

ALBERTA SECURITIES COMMISSION

Citation: Re CatalX CTS Ltd., 2024 ABASC 1

Docket: ENF-013419

Date: 20240103

NOTICE OF HEARING

To: CatalX CTS Ltd. (operating as Catalyx) and Jae Ho Lee (Respondents)

A. NOTICE

Staff of the Alberta Securities Commission (**Staff**) will make an application to the Alberta Securities Commission (the **Commission**) on January 5, 2024 for the extension of an interim order granted on December 21, 2023, pursuant to sections 33(4) and 198(1) of the *Securities Act*, R.S.A. 2000, c S-4, as amended (the *Act*) and orders pursuant to sections 2.3, 7.1(a) and 11.1 of Commission Rule 15-501 *Rules of Practice and Procedure for Commission Proceedings* (the **Rules**).

B. ORDERS SOUGHT

Staff will apply to the Commission for the following order:

1. An interim order of 12 months' duration that:
 - (a) under section 198(1)(b), the Respondents cease trading in or purchasing any securities or derivatives;
 - (b) until a Notice of Hearing arising from the investigation is issued, the affidavits filed in support of Staff's application and all other evidence admitted at the hearing of Staff's application must remain confidential and must not be divulged except in accordance with section 45 of the *Act*; and
 - (c) such further and other orders as the Commission considers to be in the public interest.

C. GROUNDS

The grounds for Staff's application include the following:

2. Staff are investigating whether the Respondents have breached the *Act*, including:
 - (a) making statements that the Respondents knew or ought to have known, in material respects and at the time and in light of the circumstances in which they were made, were misleading or untrue, or did not state a fact that was required to be stated or that was necessary to make the statement not misleading, and would reasonably be expected to have a significant effect on the market price or value of a security, contrary to section 92(4.1) of the *Act*; and
 - (b) breach of a written undertaking, contrary to section 93.2 of the *Act*.

3. The interim order is sought on the basis that the Respondents, on a *prima facie* basis, are violating section 93.2 of the *Act*.
4. The investigation is looking into the Respondents' activities after January 1, 2019, particularly focusing on the last several months.
5. The Respondent, CatalX CTS Ltd., operating as Catalyx (**Catalyx**), is a corporation whose registered office and records address are located in Calgary, Alberta. The Respondent, Jae Ho Lee (**Lee**), is a director of Catalyx and its chief financial officer. Lee resides in Surrey, British Columbia.
6. Catalyx operates an internet-based platform for the trading of crypto contracts based on crypto assets, which enables clients to buy, sell, hold, deposit and withdraw crypto assets such as Bitcoin, Ether and anything commonly considered to be a crypto asset, digital or virtual currency, or digital or virtual token.
7. On March 24, 2023, Catalyx signed a Pre-Registration Activities Undertaking (**PRU**) with the Commission.

Interim Cease Trade Order

8. On December 21, 2023, Staff applied to a hearing panel of the Commission with informal notice to Catalyx and no notice to Lee for an interim order pursuant to sections 33 and 198 of the *Act*.
9. On December 21, 2023, the Commission ordered under sections 33(1) and 198(1) of the *Act* that the Respondents must cease trading in or purchasing any securities or derivatives until 10:30 p.m. (MST) on January 5, 2024, unless extended by the Commission (the **Interim Order**).

Section 47 Freeze Order

10. After some initial investigative work by Commission investigators, Staff identified that Catalyx had a Servus Credit Union account that potentially held investor funds.
11. On December 28, 2023, Staff applied to the Executive Director for an order under section 47 of the *Act* freezing Catalyx's Servus Credit Union account, and the order was signed by the Executive Director on December 28, 2023.

Breach of Undertaking

12. As part of its obligations under the PRU, Catalyx undertook, among other things, to:
 - (a) designate an individual as its chief compliance officer who was responsible for the maintenance and application of policies and procedures for accessing compliance by Catalyx and individuals acting on behalf of Catalyx, with securities legislation;

- (b) promptly inform the Commission in writing of any material breach or failure of Catalyx or any of its third-party custodian's system of control or supervision, and what steps had been taken by Catalyx to address each such breach or failure;
 - (c) establish, maintain and apply written policies and procedures that establish a system of controls and supervision sufficient to provide reasonable assurance that Catalyx and each individual acting on its behalf complies with securities legislation; and
 - (d) ensure it was proficient and experienced in holding crypto assets and had established and would maintain and apply policies and procedures that manage and mitigate custodial risks.
13. As part of its obligations under the PRU, Catalyx filed a report with Staff indicating that it held crypto assets totalling approximately \$12.9 million CAD as of September 30, 2023.
14. Staff were contacted by representatives of Catalyx on December 21, 2023. Among other things, Catalyx represented that:
- (a) Catalyx and its management corporation, Catalx Management Ltd. (**Management**), had ceased allowing withdrawals of customer deposits and ceased paying its employees;
 - (b) Lee was the only person who held the keys or otherwise had access to the digital wallets and accounts that hold Catalyx's and Management's crypto assets and the crypto assets held by Catalyx on behalf of its customers; and
 - (c) Catalyx identified that the balances of customer funds in Catalyx's digital wallets had been withdrawn or transferred out of the accounts, and there were concerns that suspicious transactions had occurred.
15. Subsequent to the issuance of the Interim Order, Staff have become aware of the following representations made by Lee's counsel, that:
- (a) about \$69,000 USD worth of digital assets remained in Catalyx's digital wallets;
 - (b) Lee was not the only individual who had access to the digital wallets or accounts held at Catalyx; and
 - (c) multiple employees of Management had access to the trading history of Catalyx.
16. There has been no accounting of where Catalyx's missing digital assets have gone.

Public Interest

17. The evidence shows on a *prima facie* basis that Catalyx breached its undertakings pursuant to the PRU in respect of its policies and procedures, or its system of controls and supervision about its ability to ensure the protection of its custodial assets.

18. The evidence further shows on a *prima facie* basis that Lee authorized, permitted or acquiesced in these breaches of the *Act*.
19. These breaches of the *Act* appear to be ongoing insofar as the Respondents are unable to account for the loss of digital assets at Catalyx.
20. It would be in the public interest to cease all trading and other securities-related activities by the Respondents while the investigation proceeds.
21. The length of time required for Staff to complete their investigation, to conduct a hearing and for a decision to be rendered on the merits of the alleged breaches could be prejudicial to the public interest.
22. As the investigation is ongoing, the evidence tendered in support of the application should not be available to the public prior to a hearing on the merits of alleged breaches of the *Act*.

D. EVIDENCE IN SUPPORT OF APPLICATION

Staff will rely on the following:

23. Affidavit of Stuart Mills, Securities Investigator, sworn January 2, 2024.
24. *Viva voce* evidence of Stuart Mills, as well as a proposed electronic document in Excel format that is impractical to attach to an affidavit or provide in print form.
25. Such further and other materials as Staff may advise and the Commission may permit.

E. LOCATION

Alberta Securities Commission, 5th Floor, 250 – 5 Street SW, Calgary, Alberta. Contact Jayne Lewis, Registrar of the Commission, by telephone at 403.294.4277, email at registrar@asc.ca or facsimile at 403.297.4486 for further information.

F. PROCEDURE

You may obtain further information about Staff's application from Justin Dunphy c/o Alberta Securities Commission, 600, 250 – 5 Street SW, Calgary, Alberta, T2P 0R4, telephone 403.355.1507, email: Justin.Dunphy@asc.ca.

You may be represented by legal counsel and you or your counsel may make submissions and introduce relevant evidence at the hearing.

If you or your counsel fail to attend, the hearing may proceed in your absence and an interim order may be made against you without further notice.

See attached sections 29, 33, 45, 93.2, and 198 of the Act, and Commission Rule 15-501 Rules of Practice and Procedure for Commission Proceedings.

Calgary, Alberta, 3 January, 2024

) ALBERTA SECURITIES COMMISSION

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) *“Original signed by”*

) Samir Sabharwal

) Executive Director