



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

22e étage
20, rue queen ouest
Toronto ON M5H 3S8

Citation: Daley (Re), 2021 ONSEC 23

Date: 2021-09-23

File No. 2019-28

IN THE MATTER OF
SEAN DALEY; and SEAN DALEY carrying on business as the ASCENSION FOUNDATION, OTO.Money, SilentVault, and CryptoWealth; WEALTH DISTRIBUTED CORP.; CYBERVISION MMX INC.; KEVIN WILKERSON; and AUG ENTERPRISES INC.

REASONS FOR DECISION
(Subsections 127(1) and (8) of the *Securities Act*, RSO 1990, c S.5)

Hearing: September 15, 2021

Decision: September 23, 2021

Panel: M. Cecilia Williams
Lawrence P. Haber
Frances Kordyback
Commissioner and Chair of the Panel
Commissioner
Commissioner

Appearances: Hanchu Chen
Michelle Spain
For Staff of the Ontario Securities
Commission

Sean Daley
For himself

No one appearing for Sean Daley
carrying on business as the
Ascension Foundation, OTO.Money,
SilentVault, and CryptoWealth;
Wealth Distributed Corp.;
Cybervision MMX Inc.; Kevin
Wilkerson; or Aug Enterprises Inc.

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REASONS FOR DECISION

I. OVERVIEW

- [1] This was a hearing pursuant to section 127(8) of the *Securities Act*¹ (the **Act**) to consider whether it is in the public interest to extend a temporary cease trade order (the **Temporary Order**) against the respondents Sean Daley, Sean Daley carrying on business as the Ascension Foundation, OTO.Money, SilentVault and CryptoWealth, Wealth Distributed Corp., Cybervision MMX Inc., Kevin Wilkerson, and Aug Enterprises Inc. (collectively, the **Respondents**).
- [2] The Temporary Order has been extended nine times.
- [3] Daley contests the extension. Daley appeared on his own behalf and made submissions. No other Respondents attended the hearing or made submissions, although having been properly served.
- [4] After hearing the submissions from Staff and Daley, and considering the evidence submitted in this matter, we ordered that the Temporary Order be extended until the fourteenth day following the date of the reasons and decision in the merits hearing in a separate, but related, proceeding involving Daley and Wilkerson, File No. 2019-39 (the **Related Matter**). These are the reasons for our decision.

II. BACKGROUND

- [5] Staff began an investigation on November 9, 2018 (the **Investigation**) based on concerns that the Respondents were breaching the registration, distribution and fraud provisions of the Act through their operation of, what Staff describes as, a crypto-asset investment scheme.
- [6] The Temporary Order was issued on August 6, 2019, pursuant to s. 127(5) of the Act.² In the original request for a temporary order, Staff stated that it appears that the Respondents may have:
 - a. traded in securities without registration and without an exemption to the registration requirement contrary to s. 25 of the Act; and
 - b. traded securities without a prospectus having been received by a Director contrary to s. 53 of the Act.
- [7] The Temporary Order provides that:
 - a. trading in all securities by the Respondents shall cease;
 - b. all trading in 'overcome the odds' vouchers, also known as OTO Vouchers, and Lyra shall cease (**OTO/Lyra**); and
 - c. the exemptions contained in Ontario securities law do not apply to the Respondentsfor the period of time as specified in the order, unless it is extended by order of the Commission.

¹ RSO 1990, c S.5

² (2019) 42 OSCB 6630

- [8] The Temporary Order has been extended on August 16, 2019, September 24, 2019, November 6, 2019, February 12, 2020, May 25, 2020, July 10, 2020 and September 14, 2020. On October 19, 2020, the Temporary Order was extended until the end of the merits hearing in the Related Matter. On July 14, 2021, the last day of the merits hearing in the Related Matter, the Temporary Order was extended until September 15, 2021 on the consent of the parties.
- [9] Staff have not commenced an enforcement proceeding against the Respondents relating to the Investigation giving rise to the Temporary Order. On November 18, 2019, Staff filed a Statement of Allegations in the Related Matter and a merits hearing in that matter was held in April, June and July, 2021. On the date of this hearing to consider whether to extend the Temporary Order, the reasons and decision for the merits hearing in the Related Matter were pending.

III. ISSUE AND ANALYSIS

- [10] The sole issue before us is whether the Temporary Order should be extended again, until the fourteenth day following the reasons and decision in the Related Matter.
- [11] The Commission may extend a temporary order, under s. 127(8) of the Act, "for such period as it considers necessary if satisfactory information is not provided to the Commission".
- [12] As noted in an earlier decision extending the Temporary Order in this proceeding, the Commission's authority to issue and extend temporary cease trade orders is an important tool for the Commission in achieving its mandate to protect investors and the capital markets.³
- [13] Staff must satisfy the Commission that there is "sufficient evidence of conduct that may be harmful to the public interest."⁴ In considering the sufficiency of the evidence, the Commission should consider "the seriousness of the allegations and the evidence supporting them" as well as "any explanations or evidence that may contradict such evidence."⁵ This "will allow [the Commission] to weigh the threat to the public interest against the potential consequences of the order."⁶ The evidence presented "may fall short of what would be required in a hearing on the merits", but must be "more than mere suspicion or speculation."⁷
- [14] Staff submits that the Commission has repeatedly found sufficient evidence here of conduct that may be harmful to the public interest. Although Daley did not provide evidence in this matter, he did make several comments during his oral submissions that caused us concern. Daley stated that he has no ability to block the circulation of OTO/Lyra which, therefore, continued to trade despite the Temporary Order. In addition, Daley stated that he had been approached by at least one new potential investor who had apparently expressed interest in funding further developments of the crypto-asset project.

³ *Daley (Re)*, 2020 ONSEC 26, (2020) 43 OSCB 8239 (**Daley**) at para 14, citing *Watson (Re)*, 2008 ONSEC 2, (2008) 31 OSCB 705 (**Watson**) at para 31

⁴ *Watson* at para 35

⁵ *Valentine (Re)*, (2002) 25 OSCB 5329 (**Valentine**) at para 27

⁶ *Valentine* at para 27

⁷ *Western Wind Energy Corp (Re)*, 2013 ONSEC 25, (2013) 36 OSCB 6749 at para 11

- [15] In his October 2020 reasons and decision extending the Temporary Order, Commissioner Haber concluded that "the investor protection concerns are still present and have not dissipated."⁸ We do not have any evidence to support Daley's statements about the continued circulation of OTO/Lyra despite the Temporary Order or about his potential engagement with a new investor. We do not know, therefore, the extent of increase, if any, in the total amount of OTO/Lyra outstanding, nor do we know if discussions with a new investor are happening or how far along those discussions are. What Daley's comments do raise for us is a heightened concern that the risk of potential harm to the public persists and may be increasing.
- [16] Since we have found that there is sufficient evidence of conduct that may be harmful to the public interest, the onus shifts to a respondent to provide satisfactory information that the Temporary Order should not be extended, absent which the Commission is justified in extending the Temporary Order.⁹
- [17] None of the Respondents have submitted any evidence regarding the grounds forming the basis for the issuance of the Temporary Order. Daley commented that extending the Temporary Order was prejudicial as the order effectively prevented him from conducting discussions with the potential new investor.
- [18] As indicated above, we received no evidence about the existence of these investment discussions or how far along they might be. In addition, Daley was appearing only on his own behalf. Even if we were to accept that these discussions were occurring, any prejudice suffered would be by one or more of the corporate respondents and not by Daley in his personal capacity.
- [19] We conclude that there is insufficient evidence before us that would warrant a decision not to extend the Temporary Order.
- [20] Staff requested an extension of the Temporary Order for fourteen days after the issuance of the merits reasons in the Related Matter. The Panel had questions about the appropriateness of that timing. In response, Staff explained that the timing would allow Staff to factor the outcome in the Related Matter into their consideration of appropriate next steps regarding the Investigation in this matter. We were satisfied with this explanation.

IV. CONCLUSION

- [21] The allegations against the Respondents are serious. The Respondents have provided no evidence to counter the basis on which the Temporary Order was issued. Daley's comments, while not evidence, suggests that the risk of public harm remains. There is no evidence that extending the Temporary Order for the short period sought is prejudicial. We therefore conclude that the threat to the public interest outweighs the potential consequences of extending the Temporary Order.

⁸ Daley at para 29

⁹ Daley at para 17; *Meharchand (Re)*, 2015 ONSEC 43, (2015) 38 OSCB 10761 at para 57

- [22] We find that it is appropriate to extend the Temporary Order until the fourteenth day following the date of the Reasons and Decision in the merits hearing in File No. 2019-39 with respect to Sean Daley and Kevin Wilkerson.

Dated at Toronto this 23rd day of September, 2021.

"M. Cecilia Williams"

M. Cecilia Williams

"Lawrence P. Haber"

Lawrence P. Haber

"Frances Kordyback"

Frances Kordyback