



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF
POLO DIGITAL ASSETS, LTD.**

STATEMENT OF ALLEGATIONS

(Subsection 127(1) and Section 127.1 of the
Securities Act, RSO 1990, c S.5)

A. OVERVIEW

1. Staff of the Enforcement Branch of the Commission (**Enforcement Staff**) brings this proceeding to hold Polo Digital Assets, Ltd. (**Poloniex**) accountable for disregarding Ontario securities law and to signal that crypto asset trading platforms flouting Ontario securities law will face regulatory action.
2. Poloniex operates an online crypto asset trading platform (the **Poloniex Platform**). The Poloniex Platform is available to Ontario residents. Ontario residents have opened accounts on the Poloniex Platform and have used the platform to deposit and trade in crypto asset products.
3. Poloniex is subject to Ontario securities law because crypto asset products offered on the Poloniex Platform are securities and derivatives. Poloniex has nonetheless failed to comply with the registration and prospectus requirements under Ontario securities law.
4. Registration and disclosure are cornerstones of Ontario securities law. The registration requirement serves an important gate-keeping function by ensuring that only properly qualified and suitable persons are permitted to engage in the business of trading. Prospectus requirements are fundamental to ensuring investors are provided with full, true and plain disclosure of all material facts relating to the securities being offered.

5. On March 29, 2021, the Ontario Securities Commission (the **Commission**) issued a press release notifying crypto asset trading platforms that currently offer trading in derivatives or securities to persons or companies located in Ontario that they must bring their operations into compliance with Ontario securities law or face potential regulatory action. The press release included a deadline of April 19, 2021 for such platforms to contact Commission staff to start compliance discussions. The press release followed regulatory guidance issued by the Canadian Securities Administrators and the Investment Industry Regulatory Organization of Canada on the application of securities legislation to crypto asset trading platforms.¹
6. Despite this warning, Poloniex did not contact the Commission by April 19, 2021 or at any time to start compliance discussions.
7. A process is in place for crypto asset trading platforms to bring their operations into compliance with Ontario securities law. Entities such as Poloniex, which flout this compliance process, expose Ontario investors to unacceptable risks and create an uneven playing field within the crypto asset trading platform sector.

B. FACTS

Enforcement Staff makes the following allegations of fact:

(a) Poloniex

8. Poloniex is a corporation incorporated under the laws of the Republic of Seychelles. Poloniex has never been registered with the Commission to engage in the business of trading or obtained an exemption from the registration requirement. Poloniex has never filed a prospectus with the Commission or obtained an exemption from the prospectus requirement.

(b) The Poloniex Platform

9. Investors access the Poloniex Platform by first creating an account on the platform using an online application process. After opening an account, an investor may deposit

¹ This guidance included Joint CSA/IIROC Staff Notice 21-329 *Guidance for Crypto-Asset Trading Platforms: Compliance with Regulatory Requirements* (March 29, 2021), CSA Staff Notice 21-327 *Guidance on the Application of Securities Legislation to Entities Facilitating the Trading of Crypto Assets* (January 16, 2020) and Joint CSA/IIROC Consultation Paper 21-402 *Proposed Framework for Crypto-Asset Trading Platforms* (March 14, 2019).

crypto assets into the account. An investor makes a crypto asset deposit by transferring crypto assets to a wallet controlled by Poloniex. An investor may also use fiat currency to purchase crypto assets which are then credited to their account.

10. Investors may trade crypto assets credited to their account for a variety of other assets. The crypto assets available on the platform include, among others, Bitcoin and Ether.
11. Poloniex maintains custody of crypto assets deposited and traded on the Poloniex Platform in wallets Poloniex controls. Investors do not have possession or control of crypto assets deposited or traded on the Poloniex Platform. Rather, they see a crypto asset balance displayed in their account on the Poloniex Platform. In order to take possession of crypto assets reflected in their Poloniex account balance, an investor must request a withdrawal and is dependent on Poloniex to satisfy that withdrawal request by delivering crypto assets to an investor-controlled wallet.
12. While Poloniex purports to facilitate trading of the crypto assets in its investors' accounts, in practice, Poloniex only provides its investors with instruments or contracts involving crypto assets. These instruments or contracts constitute securities and derivatives.
13. Investors may also trade crypto asset futures contracts on the Poloniex Platform that constitute securities and derivatives. The Poloniex Platform allows investors to engage in leveraged trading of up to 100:1 on various futures contracts.
14. Poloniex charges fees for trades made on the Poloniex Platform and for crypto asset withdrawals.

(c) Poloniex's Ontario presence

15. Poloniex has opened and operated trading accounts for Ontario residents. Ontario investors have deposited crypto assets into their accounts. They are able to trade, and have traded, the products offered on the Poloniex Platform, as described above.
16. Poloniex encourages Canadians to use the Poloniex Platform. Poloniex's website indicates that investors may use Canadian fiat currency to purchase crypto assets on the Poloniex Platform and that investors in Canada can purchase crypto assets by setting up a bank account with a payment processing company partnered with

Poloniex. Canada is also not identified in the list of "Restricted Territories" on Poloniex's website.

C. BREACHES AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

Enforcement Staff alleges the following breaches of Ontario securities law and conduct contrary to the public interest:

17. Poloniex has engaged in, or held itself out as engaging in, the business of trading in securities without the necessary registration or an applicable exemption from the registration requirement, contrary to subsection 25(1) of the Ontario *Securities Act*, RSO 1990, c. S.5, as amended (the **Act**);
18. Poloniex has engaged in trading in securities which constitute distributions without complying with the prospectus requirements and without an applicable exemption from the prospectus requirements, contrary to section 53 of the Act; and
19. Poloniex has engaged in activity that is contrary to the public interest.

D. ORDER SOUGHT

Enforcement Staff requests that the Commission make the following orders:

20. that Poloniex cease trading in any securities or derivatives permanently or for such period as is specified by the Commission, pursuant to paragraph 2 of subsection 127(1) of the Act;
21. that Poloniex be prohibited from acquiring any securities permanently or for such period as is specified by the Commission, pursuant to paragraph 2.1 of subsection 127(1) of the Act;
22. that any exemptions contained in Ontario securities law not apply to Poloniex permanently or for such period as is specified by the Commission, pursuant to paragraph 3 of subsection 127(1) of the Act;
23. that Poloniex be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;
24. that Poloniex be prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter permanently or for such period as is specified by the Commission, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

25. that Poloniex pay an administrative penalty of not more than \$1 million for each failure to comply with Ontario securities law, pursuant to paragraph 9 of subsection 127(1) of the Act;
26. that Poloniex disgorge to the Commission any amounts obtained as a result of non-compliance with Ontario securities law, pursuant to paragraph 10 of subsection 127(1) of the Act;
27. that Poloniex pay the costs of the Commission investigation and the hearing, pursuant to section 127.1 of the Act; and
28. such other orders as the Commission considers appropriate in the public interest.

DATED this 25th day of May, 2021.

ONTARIO SECURITIES COMMISSION

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