



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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File No. 2019-23

**IN THE MATTER OF
COINLAUNCH CORP.**

**ORAL REASONS FOR APPROVAL OF SETTLEMENT
(Sections 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5)**

Hearing: July 24, 2019

Decision: July 24, 2019

Panel: D. Grant Vingoe Vice-Chair and Chair of the Panel
M. Cecilia Williams Commissioner
Raymond Kindiak Commissioner

Appearances: Katrina Gustafson For Staff of the Commission
Michael L. Byers For CoinLaunch Corp.

ORAL REASONS FOR APPROVAL OF SETTLEMENT

The following reasons have been prepared for publication in the Ontario Securities Commission Bulletin, based on the reasons delivered orally at the hearing, and as edited and approved by the Panel, to provide a public record.

I. OVERVIEW

- [1] The parties have jointly submitted that it would be in the public interest for the Panel to issue an order approving a settlement agreement between the parties (the **Settlement Agreement**) and imposing sanctions on the respondent, CoinLaunch Corp. (**CoinLaunch**). After considering the submissions of the parties, and for the following reasons, the Panel agrees that the requested order is in the public interest.
- [2] A detailed description of the facts is provided in the Settlement Agreement, which will be publicly available, so we will be brief in describing the background and the conduct at issue.

II. BACKGROUND

A. CoinLaunch

- [3] CoinLaunch was a service provider in the crypto-asset sector. CoinLaunch was incorporated under the *Canada Business Corporations Act*¹ on October 16, 2017 and its registered address is in Oakville Ontario. During the Material Time (as defined below), all of the directors and officers of CoinLaunch were residents of Ontario.
- [4] CoinLaunch is not, and never has been, registered as a dealer or in any other capacity with the Ontario Securities Commission (the **Commission**).
- [5] CoinLaunch is in the process of winding up its business and has filed a notice of its intent to dissolve.

B. The Marketing Activities

- [6] During the period between March 1, 2018 and September 30, 2018 (the **Material Time**), CoinLaunch held itself out as engaging in the business of trading in securities by advertising a package of “crypto consulting” marketing and promotional services that included:
- a. helping companies administer their token offerings;
 - b. helping companies solicit investors to register and go through the investment process, including “KYC/AML”, accreditation, and other legal requirements;
 - c. helping companies create a plan to get “seed funding” for token offerings;
 - d. taking offerings on roadshows;
 - e. providing full day workshops to help companies develop the optimal approach, tactics and strategy for their offerings;
 - f. planning and consulting on all key aspects of “crowdsale” campaigns; and

¹ RSC 1985, c C-44

- g. marketing token offerings through marketing campaigns, landing pages, and other advertising.
- [7] In practice, CoinLaunch performed a more limited range of services during the Material Time than advertised. Specifically, they provided services in respect of two offerings, namely the BCZERO and ECOREAL token offerings.
- [8] According to its white paper, BCZERO is a token related to Buggyra, an off-road truck racing team based in the Czech Republic. The Settlement Agreement states that the BCZERO offering involved an investment of money through the purchase of these tokens with bitcoin or ether, both of which have value and are exchangeable for traditional fiat currencies. There was an expectation of profit because the proceeds from the BCZERO offering were to be used by the issuer to build a marketplace that would create demand for BCZERO tokens and raise the value of BCZERO tokens. Prior to the creation of this marketplace, the BCZERO tokens were available for secondary market trading on crypto-asset trading platforms, reinforcing the existence of a speculative investment opportunity. Investors' potential profits were dependent on the managerial efforts of Buggyra and its key personnel as described in the white paper.
- [9] ECOREAL was described in its white paper as a "securities token", with funds raised from their sale being used to develop a resort in Portugal. ECOREAL tokens were stated to represent a fractional interest in the resort with all net revenue distributed to holders each year. As with the BCZERO token, an investment of money was involved in purchasing ECOREAL tokens on foreign crypto-asset trading platforms. Investors expected profits through anticipated distributions of the resort's net revenue. The profits would be derived from the managerial efforts of the issuer in operating and managing the resort.
- [10] The term "security" is defined in s.1(1) of the Ontario *Securities Act*² to include an "investment contract". There is no definition for investment contract in the Act. However, the Supreme Court of Canada has held that an investment contract will be found where there is
- a. an investment of money;
 - b. with an intention or expectation of profit;
 - c. 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
 - d. that the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise.³
- [11] The parties agree, and we are satisfied based on the agreed facts, that the BCZERO and ECOREAL tokens each constitute "investment contracts" and therefore securities under the Act.

² RSO 1990, c S.5 (the **Act**)

³ *Pacific Coast Coin Exchange v Ontario (Securities Commission)*, 1977 CanLII 37 (SCC), [1978] 2 SCR 112 at 128

- [12] During the Material Time, CoinLaunch provided the following services to the issuers of these security tokens, which taken together, were in furtherance of the sale of those tokens:
- a. creating and deploying BCZERO and ECOREAL tokens to Ethereum addresses associated with the token issuers;
 - b. creating and preparing promotional materials termed “white papers” for the token offerings;
 - c. creating and managing live websites, or “landing pages”, to promote the token offerings;
 - d. providing advice to the token issuers with respect to the structure of the token offerings;
 - e. booking a booth for an agent of the BCZERO token issuer to market the BCZERO offering at an event in London, England;
 - f. introducing the token issuers to crypto-asset trading platforms to “list” the tokens for public trading; and
 - g. introducing the token issuers to an online forum which announced the launch of the two security tokens and provided other marketing materials resembling those included on the landing pages.
- [13] As compensation for these services, CoinLaunch received 500 million BCZERO tokens (amounting to 5% of all tokens issued) and \$12,233.06 in respect of the BCZERO offering and over 46 million ECOREAL tokens (amounting to 4.6% of all tokens issued) in respect of the ECOREAL offering. CoinLaunch was supposed to be compensated with additional fiat currency, which it did not ultimately receive.
- [14] We want to emphasize that while we are satisfied that this marketing program constituted acts in furtherance of trades in these tokens, we do not intend to convey that each activity in isolation would necessarily constitute such an act. Together, however, they were instrumental and central aspects of the investor solicitation activities for these security tokens and constitute acts in furtherance of trades in such tokens.

C. Interaction with Staff and Voluntary Actions

- [15] CoinLaunch became aware of the registration requirements under Ontario securities law as a result of Staff’s investigation. The Settlement Agreement states that, prior to Staff’s investigation, CoinLaunch’s officers and directors did not understand that CoinLaunch needed to be registered under Ontario securities law.
- [16] CoinLaunch did not engage with the Commission programs designed to assist with regard to crypto-asset and other emerging technologically-driven business models. It did, however, voluntarily take certain remedial steps, described in greater detail in the Settlement Agreement, including the removal of the BCZERO and ECOREAL landing pages that it was hosting and culminating in it ceasing its crypto consulting business altogether and deciding to wind up its operations.
- [17] The facts set out in the Settlement Agreement also state that CoinLaunch cooperated with Staff throughout the course of its investigation.

- [18] In addition, as set out in more detail below, Reuven Cohen, who during the Material Time, was the Chief Executive Officer and a director of CoinLaunch, has given an undertaking that includes, among other terms and conditions, an assurance that the BCZERO and ECOREAL tokens received by CoinLaunch as compensation for the services described above, will be rendered inaccessible and therefore without value. This is tantamount to the destruction of these tokens in terms of the ability of anyone to realize on their present or future value.
- [19] We find that the remedial measures implemented by CoinLaunch and Mr. Cohen's commitment constitute significant mitigating factors relevant to the sanctions to be imposed in this matter.
- [20] We have also taken into account the asserted lack of understanding by CoinLaunch's officers and directors concerning the applicability of the registration requirements under Ontario securities laws to CoinLaunch's crypto-asset consulting activities. As a result of our decision in this matter, we expect that such an assertion is not likely to receive much weight in the future.

III. CONDUCT CONTRARY TO ONTARIO SECURITIES LAW

- [21] CoinLaunch acknowledges and admits that it engaged in and held itself out as engaging in the business of trading in securities, without being registered to do so and where no exemption from the registration requirement of Ontario securities law was available, contrary to s. 25(1) of the Act.

IV. THE TERMS OF THE SETTLEMENT AGREEMENT

- [22] The Settlement Agreement proposes monetary sanctions and costs as follows:
- a. an administrative penalty in the amount of \$30,000,
 - b. disgorgement in the amount of \$12,233.06, and
 - c. costs in the amount of \$10,000
- each to be paid before the commencement of the Settlement Hearing.
- [23] The Settlement Agreement also includes the following conduct sanctions:
- a. CoinLaunch is prohibited from trading in any securities or derivatives for 5 years, pursuant to paragraph 2 of s. 127(1) of the Act; and
 - b. CoinLaunch is prohibited from acquiring any securities for 5 years, pursuant to paragraph 2.1 of s. 127(1) of the Act.
- [24] Separately, and on a voluntary basis, Mr. Cohen has given an undertaking to the Commission to:
- a. not become or act as a director or officer of any company which engages in or holds itself out as engaging in the business of trading in securities without applicable registration under Ontario securities law or an exemption from such requirement; and
 - b. ensure that all references to the private keys in respect of all BCZERO and ECOREAL tokens received by CoinLaunch as compensation are deleted and thereby rendered inaccessible such that those tokens may not be accessed or transferred in the future.

V. ANALYSIS

[25] The role of the Panel is to decide whether the proposed Settlement Agreement, as presented and agreed to, falls within an acceptable range and should be approved as being in the public interest. It is important to note, however, that the agreed sanctions need not be the sanctions that the Panel might have imposed after a hearing on the merits. A settlement is based on the facts admitted by the respondent and agreed to by Staff, which may or may not be the facts that a panel would have found after a contested hearing.

A. Administrative Penalty

[26] We find that that the administrative penalty is within a reasonable range in light of the limited history of penalties for non-registration cases involving crypto-assets and given the undertaking received from Mr. Cohen regarding the treatment of the BCZERO and ECOREAL tokens received as compensation by CoinLaunch. The relatively modest magnitude of this administrative penalty also acknowledges the mitigating steps taken by CoinLaunch, culminating in its decision to discontinue the crypto-asset consulting business and to wind-up its business and dissolve. Notwithstanding the result in this settlement, firms that are found to have ignored the registration obligation in the future should be considered on notice and can reasonably expect to face more stringent consequences. Both specific and general deterrence will likely require stronger measures if such conduct arises in the future.

B. Disgorgement

[27] We have ordered disgorgement of the amount of the cash compensation received by CoinLaunch in respect of the BCZERO offering, an amount agreed to constitute all fiat currency received during the Material Time as a result of the two security token offerings.

C. Costs

[28] Costs in the amount of \$10,000 have been agreed and we will order this payment.

D. Market Participation Sanctions

[29] The five-year prohibitions on CoinLaunch from trading or acquiring securities may have limited practical effect given CoinLaunch's intention to dissolve. However, these sanctions are appropriate to guard against the possibility that such activities could occur in the period before the dissolution is completed or the corporation is revived under corporate law in the future. It also provides an appropriate message of general deterrence to others who may seek to engage in such misconduct.

[30] We are satisfied that, in these circumstances, such market participation restrictions bring this settlement into a reasonable range of consequences to obtain our approval.

VI. CONCLUSION

[31] We have been advised by Staff today that all monetary sanctions and proposed costs have been paid.

[32] In our view, the sanctions proposed by the parties take into consideration the seriousness of the misconduct. The settlement is reasonable and its approval is in the public interest. An order will be issued following this hearing in substantially the form proposed by the parties.

Dated at Toronto on this 24th day of July, 2019.

"D. Grant Vingoe"

D. Grant Vingoe

"M. Cecilia Williams"

M. Cecilia Williams

"Raymond Kindiak"

Raymond Kindiak