

## Crypt-Oh-No: The OSC Continues to Crack Down on Unregistered Crypto Asset Trading Platforms

*Robert B. Cohen, Laura Cloutier*

**July 7, 2022**

On June 22, 2022, the Ontario Securities Commission (OSC) announced the outcomes of enforcement proceedings against Bybit Fintech Limited (Bybit) and Mek Global Limited and PhoenixFin Pte Ltd (collectively, KuCoin), foreign companies that operated unregistered crypto asset trading platforms servicing Ontario investors (the Release).

Bybit and KuCoin were both ordered to pay significant monetary penalties and/or disgorge their profits. However, while Bybit and the OSC agreed to a settlement (approved by the Capital Markets Tribunal) that included a temporary market ban, subject to Bybit bringing its operations into compliance with the Ontario *Securities Act* (the Act), a panel of the Capital Markets Tribunal separately imposed a permanent market participation ban on KuCoin, which had failed to cooperate with the OSC's investigation and enforcement efforts.

### Key Takeaways

- The OSC has demonstrated an increasing concern for protecting Ontario investors from unregulated crypto asset trading platforms.
- The OSC is sending a decisive message that unregistered crypto asset trading platforms must register with the OSC and comply with Ontario securities law or risk facing permanent bans from operating in Ontario.
- The OSC continues to show a willingness to enter into settlement discussions for comparatively lenient penalties with parties who cooperate with OSC investigations.

### Summary and Background

In March of 2021, the OSC issued a warning that all crypto asset trading platforms that offer trading in derivatives or securities in Ontario must contact the OSC to commence registration discussions or face enforcement proceedings. Neither Bybit nor KuCoin heeded the OSC's warning.

On June 9, 2022, the Capital Markets Tribunal approved a settlement agreement with Bybit in which Bybit agreed to disgorge over US\$2.5 million and to pay a further C\$10,000 in costs towards the OSC's

investigation. Bybit also agreed through a legally enforceable undertaking to bring its operations into compliance with the requirements under the Act. In the meantime, Bybit is subject to a temporary market ban, including agreeing not to accept any new accounts for, offer any new products to, or engage in marketing activities directed at Ontario residents, while it undertakes its registration compliance.

On June 21, 2022, the Capital Markets Tribunal issued its Reasons and Decision in which it permanently banned KuCoin from participating in Ontario capital markets and ordered that KuCoin pay a C\$2 million administrative penalty and C\$96,550.35 in costs. The panel emphasized several aggravating factors as they pertained to KuCoin, including consistent breaches of statutory requirements, despite warnings, and misleading investors about its cooperation with the enforcement proceedings.

The key distinguishing factor accounting for the temporary ban imposed on Bybit as opposed to the permanent ban imposed on KuCoin, as noted by the Capital Markets Tribunal, was Bybit's cooperation with the OSC's investigation and enforcement efforts. Conversely, KuCoin did not respond to the OSC's warnings in March 2021, failed to cooperate with the OSC's investigation, and did not make any submissions in the enforcement proceeding.

## Trends

The Release has reaffirmed the OSC's intention to protect Ontario investors from unregistered crypto asset trading platforms by demonstrating a willingness to permanently ban crypto asset trading platforms that refuse to comply with Ontario securities legislation. However, as has previously been observed in *Crypto Gone Wrong: Failed Crypto Company's Early Co-Operation Leads to More Lenient Sanctions* (June 10, 2020), the OSC continues to show a willingness to enter into settlement agreements with respondents who cooperate with the OSC's investigation and enforcement efforts.

The OSC confirmed in the Release that it will continue to scrutinize non-compliant crypto asset trading platforms and collaborate with international securities regulators on investigation and enforcement efforts. Going forward, parties involved in operating crypto asset trading platforms would be well-advised to liaise and cooperate with securities regulators to ensure that their platforms comply with the governing securities regime.

Links to the Settlement Agreement, Reasons and Decision, and Release can be found [here](#).