual Respondents). As part of the settlement agreement, the Individual Respondents' admitted that they induced investors to invest approximately \$365,000 by making numerous false and misleading statements, including guaranteeing significant monthly returns on investments, and omitting that the FCCI did not have established mining facilities and held no insurance to protect investment funds that were held in volatile crypto assets. When the Individual Respondents finally shut down FCCI in June 2018, a substantial portion of investor funds had been lost; however, the Individual Respondents asked investors to sign documents falsely acknowledging that they had been paid in full.

In connection with the OSC's findings that, among other things, the sale of the crypto assets was an illegal distribution of securities and false and misleading statements were made to investors, FCCI and the Individual Respondents agreed to pay approximately \$240,000 in fines and disgorgement in addition to \$25,000 in costs. Additionally, FCCI was permanently prohibited from trading, while Harris, Carnie and Kloss received bans from trading in securities and acting as directors or officers for twelve, seven and five years, respectively.

## Trends

The OSC continues to take great efforts to secure expeditious and cost-efficient resolutions of alleged breaches of the Act in the public interest. In this instance, the OSC noted that the misconduct was serious and that the failure to keep accurate and complete books and records was a significant and heightened concern for entities operating in the crypto asset sector. The OSC also noted their comfort that the settlement agreement specifically declined to include a full and final release for future proceedings, thereby preserving enforcement staff's ability to bring further proceedings in the event it is discovered that materially more funds were raised, materially more investors were involved or materially more investors or funds remain unpaid. The Panel also acknowledged certain mitigating factors, including that the Individual Respondents were "unsophisticated and inexperienced individuals" who have never been registered, that they sought an early resolution, proactively facilitates the partial return of funds to investors and that they've "demonstrated some recognition of the seriousness of their misconduct" by attempting to repay investor - all of which contributed to approval of sanctions and penalties.

Links to the Settlement Agreement and the Reasons and Decision for Approval of Settlement can be found [here](#).

***The authors of this article gratefully acknowledge the contributions of summer student Caroline Cusinato in the preparation of this article.***

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