

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of

THE STATE OF NEW YORK,
by LETITIA JAMES, Attorney General
of the State of New York,

VERIFIED PETITION

Petitioner,

- against -

Index No. _____

IAS Part _____

Assigned to Justice _____

MEK GLOBAL LIMITED and
PHOENIXFIN PTE LTD
d/b/a KUCOIN

Respondents.

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Petitioner, the People of the State of New York, by its attorney, Letitia James, Attorney General of the State of New York (“OAG” or “Petitioner”), brings this special proceeding pursuant to Executive Law § 63(12) against Mek Global Limited and Phoenixfin PTE Ltd. doing business as the KuCoin Exchange (“KuCoin”).

NATURE OF THIS PROCEEDING

1. Respondents, Mek Global Limited (a business entity incorporated under the laws of the Republic of the Seychelles), PhoenixFin PTE LTD (a business entity incorporated under the laws of Singapore), together (“KuCoin” or “Respondents”), operate as a cryptocurrency trading platform through their website with the URL address of www.kucoin.com (the “KuCoin website”) and an application available for download on mobile phones.

2. KuCoin sold, offered to sell, purchased and offered to purchase cryptocurrencies, including ETH, LUNA, and UST (the “Tokens”) in the State of New York. The Tokens are commodities and securities under the Martin Act.

3. KuCoin also sold KuCoin Earn, a securities product by which KuCoin pooled investors’ cryptocurrencies for the purpose of generating income for both itself and investors. KuCoin sold this product to New York without registering as a securities broker or dealer.

4. To lawfully engage in the above activities, Respondents are and were required to file a registration statement with the OAG, also known as the New York State Department of Law pursuant to GBL 359-e.

5. KuCoin failed to register with OAG as a securities broker, dealer or commodity broker-dealer as required by Article 23-A of New York General Business Law (“GBL”) also known as the Martin Act. Such conduct is a fraudulent practice under the Martin Act.

6. KuCoin further violated the law by representing that it is an “exchange” without satisfying the substantial prerequisites required by GBL § 352-c(3).

7. KuCoin repeatedly and persistently engaged in the above illegal activities in violation of Executive Law § 63(12).

8. KuCoin further failed to comply with an OAG subpoena issued pursuant to GBL § 352 by failing to appear for testimony.

9. Petitioner applies for an order and judgment (a) enjoining KuCoin from engaging in the fraudulent practices alleged herein; (b) permanently enjoining KuCoin from purchasing, offering to purchase, selling or offering to sell commodities and securities through and from the State of New York; (c) directing KuCoin to provide a full accounting of all New York accounts and all fees received from New York customers; (d) an order directing KuCoin to implement geo-blocking based on IP addresses and GPS location to prevent access to KuCoin’s mobile app, website, and services from New York; (e) directing KuCoin to pay restitution, disgorgement, and damages; and (f) pursuant to CPLR § 8303(a)(6), granting costs to the State of New York of two thousand dollars (\$2,000.00).

PARTIES

10. Petitioner, Letitia James, the Attorney General of the State of New York, is authorized to bring this special proceeding and to assert the causes of action set forth below in the name and on behalf of the People of the State of New York pursuant to Executive Law § 63(12).

11. KuCoin is operated by a business entity named MEK GLOBAL LIMITED with its affiliates. MEK GLOBAL LIMITED is incorporated under the laws of the Republic of

Seychelles and lists as its principal office address, Vistra (Seychelles) Limited Suite 23, 1st Floor, Eden Plaza Eden Island, Mahé Seychelles.

12. KuCoin is also operated by a business entity named PHOENIXFIN PTE LTD with its affiliates. PHOENIXFIN PTE LTD is incorporated under the laws of Singapore and lists as its principal office address, 2 Science Park Drive, #01-03 Ascent, Singapore, 118222.

JURISDICTION AND VENUE

13. Petitioner brings this special proceeding pursuant to Executive Law § 63(12) to enjoin Respondents' fraudulent and illegal business practices.

14. The Court has jurisdiction over the subject matter of this special proceeding, personal jurisdiction over the Respondent, and authority to grant the relief requested pursuant to the Executive Law § 63(12).

15. Venue is proper in New York County because the OAG's New York office is located in New York County and Respondents' offers for sale, sales, offers to purchase, and purchases of commodities and securities occurred in New York County.

STATEMENT OF FACTS

I. KUCOIN OPERATES A CRYPTOCURRENCY PLATFORM AVAILABLE WITHIN NEW YORK

16. KuCoin was founded on September 27, 2017. Metz Aff. ¶ 4; Ex. 3. KuCoin is headquartered in the Republic of Seychelles and owned and operated by Mek Global Limited. Metz Aff. ¶ 5; Ex. 4.

17. At least three foreign jurisdictions have taken adverse regulatory action against KuCoin. In February 2021, the Financial Services Authority of the Republic of Seychelles identified Mek Global Limited as operating a cryptocurrency trading platform under the name

KuCoin and through the KuCoin Website without proper licensure and, as a result, removed the company from the Seychelles corporate registry. Metz Aff. ¶ 6; Exs. 5.1-5.2.

18. The following year, in June 2022, the Ontario Securities Commission obtained a multimillion-dollar judgment in a proceeding against Mek Global Limited and Phoenixfin PTE Ltd. finding that KuCoin operated in Ontario without properly registering. Metz Aff. ¶ 10; Ex. 9.

19. Finally, in December 2022, the Central Bank of the Netherlands issued a warning to investors regarding Mek Global Limited doing business as KuCoin. The warning concerned KuCoin offering services without registration, including exchanging virtual currencies and fiduciary currencies and illegally offering custodian wallets. Metz Aff. ¶ 11; Ex. 10.

20. KuCoin, a cryptocurrency trading platform, operates through www.kucoin.com (“KuCoin Website”) and mobile applications offered in application marketplaces available on mobile phones. Metz Aff. ¶¶ 2,17-18; Exs. 1.1-1.6, 13-14. On its website, KuCoin boasts a user base of over 20 million investors across over 200 countries. Metz Aff. ¶ 14; Ex. 1.1. KuCoin claims to provide 24/7 customer service and says it supports over twenty languages. *See* Ex. 1.1.

21. KuCoin markets itself as “the People’s Exchange” and the “Top 1 Altcoin Exchange,” while making its website and services available to investors in New York to purchase and sell cryptocurrencies. Metz Aff. ¶ 14; Ex. 1.1. Respondents offer to buy and sell numerous cryptocurrencies including Ether (“ETH”), LUNA, and TerraUSD (“UST”). Metz Aff. ¶; Ex58-60; Ex. 38. KuCoin makes its services available to investors to: “Trade anytime, anywhere.” Metz Aff. ¶ 14; Ex. 1.1. On the download pages for the KuCoin application, KuCoin represents itself as a “crypto exchange”. Metz Aff. ¶¶ 18, 19; Exs. 13, 14.

22. KuCoin promotes its products on a blog. Metz Aff. ¶ 21; Exs. 15.1-15.5. The KuCoin blog contains guides on how to use KuCoin products such as KuCoin Earn and

publishes a weekly “crypto analysis” which includes industry news, and trading strategies. Metz Aff. ¶ 21; Exs. 15.1-15.5.

23. KuCoin invites investors to engage in a variety of cryptocurrency transactions including the simultaneous selling of one cryptocurrency and the buying of another cryptocurrency. Metz Aff. ¶¶ 59-60; Ex. 38. KuCoin charges a fee to process transactions. Metz Aff. ¶¶ 58-60; Ex. 38.

24. Prior to trading on the KuCoin trading platform, KuCoin requires investors to create a KuCoin account. To do so investors must provide a phone number, create a password, and accept the terms of service for using the platform. Metz Aff. ¶ 25. To trade in cryptocurrencies on KuCoin, investors can fund their account with cryptocurrencies that the investor deposits into a digital asset wallet generated by KuCoin. Metz Aff. ¶ 26-27.

25. KuCoin offered for sale, sold, purchased and offered for purchase, and effected transactions in multiple cryptocurrencies within New York including ETH, LUNA and UST. Metz Aff. ¶¶ 59-60; Ex. 38.

26. KuCoin also issued and sold a security called KuCoin Earn, which it markets to investors as a means for earning passive income. Metz Aff. ¶ 62-63; Exs. 1.6, 15.2. KuCoin Earn offers to provide investors with passive income through either interest or staking rewards after investors allocate their cryptocurrencies to KuCoin Earn. Metz Aff. ¶ 62-63; Exs. 1.6, 15.2.

27. Respondents continue to operate through the KuCoin Website and its various mobile applications, which remain available and accessible to New Yorkers. Metz Aff. ¶ 69.

II. KUCOIN IS AN UNREGISTERED COMMODITY BROKER-DEALER AND SECURITIES BROKER OR DEALER

A. KuCoin Sold Cryptocurrencies within New York through the KuCoin Website

28. Senior Detective Brian Metz (“Detective Metz”), while physically located in New York State, signed up for a KuCoin account on September 23, 2021. Metz Aff. ¶ 23. Upon completing the KuCoin account sign-up process, Detective Metz received a notification that included instructions on funding his wallet by depositing other cryptocurrencies. Metz Aff. ¶ 25.

29. On May 17, 2022, Detective Metz used an external wallet address, which contained cryptocurrency purchased using the U.S. dollar, to fund his KuCoin account with Ethereum (“ETH”). Metz Aff. ¶ 26.

30. On May 17, 2022, Detective Metz placed an order with KuCoin to sell ETH and buy LUNA. Metz Aff. ¶ 57. KuCoin then filled Detective Metz’s order and delivered LUNA to his KuCoin account. Metz Aff. ¶ 57.

31. Detective Metz then placed an order with KuCoin to sell ETH and purchase UST tokens. Metz Aff. ¶ 58. KuCoin then filled Detective Metz’s order and delivered UST tokens to the KuCoin account. Metz Aff. ¶ 58. Later that day, Detective Metz placed an order with KuCoin to sell UST and to purchase LUNA. Metz Aff. ¶ 59. KuCoin then filled Detective Metz’s order and delivered LUNA to his KuCoin account. Metz Aff. ¶ 59.

32. KuCoin charged Detective Metz a fee for each sale and each purchase referenced in paragraphs 30 and 31 above. Metz Aff. ¶¶ 57-59.

33. On February 1, 2023, Detective Metz returned to the KuCoin website and sold his ETH to purchase Tether (“USDT”), a different cryptocurrency. Metz Aff. ¶ 60. Detective Metz then deposited the USDT onto the KuCoin Earn platform at the “reference APY” of 3.8% interest on his USDT. Metz Aff. ¶ 64. After reviewing the user agreement and clicking

“confirm,” he received notification that he had successfully subscribed to the USDT savings product on KuCoin Earn. Metz Aff. ¶ 66.

34. KuCoin takes a fee for its KuCoin Earn product. Metz Aff. ¶ 49.

B. KuCoin Offered, Sold, and Purchased Securities and Commodities

35. KuCoin offered for sale, sold, and offered to purchase and purchased, multiple cryptocurrencies to and from New York including the Tokens for a fee.

36. The Tokens each fall within the Martin Act’s definition of commodities, which includes any foreign currency, and any other good, article or material. GBL§ 359-e(14). KuCoin is engaged in the business of selling and offering to sell commodities through accounts, agreements, or contracts to New York accounts primarily for investment purposes.

37. The Tokens are also securities under the Martin Act because they represent investments of money in common enterprises with profits to be derived primarily from the efforts of others.

1. ETH

38. KuCoin offered, sold and purchased a cryptocurrency called ETH on its platform. ETH is the native cryptocurrency on the Ethereum blockchain created by Vitalik Buterin and several others.¹ Metz Aff. ¶ 29. A blockchain is a distributed ledger that maintains a system of payments and receipts for cryptocurrency transactions. ETH has grown to become one of the largest cryptocurrencies in the world with a market capitalization of over \$170 billion. Metz Aff.

¹ Ether or ETH is a cryptocurrency, and Ethereum is the name of the blockchain network. The two are often used interchangeably, but the difference is that ETH is the primary coin used on the network, whereas the Ethereum blockchain network is used as the foundational software for many different types of cryptocurrencies, smart contracts and applications.

¶ 30. Its price has increased astronomically from its initial price of \$0.31 to a peak of over \$4,700 in November 2021 and is currently valued at roughly \$1,600. Metz Aff. ¶ 30.

a. The Initial Coin Offering

39. ETH's development and management is largely driven by a small number of developers who hold positions in ETH and stand to profit from the growth of the network and the related appreciation of ETH. Metz Aff. ¶¶ 43-47. In 2014, some of those developers founded the Ethereum Foundation. Metz Aff. ¶ 39; Ex. 40. The Ethereum Foundation describes itself as a non-profit that is "supports the Ethereum Ecosystem" through its work to "fund protocol development, grow the ecosystem, and advocate for Ethereum." Metz Aff. ¶ 38; Ex. 24.

40. Shortly after the formation of the Ethereum Foundation, an initial coin offering ("ICO") was held in which ETH was sold to fund the creation of Ethereum. Metz Aff. ¶¶ 33-34. The ETH ICO raised funds to support the development of the Ethereum blockchain, directly provided developers with funding. Metz Aff. ¶ 35; Ex. 21. The ICO was governed by documents including the ETH Genesis Sale Terms and Conditions and the Proposed Use of Revenue, collectively the "ICO Documents", which described the sale as a means of promoting the development of the Ethereum blockchain by paying expenses incurred by developers, paying for legal contingencies, research, and further development. Metz Aff. ¶¶ 33-34; Ex. 20. The Ethereum Foundation and Buterin received a portion of the funding raised in ETH's ICO. Metz Aff. ¶ 35. Buterin and the Ethereum Foundation also received significant quantities of ETH in the ICO and are believed to retain significant stakes of that ETH today. Metz Aff. ¶¶ 35-37, 41; Exs. 21-23, 25.

b. Transition to Staking

41. Buterin and the Ethereum Foundation retain significant influence over Ethereum and are often a driving force behind major initiatives on the Ethereum blockchain that impact the functionality and price of ETH. *See Metz Aff.* ¶ 43; Ex. 27. Most relevant here, Buterin and the Ethereum Foundation played key roles in facilitating the recent fundamental shift of the transaction verification method from proof-of-work to proof-of-stake. *Metz Aff.* ¶¶ 43-47; Exs. 24, 27-30. Indeed, one developer who worked on creating the software necessary for the transition stated that his team was “granted permission by the Ethereum Foundation” to work on the shift to proof-of-stake. *Metz Aff.* ¶ 47; Ex. 30.

42. Transactions can only be entered on the blockchain once they are verified or validated. Under proof-of-work, computers on the Ethereum network competed to answer a mathematical puzzle in order to verify transactions on the blockchain and receive in-kind digital asset rewards. Under proof-of-stake, however, validators, pledge or “stake” their holdings in ETH and are randomly chosen to verify transactions on the blockchain and receive an in-kind digital asset reward. By shifting to proof-of-stake, ETH no longer relies upon competition between computers, but instead now relies on a pooling method that incentivizes users to own and stake ETH. The shift to proof-of-stake significantly impacted the core functionality and incentives for owning ETH, because ETH holders now can profit merely by participating in staking. *Metz Aff.* ¶ 42; Ex. 26.

c. ETH is Promoted as an Investment

43. The developers of ETH promoted it as an investment that was contingent on the growth of the Ethereum network. For instance, the Ethereum Foundation notes on its website that many ETH users “see it as an investment, similar to Bitcoin and other cryptocurrencies.” *Metz*

Aff. ¶ 31. In addition, the ICO Documents included representations that ETH production would dramatically slow over time, resulting in ETH becoming increasingly scarce, and thus more valuable. Metz Aff. ¶ 34. Indeed, the Ethereum Foundation claims on its website that users of Ethereum “see it as a digital store of value because the creation of new ETH slows down over time.” Metz Aff. ¶ 31. Since transitioning to the proof-of-stake consensus, the value proposition has altered significantly because possession of ETH translates directly to profit potential by earning staking rewards. Metz Aff. ¶ 42; Ex. 26.

2. LUNA and UST

44. LUNA and its sister token, UST, are virtual assets created by Terraform Labs as an “algorithmic stablecoin” project which involved two components: LUNA, a token with a free-floating price that would rise and fall with demand, and UST, which was intended to keep a stable price equal to one U.S. dollar. Metz Aff. ¶ 51; Ex. 32. LUNA was designed to be convertible to UST and a dollar’s worth of LUNA could be converted into one UST. Metz Aff. ¶ 54; Ex. 35.1.

a. LUNA and UST were Promoted as Investments

45. From its inception, the LUNA token was promoted as an investment. Terraform Labs’ April 2019 whitepaper regarding the LUNA and UST project explained that LUNA and UST were “growth-driven” and discussed the creation of applications to create demand and use for UST. Metz Aff. ¶ 52; Ex. 33. Terraform Labs founder, Do Kwon, frequently marketed LUNA as having growth potential and value as an investment. For instance, on March 22, 2021, Do Kwon described LUNA and UST’s protocol on Twitter as being “designed to... accrue value to the moon.” Metz Aff. ¶ 53; Ex. 34.1. Essentially, LUNA’s price increases proportionately to the amount it is used. Kwon explained:

A bet on the moon is very simple: it goes up in value (inc. scarcity) the more Terra money is used[,] it goes down in value (inc. dilution) the less Terra money is used[.] The moon's fate in the long run is tied to how widely the money gets used and transacted . . . \$Luna value is actionable, it grows as the ecosystem grows.

Metz Aff. ¶ 53; Ex. 34.2.

46. Do Kwon also used Twitter to promote the ability of investors in LUNA to earn double-digit returns in UST by staking their assets to receive profits. Metz Aff. ¶ 53; Ex. 34.3. On the LUNA and UST network, investors staked LUNA and rewards were paid in UST. Metz Aff. ¶ 53; Ex. 34.3.

b. Terraform Labs Drove the Growth of LUNA and UST and Stood to Profit from that Growth

47. Terraform Labs was primarily responsible for driving the growth of LUNA and UST. They did so by creating interconnected platforms and applications that promised interest rates as high as 20% in exchange for deposits of UST on the lending platform created by Terraform Labs. Metz Aff. ¶ 54; Ex. 35.1. The allure of 20% interest rates – levels well above those available in a savings account or certificate of deposit – drove significant numbers of investors to deposit UST onto Terraform Lab's lending platform. Metz Aff. ¶ 54; Ex. 35.1. Importantly, however, Terraform Labs subsidized those 20% yields, meaning the yields were not generated solely by the interest earned on the deposit but were bankrolled by Terraform Labs itself. Metz Aff. ¶ 54; Exs. 34.4, 35. Terraform Labs told venture capital firms in private offering documents that its role in developing LUNA and UST was crucial to the projects' success. In disclosure documents, Terraform Labs warned that its inability "to establish the Project or Tokens' utility" could render the project no longer viable. Metz Aff. ¶ 56; Ex. 37.

48. Additionally, Terraform Labs used sales of LUNA to raise funds for its operations and provide incentives for employees. Do Kwon publicly announced that Terraform Labs committed to “unlock at most 3 million LUNA per month for all operating costs...” and that it would cover both expenditures in “a new funding initiate for critical infrastructure improvements and core technologies to supplement the accelerating growth of the Terra ecosystem” and “all other [Terraform Labs] operating costs such as employee token distribution.” Metz Aff. ¶ 55; Ex. 36. This funding structure illustrates Terraform Labs’ dependence on the appreciation of value in LUNA in order to continue its day-to-day operations.

3. The Tokens Were Securities

49. The Tokens were promoted as profit opportunities that were contingent on the growth of their respective networks, ETH, LUNA, and UST. The growth and development of these networks were dependent on the managerial efforts of the founders and management teams of these tokens and were reasonably believed to lead investors to a profit from their entrepreneurial and managerial efforts. Additionally, sums of the tokens’ distribution were reserved for their founders and management teams, thereby appearing to tie the fortunes of the token holder to the management teams, creating a common enterprise. Accordingly, the Tokens were securities.

4. KuCoin’s “KuCoin Earn” Product is a Security

50. KuCoin issued and sold a security which it called “KuCoin Earn.” KuCoin markets “KuCoin Earn” as a way for investors to “earn stable profits with professional asset management.” Metz Aff. ¶ 62; Ex. 1.6. KuCoin encourages investors to use KuCoin Earn “to increase the value of their holdings” and promotes KuCoin Earn as a product that “allows users to earn passive income.” Metz Aff. ¶ 62; Ex. 1.6.

51. KuCoin Earn is comprised of a savings product and a staking product. The savings product pays users a certain amount of interest for depositing cryptocurrency into their KuCoin Earn Savings account, which pools assets together and functions “like savings with a bank.” Metz Aff. ¶ 63; Ex. 15.2. The staking product offers to pool users’ assets together and generate staking rewards from those assets. Metz Aff. ¶ 63; Ex. 15.2. KuCoin charges investors who use KuCoin Earn a fee which it describes as “necessary expenses” in its user agreement. Metz Aff. ¶ 65; Ex. 39.

52. KuCoin Earn was promoted as a way to generate income passively. The interest earned through KuCoin Earn are dependent upon the managerial efforts of KuCoin. KuCoin earns fees from the KuCoin Earn product. Accordingly, KuCoin Earn is a security.

C. KuCoin is a Commodity Broker-Dealer and Securities Broker or Dealer and Failed to Register With OAG.

53. Under New York law commodity broker-dealers and securities brokers and dealers are required to file a registration statement with OAG prior to engaging in the conduct described herein. KuCoin was required to file registration statements with OAG. Kucoin failed to file required registration statements with OAG. *See* Jaffe Aff. ¶ 7.

1. The Martin Act Requires the Registration of Commodity Broker-Dealers

54. Section 359-e (14)(b) of the Martin Act provides, in relevant part:

Any person acting as a commodity broker-dealer, commodity salesperson or commodity investment advisor and any person who manages or supervises any such broker-dealer, salesperson or investment advisor shall file a registration statement with the attorney general as a commodity broker-dealer, commodity salesperson, or commodity investment advisor relating to the activity actually engaged in.

GBL § 359-e (14)(b)

55. GBL § 359-3(14)(l) states that “A violation of this subdivision shall constitute a fraudulent practice as that term is used in this article.”

56. Under the Martin Act a commodity broker-dealer means “any person engaged in the business of selling or offering to sell commodities through commodity contracts to the public within or from the state of New York.” GBL § 359-e(14)(a)(iii).

57. A “commodity contract” is defined in subsection a(ii) as “any account, agreement or contract for the purchase or sale of, or any option or right to purchase or sell, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser one or more commodities...”

58. The Martin Act’s definition of commodities includes “any foreign currency, any other good, article, or material” GBL § 359–e[14]. Virtual currencies are commodities under the Martin Act.

2. Kucoin is an Unregistered Commodity Broker-Dealer

59. The Tokens fall within the definition of commodities under the Martin Act and are primarily for speculation or investment, rather than for consumption. Additionally, KuCoin’s use of its website’s blog to educate investors on how to make passive income, *supra* in section I are further indications that the Tokens are primarily for speculation or investment. Metz Aff. ¶ 20; Ex. 15.

60. As described, *supra* in section I, KuCoin offered for sale and sold the Tokens to Detective Metz through KuCoin accounts within New York State in May 2022.

61. The KuCoin website has offered commodity broker-dealer services and has been continuously available to New York State since at least September 2021. Metz Aff. ¶ 68.

62. Thus, KuCoin is a commodity broker-dealer.

63. Subdivision 14(b) of GBL § 359-e and Title 13, N.Y.C.R.R. § 13.2 require that, any commodity broker-dealer or commodity salesperson “shall file” with the OAG a “registration statement.” GBL § 359-e (14)(b); 13 N.Y.C.R.R. § 13.2.

64. KuCoin was required to register as a commodity broker-dealer because it was engaged in the business of selling or offering to sell commodities through accounts and agreements that were primarily for speculation or investment purposes.

65. KuCoin has not filed a registration statement with the OAG in order to register as a commodity broker-dealer. Jaffe Aff. ¶ 7.

66. KuCoin’s failure to register means the OAG has no information about KuCoin’s business history, record of criminal convictions, litigation history, and educational background of the registrant, its partners, officers, directors, and principals, among other information the Martin Act grants the OAG authority to collect of commodity broker-dealers who engage in the business of selling or offering to sell commodities through commodity contracts to the public within New York.

3. The Martin Act Requires the Registration of Securities Brokers and Dealers

67. Under the Martin Act, it is “unlawful for any dealer, broker or salesman to sell or offer for sale to or purchase or offer to purchase from the public within or from this state, any securities issued or to be issued, unless and until such dealer, broker or salesman shall have filed with the department of law a registration statement . . .” GBL § 359-e (3).

68. Under GBL § 359-e(1)(a) “dealer” is “any person, firm, association, or corporation engaged in the business of buying and selling securities from or to the public within

or from this state for his or its own account, through a broker or otherwise...” and includes issuers, i.e., a person or firm “selling or offering for sale ...securities issued by it.” GBL § 359-e(1)(a). Under GBL § 359-e(1)(b) a “broker” means “any person, firm, association or corporation... engaged in the business of effecting transactions in securities for the account of others within or from this state....” GBL 359-e(1)(b).

69. GBL 352(1) states that wherever “any broker, dealer, or salesman, as defined by section three hundred fifty-nine-e of this article...has sold or offered for sale or is attempting to sell or is offering for sale any security or securities in violation of the provisions of said section ...[such practices] are hereby declared to be and are hereinafter referred to as a fraudulent practice or fraudulent practices...”

4. KuCoin is an Unregistered Securities Broker and Dealer

70. The Tokens KuCoin offered to sell, sold and offered to purchase and purchased within New York, including KuCoin Earn, are securities under New York law.

71. As alleged above, *see supra*, section II, KuCoin offered to sell, sold and offered to purchase and purchased and effected transactions in the Tokens for Detective Metz within New York State in May 2022. Metz Aff. ¶¶ 57-59.

72. KuCoin offered to sell and sold its KuCoin Earn security in February 2023.

73. The Tokens and KuCoin Earn are securities and as such, KuCoin acted as a securities broker or dealer with respect to these transactions.

74. KuCoin’s website has offered securities broker or dealer services and has made its services continuously available to New York State since at least September 2021. Metz Aff. ¶ 19, 68.

75. KuCoin has not filed a registration statement with the OAG in order to register as a securities broker or dealer. Jaffe Aff. ¶ 7.

76. As stated above, supra ¶ 66, KuCoin's failure to register means important information that OAG is entitled to regarding the background of KuCoin's principals was not provided to OAG before KuCoin engaged in selling and buying commodities and securities in New York.

77. KuCoin's May 2022 and February 2023 transactions in securities, as well as its continuous offers through its website, within New York are fraudulent practices.

III. KUCOIN REPRESENTED IT WAS AN EXCHANGE IN VIOLATION OF GBL § 352-c(3)

78. KuCoin represents itself as an exchange in violation of GBL ..., which provides in relevant part that:

in the sale of any securities or commodities . . . within or from the State of New York to represent that they are an "exchange" or use the word "exchange," or any abbreviation or derivative thereof, in its name or assumed name unless it is registered with the Securities Exchange Commission as a national exchange, pursuant to section six of the Securities and Exchange Act of 1934, or unless it has been designated as a contract market by the Commodity Futures Trading Commission, pursuant to section five of the Commodity Exchange Act.

GBL § 352-c(3).

79. Kucoin represented itself as an "exchange," on the KuCoin website and the KuCoin application download pages. Metz Aff. ¶ 14.

80. Respondents were neither registered with the Securities and Exchange Commission as a national securities exchange nor designated as a contract market by the

Commodities Futures Trading Commission as required by GBL § 352-c(3). Jaffe Aff. ¶¶ 6, 8.
Respondents violated GBL § 352-c(3).

IV. KUCOIN FAILED TO COMPLY WITH OAG SUBPOENA

81. As part of its investigation into KuCoin, the OAG served a subpoena *ad testificandum* on the Respondents, *see* Exhibits 1, 2 to the Ruth Aff., to appear on January 23, 2023 and provide testimony concerning the digital asset trading activities of its platform. Ruth Aff. ¶ 3.

82. The subpoenas served on Respondents pursuant to N.Y. Gen. Bus. Law § 352-b and state in pertinent part:

TAKE FURTHER NOTICE that Your disobedience of this Subpoena, by failing to appear and attend and testify on the date, time and place stated above or on any agreed upon adjourned date or time, may subject You to prosecution for a misdemeanor or penalties and other lawful punishment under **General Business Law § 352(4)** and § 2308 of the New York Civil Practice Law and Rules, and/or other statutes. (emphasis added).

83. In addition to serving the subpoenas, OAG also emailed Respondents the subpoena at email addresses listed for law enforcement requests and legal inquiries and received no response.

84. However, on January 23, 2023, no representative appeared before OAG on behalf of KuCoin. Ruth Aff. ¶ 5.

85. GBL § 353 provides in pertinent part that a refusal “to be examined . . . when duly ordered so to do by the officer . . . fully conducting an inquiry into the subject matter forming the basis of the application for . . . [an] injunction . . . shall be prima facie proof that [the named] defendant is or has been engaged in fraudulent practices as set forth in such application and a

permanent injunction may issue from the supreme court without any further showing by the attorney-general.” GBL § 353(1).

CONCLUSION

86. Respondents offered, sold and purchased and effected transactions in cryptocurrencies that were commodities and securities within New York, without having been registered as a commodity broker-dealer and securities broker or dealer in New York. Respondents represented themselves as an “exchange” while not being registered or designated to make such representation and have failed to comply with OAG’s duly issued subpoena commanding sworn testimony regarding its trading platform.

EVIDENCE

87. The Affirmation of John Ruth (“Ruth Aff.”), together with exhibits 1 through 2, sworn to March 9, 2023, filed herewith and exhibits thereto, summarizes Respondent’s illegalities in violation of Executive Law § 63(12).

88. The Affidavit of Senior Detective Brian N. Metz, a Senior Detective employed by the Office of the Attorney General of the State of New York, sworn to March 8, 2023, together with Exhibits 1 through 40 thereto (the “Metz Aff.”), sets forth the Respondent’s illegalities, as well as certain publicly available information regarding Respondent; and (ii) the Affidavit of Ed Jaffe sworn to March 3, 2023, together with Exhibits A through B thereto (the “Jaffe Aff.”), averring that Respondents are not registered with OAG as required by Section 359-e of the Martin Act, filed herewith, describes Respondents’ illegalities.

CAUSES OF ACTION**FIRST CAUSE OF ACTION****PURSUANT TO EXECUTIVE LAW § 63(12): ILLEGALITY
VIOLATIONS OF GENERAL BUSINESS LAW ARTICLE 23
Martin Act Failure to Register as a “commodity broker-dealer”
GBL § 359-e and 13 N.Y.C.R.R § 13**

89. The Attorney General repeats and re-alleges the paragraphs above as if fully stated herein.
90. The acts and practices of Respondents alleged above violated New York General Business Law § 359-e insofar as Respondents are subject to GBL § 359-e(14)(a)(iii) and (b) and 13 N.Y.C.R.R § 13 and failed to register as a “commodity broker-dealer.”
91. In separate and discrete transactions Respondents engaged in the business of selling or offering to sell commodities through commodities contracts to the public within or from the State of New York.
92. Respondents are not registered with the OAG as a commodity broker-dealer and are not exempt from such registration requirements.
93. Each security transaction offered or effected by Respondent within New York is a fraudulent practice that is unlawful under Art. 23-A of the New York General Business Law as that term is defined under GBL § 352(1). Respondents have repeatedly and persistently violated GBL § 359-e and 13 N.Y.C.R.R. 13.
94. Respondents have repeatedly and persistently violated GBL § 359-e(3) and 13 N.Y.C.R.R 10.
95. Respondents’ conduct constitutes repeated and persistent illegality in violation of Executive Law § 63(12).

96. Respondents are currently engaged in or is about to engage in similar and further fraudulent practices under Art. 23-A of the General Business Law with respect to other commodities, including, but not limited to the ETH, LUNA, and UST tokens.

SECOND CAUSE OF ACTION

PURSUANT TO EXECUTIVE LAW § 63(12): ILLEGALITY VIOLATIONS OF GENERAL BUSINESS LAW ARTICLE 23-A Martin Act Failure to Register as a “broker” or “dealer”- General Business Law § 359-e; 13 N.Y.C.R.R. 10

97. The Attorney General repeats and re-alleges the paragraphs above as if fully stated herein.

98. The acts and practices of Respondents alleged above violated New York General Business Law § 359-e insofar as KuCoin is subject to GBL§ 359-e (3) and 13 N.Y.C.R.R. 10 and failed to register as a “broker” or “dealer” and failed to file a registration statement under GBL§ 359-e(3).

99. In separate and discrete transactions, Respondent offered to sell, sold, and offered to purchase and purchased and effected transactions in securities for the accounts of others within or from New York.

100. Respondents are not and have not registered with OAG as a securities broker or dealer and are not exempt from such registration requirement.

101. Each security transaction offered or effected by Respondents within New York is a fraudulent practice that is unlawful under Art. 23-A of the New York General Business Law as that term is defined under GBL § 352(1).

102. Respondents have repeatedly and persistently violated GBL § 359-e(3) and 13 N.Y.C.R.R. 10.

103. Respondents' conduct constitutes repeated and persistent illegality in violation of Executive Law§ 63(12).

104. Respondents are currently engaged in or is about to engage in similar and further fraudulent practices under Art. 23-A of the General Business Law, with respect to securities, including, but not limited to the ETH, LUNA, and UST tokens and KuCoin Earn.

THIRD CAUSE OF ACTION

PURSUANT TO EXECUTIVE LAW § 63(12): ILLEGALITY VIOLATIONS OF GENERAL BUSINESS LAW ARTICLE 23-A Martin Act Unlawful Use of the Word "Exchange" - GBL § 352-c(3)

105. The Attorney General repeats and re-alleges the paragraphs above as if fully stated herein.

106. The acts and practices of KuCoin alleged above violated New York General Business Law § 352-c(3) insofar as Respondents were engaged in the sale of securities or commodities, as defined in GBL § 352, within or from the state of New York, and represented that it was an "exchange" or used the word "exchange" or any abbreviation or derivative thereof in its name or assumed name.

107. KuCoin was not registered with the Securities and Exchange Commission as a national securities exchange, pursuant to section six of the Securities and Exchange Act of 1934 and was not designated as a contract market by the Commodity Futures Trading Commission, pursuant to section five of the Commodity Exchange Act.

108. Respondents have repeatedly and persistently violated GBL § 352-c(3).

109. Respondents' conduct constitutes repeated and persistent illegality in violation of Executive Law§ 63(12).

110. Respondents currently represents that they are an "exchange."

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully demands that the Court issue an order and judgment against Respondents:

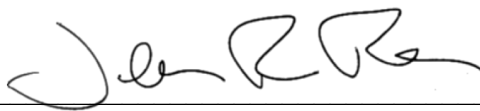
- (a) Permanently enjoining Respondents under Section 63(12) of the N.Y. Executive Law from engaging in business requiring registration under GBL § 359-e;
- (b) directing Respondents to identify all members of the public within the State of New York with or for whom Respondents purchased or sold securities or commodities, at any time from six years prior to the date of this Verified Petition, including their names, email addresses, date of all transactions, associated IP address used at the time of each transaction, and last log-in date and time;
- (c) directing Respondents to provide an accounting of all fees obtained from those identified pursuant to paragraph (b) above, including the type of fee, type of currency, and amount;
- (d) directing KuCoin to implement geo-blocking based on IP addresses and GPS location to prevent access to KuCoin's mobile app, website, and services from New York;
- (e) directing Respondents to make full monetary restitution and disgorge all sums received in connection with or as a result of the violations of law alleged herein as to all transactions identified in (c) and all moneys obtained in connection with or as a result thereof;
- (f) directing the Clerk of the Court to enter a money judgment with interest as provided by law against Respondents and in favor of Petitioner for the relief set forth in paragraphs (c) through (f) above pursuant to CPLR Rule 2222, and including costs to Petitioner in the amount of two thousand dollars (\$2000) pursuant to CPLR § 8303(a)(6); and

(g) together with such other and further relief as the court deems just and proper.

Dated: New York, New York

March 9, 2023

LETITIA JAMES
Attorney General of the State of New York

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Counsel for the People of the State of New York

VERIFICATION

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

John Ruth, Esq, an attorney and member of the bar of this Court, affirms the following to be true under penalty of perjury:

1. I am an Assistant Attorney General in the office of Letitia James, Attorney General of the State of New York, and I am duly authorized to make this verification.

2. I have read the foregoing petition and I know the contents thereof; the same is true to my own knowledge; Except as to matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true.

The reason this verification is not made by Petitioner is that Petitioner is a body politic. The Attorney General is Petitioner's statutory representative.

[Handwritten signature of John Ruth]

John Ruth

Dated: New York, New York
March 9, 2023