

## To Be or Not to Be a Security: That is the Crypto Question

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In recent years, the number of crypto asset trading platforms (CTP) has grown significantly, and the legal landscape in Ontario continues to evolve to adapt. *Manticore Labs OÜ (Re)*, [2024 ONCMT 19](#), is a recent decision that highlights the importance of ensuring these non-traditional trading platforms are compliant with the provincial regulatory regime.

### Background

From 2018 to 2023, Manticore Labs OÜ and Manticore Labs Inc. (Manticore) operated a CTP called CoinField. In Ontario, 21 investors deposited money with CoinField, which ultimately, they were unable to withdraw.<sup>1</sup>

The Ontario Securities Commission (OSC) alleged that the contracts signed by users when they deposited fiat money or crypto assets, and purchased or sold crypto assets, were securities. As a result, the OSC argued that the respondents violated the *Securities Act* (Ontario) (Act) by selling securities without being registered, and without having filed a prospectus for those securities. Additionally, the OSC claimed that Manticore made false or misleading statements to its investors and engaged in conduct to be sanctioned under the Act.<sup>2</sup>

### Crypto Contracts Are Securities

In their analysis, the Capital Markets Tribunal (Tribunal) agreed with the OSC that the “crypto contracts” CoinField users consented to constituted investment contracts and, therefore, securities. Since an “investment contract” is one of the enumerated definitions of a “security” under the Act, the Tribunal considered the four elements of an investment contract as defined by the Supreme Court of Canada in *Pacific Coin*, which are:

1. An investment of money,
2. with an expectation of profit,
3. in a common enterprise in which the fortunes of the investor are interwoven with and dependent upon the efforts and success of those seeking the investment or of third parties, and
4. where the efforts made by those other than the investor are the undeniably significant ones – essential managerial efforts which affect the failure or success of the enterprise.<sup>3</sup>

# Cassels

The Tribunal determined that the first element (an investment of money) was satisfied because each investor began their relationship with CoinField by investing money. The Tribunal additionally relied upon the testimony of two investors to confirm the relationship involved an investment of money. The second element (an expectation of profit) was also satisfied. The Tribunal again referenced the testimony of the two investors, as well as CoinField's own website content, which explicitly stated, "whether you're new to investing or an experienced trader, you're seconds away from great returns."<sup>4</sup>

The Tribunal addressed the third and fourth elements together (a common enterprise and reliance on the efforts of others), highlighting the Act's mandate to consider investor protection and adopting a flexible and purposive approach. Given how dependent investors were on Manticore to provide a functional trading platform, and concurrently the lack of investor protection available in this non-traditional trading environment, the Tribunal concluded that the elements of an investment contract were satisfied.<sup>5</sup>

## No Registration or Prospectus Filing

A person or company must be registered under Ontario securities law to engage in the business of trading in securities, unless an exemption applies. Manticore did not claim any exemption from this requirement. The Tribunal emphasized that the registration requirement is a cornerstone of the securities regulatory regime, and unregistered trading undermines both investor protection and the integrity of capital markets.<sup>6</sup>

The Tribunal established that Manticore's conduct constituted "trading" because steps were taken in furtherance of the crypto contracts, such as the soliciting of users through the CoinField website. The Tribunal concluded that Manticore engaged in trading for a business purpose since CoinField was "in the business" of trading crypto contracts and operated in a manner similar to that of a registrant.<sup>7</sup>

The Tribunal also agreed with the OSC that CoinField distributed securities without having filed a prospectus. Based on the available evidence, Manticore took no steps toward filing a prospectus and, as above, an exemption from this requirement was not even claimed.<sup>8</sup>

## False or Misleading Statements

In further contravention of the Act, the Tribunal found that false or misleading statements were made to CoinField investors. More specifically, CoinField made false or misleading statements that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship, and in clear violation of provincial securities laws.<sup>9</sup>

While investors attempted to get their money back, CoinField made false statements to reassure them regarding the safety of their funds. For example, one investor was told that "technical issues" were

# Cassels

prohibiting the withdrawal of their assets, but that their funds were safe. The Tribunal was satisfied that CoinField knew these statements were untrue at the time they were made, and that a reasonable investor would consider these statements relevant in deciding whether to enter into and maintain a trading relationship with CoinField.<sup>10</sup>

## Sanctionable Conduct Determined

Finally, the Tribunal ruled that Manticore engaged in conduct that would justify a sanctions order. Although the OSC claimed that four categories of sanctionable conduct were engaged, the Tribunal determined that two categories were sufficient to justify an order under the Act. Namely, CoinField (i) failed to maintain safe custody of their investors' assets; and (ii) failed to allow investors to withdraw their money.<sup>11</sup>

The Tribunal explained that it did not need to consider the remaining categories (i.e., failing to inform investors of the true reason for not honouring withdrawal requests, and misleading the Commission as to the true reasons for delays in honouring withdrawal requests). The Tribunal already concluded that CoinField's failure to inform investors of the true reason for not honouring withdrawal requests contravened the Act, and they did not have sufficient evidence to conclude that CoinField's reference to an audit by a prospective investor, which was the supposed cause of delays in honouring withdrawal requests, was false.<sup>12</sup>

## Next Steps

Digital assets continue to proliferate the Canadian market, at its best offering Canadians an alternative asset class that may also contribute to a more efficient capital markets system. However, this upside must be carefully balanced with a compliance-first approach that ensures the paramountcy of investor protection. CTPs must carefully assess and ensure their compliance with the Act, with particular focus on its marketing statements and contractual obligations to consumers.

If you or your organization have questions regarding CTPs and compliance with Canadian [securities law](#), we encourage you to reach out to our [Blockchain & Digital Assets Group](#). Furthermore, if you or your organization are facing a dispute with a CTP, we encourage you to contact our [Litigation Group](#).

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<sup>1</sup> *Manticore Labs OÜ (Re)*, [2024 ONCMT 19](#) at paras 1-2 [*Manticore*].

<sup>2</sup> *Manticore* at para 3.

<sup>3</sup> *Manticore* at paras 8-9.

<sup>4</sup> *Manticore* at paras 10-12.

# Cassels

<sup>5</sup> *Manticore* at paras 13-15.

<sup>6</sup> *Manticore* at para 18.

<sup>7</sup> *Manticore* at paras 21-28.

<sup>8</sup> *Manticore* at paras 32-35

<sup>9</sup> *Manticore* at paras 37-39.

<sup>10</sup> *Manticore* at paras 42-45.

<sup>11</sup> *Manticore* at para 58.

<sup>12</sup> *Manticore* at paras 54-56.

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*This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.*