

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

PEOPLE 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 _____

VINO GLOBAL LIMITED
d/b/a COINEX,

Respondent.

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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 VINO Global Limited doing business as COINEX.

NATURE OF THIS PROCEEDING

1. Respondent, VINO Global Limited doing business as COINEX (“CoinEx” or “Respondent”), is an entity incorporated in Colorado that operates a virtual currency trading platform through its website, www.CoinEx.com. Respondent offers to buy and sell cryptocurrency from and to members of the public within the State of New York. The cryptocurrency that Respondent offers, buys, and sells referred to herein are also commodities and securities.
2. To lawfully engage in the above activities, CoinEx is required to file a registration statement with OAG, also known as the New York State Department of Law.
3. CoinEx 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. Failure to register is a fraudulent practice under the Martin Act.
4. CoinEx further violated the law by representing that it is an “exchange” without first satisfying the substantial prerequisites set forth in GBL § 352-c(3).
5. CoinEx repeatedly and persistently engaged in the above illegal activities in violation of Executive Law § 63(12).
6. CoinEx further failed to comply with an OAG subpoena pursuant to GBL § 352 by failing to appear for testimony.
7. Petitioner applies for an order and judgment (a) enjoining CoinEx from engaging in the fraudulent practices alleged herein; (b) permanently enjoining CoinEx from purchasing,

offering to purchase, selling, or offering the sale of commodities and securities through and from the State of New York; (c) directing CoinEx to implement geo-blocking based on IP addresses and GPS location to prevent access to CoinEx's mobile app, website, and services from New York; (d) directing CoinEx to provide a full accounting of New York accounts and all fees received from New York customers; (e) directing CoinEx to pay restitution and disgorgement; and (f) granting costs to the State of New York of two thousand dollars (\$2,000.00) pursuant to CPLR § 8303(a)(6).

PARTIES

8. 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).

9. CoinEx is operated by a business entity named VINO GLOBAL LIMITED and its affiliates. VINO GLOBAL LIMITED is incorporated under the laws of the State of Colorado ("Colorado"), and its principal office address is 4255 South Buckley Road, 1296, Aurora, CO 80013.

JURISDICTION AND VENUE

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

11. 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).

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

STATEMENT OF FACTS

I. COINEX OPERATES A CRYPTOCURRENCY PLATFORM AVAILABLE WITHIN NEW YORK

13. CoinEx holds itself out as "Global Cryptocurrency Exchange" where investors can "[e]xplore the Crypto World." Metz Aff. ¶ 5.¹

14. CoinEx was founded in 2017 by its Chief Executive Officer ("CEO")², Haipo Yang, and operates as a virtual currency trading website. Metz Aff. ¶ 2. CoinEx is headquartered in Hong Kong and is operated by Vino Global Limited, a business corporation registered with the Colorado Department of State. Metz Aff. ¶ 3. According to its CEO, CoinEx is powered by a team of more than 200 employees across the globe and delivers cryptocurrency trading services to more than 200 countries and regions. Metz Aff. ¶ 3.

15. CoinEx operates through its website and also has an application available for download on mobile phones. Metz Aff. ¶ 2. Through its website, www.coinex.com ("the Website"), CoinEx makes its cryptocurrency trading services available to investors to "Trade Cryptos. Anytime. Anywhere." See Ex. 1.6 to Metz Aff.

16. CoinEx uses a blog for marketing itself and providing regular content and communications to its users. Metz Aff. ¶ 7. The CoinEx blog discusses topics such as how

¹ References herein to "Metz Aff. ¶" refer to paragraphs within the Affidavit of OAG Senior Detective Brian N. Metz, filed in support of this Petition.

² Public reporting indicates that Haipo Yang may have a criminal record in China. See Metz Aff. ¶3 Because CoinEx has failed to respond to an OAG subpoena or to file a registration statement, further information regarding Mr. Yang's criminal record, if any, is not currently available

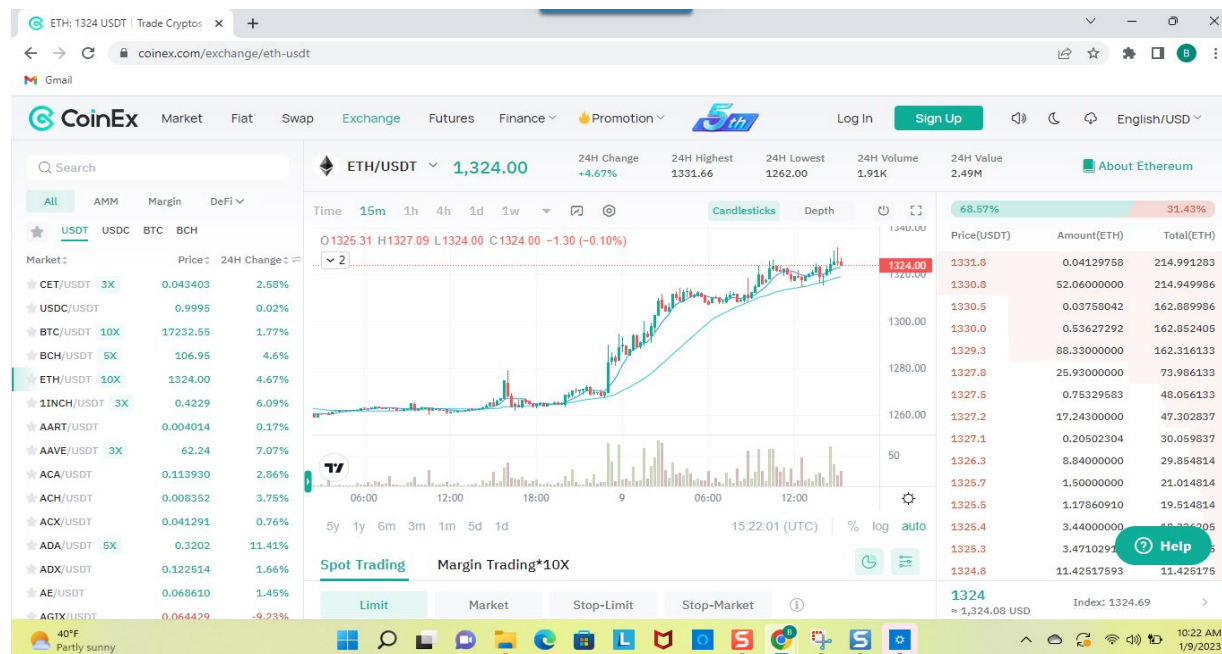
investors can make passive income; cryptocurrency whales and how to track their transactions; tips on crypto price forecasts; and how investors can profit from their crypto holdings. Metz Aff. ¶ 7. CoinEx's blogs also share information with investors about staking, such as its August 1, 2020 post titled *What is Staking in Crypto?* where CoinEx defines staking as "a method of putting your cryptocurrency to work and earning rewards." See Ex. 4.4 to Metz Aff. CoinEx states that "[m]any cryptocurrencies use staking to verify transactions and provide participants the chance to profit from their holdings . . . [and] specific cryptocurrencies provide effective interest rates for staking, [thus] staking may be a terrific method to use your cryptocurrency to create passive income." Ex. 4.4 to Metz Aff.

17. CoinEx actively promotes staking as a way to maximize the benefits of holding digital assets and highlights that "[m]any long-term cryptocurrency owners view staking to put their holdings to use by producing rewards rather than letting them sit dormant in their wallets." Ex. 4.4 to Metz Aff. CoinEx then provides investors with step-by-step instructions on how to stake. It tells investors that they ". . . must first own digital assets" . . . [and] . . . "move the coins from the exchange or application . . . used to buy them to an account that supports staking." Ex. 4.4 to Metz Aff. Investors are told that the blockchain's security and transaction processing capacity is increased when they stake their holdings. Ex. 4.4 to Metz Aff.

18. CoinEx invites investors to engage in a variety of cryptocurrency transactions, including "a swap," which it describes as "a fast exchange service, where you can exchange 2 different crypto assets in one single click." Metz Aff. ¶ 8. Respondent charges a fee for each side of the transaction. Metz Aff. ¶¶ 39-44; 48.

19. On the Website, CoinEx has a page titled "Exchange," which is accessible at www.coinex.com/exchange. Metz Aff. ¶ 5. It displays a virtual currency programming interface

that purports to stream real-time and historical data on the various virtual currencies available on the CoinEx platform, including but not limited to the Tokens.



See Ex. 1.5 to Metz Aff.

20. Prior to trading on the Website, CoinEx requires investors to create a CoinEx account. Metz Aff. ¶ 9. Investors must provide an email address and create a password as a part of the account creation process. Metz Aff. ¶ 12.

21. CoinEx offers for sale, sells, purchases offers to purchase, and effects transactions in multiple cryptocurrencies, including AMP, the LBRY token (“LBC”), LUNA, and the Rally (“\$RLY”) token (collectively the “Tokens”). Metz Aff. ¶ 5.

22. CoinEx continues to operate through the Website and its various mobile applications, which remain available and accessible to New Yorkers. Metz Aff. ¶ 50.

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

A. CoinEx Offered and Sold Cryptocurrency within New York through the CoinEx Website

23. Senior Detective Brian N. Metz (“Detective Metz”), while physically located in New York State, used a computer which showed a New York-based IP address and signed up for a CoinEx account on October 21, 2022 (“Account No.1”). Metz Aff. ¶ 12. Upon completing the CoinEx account sign-up process, Detective Metz received an email from CoinEx titled “*Notification on Successful Registration*,” stating “Congrats! You’ve successfully signed up. Explore the crypto world with CoinEx now! Holding some cryptos is the first step in crypto trading, you can now (1) Buy Crypto (2) Deposit Cryptos.” *Id.* CoinEx’s email also included hyperlinked instructions titled “(1) How to Deposit Cryptos to CoinEx Accounts; (2) How to buy cryptos; and (3) Instructions of spot trading.” Metz Aff. ¶ 15.

24. On October 21, 2022, Detective Metz used an external wallet address, which contained cryptocurrency purchased using the U.S. dollar, to fund Account No.1 with Ethereum (“ETH”), then placed orders with CoinEx to sell some ETH and an order to purchase LUNA tokens. Metz Aff. ¶¶ 16; 39. CoinEx then filled Detective Metz’s orders and sold his ETH and delivered LUNA to Account No. 1. Metz Aff. ¶ 39. Detective Metz executed a second transaction on October 21, 2022, through the same account. Metz Aff. ¶ 40. He placed orders with CoinEx to sell LUNA tokens and purchase AMP tokens. Metz Aff. ¶ 40. CoinEx filled those orders and delivered AMP tokens to Account No. 1, and sold some of Detective Metz’s LUNA. Metz Aff. ¶ 40. Detective Metz then executed a third transaction in the same account on the same date and placed orders with CoinEx to sell AMP tokens and purchase \$RLY tokens.

Metz Aff. ¶ 41. CoinEx filled each side of the third transaction and delivered \$RLY tokens to Account No. 1. Metz Aff. ¶ 41.

25. On October 28, 2022, Detective Metz placed orders with CoinEx to sell \$RLY and AMP tokens and to buy ETH and LUNA tokens. Metz Aff. ¶ 42. CoinEx filled those orders, sold Detective Metz's \$RLY and AMP tokens, and delivered ETH and LUNA tokens to Account No. 1. Metz Aff. ¶¶ 42-43.

26. CoinEx charged Detective Metz a fee for each sale and purchase referenced in paragraphs 24 to 25 above. Metz Aff. ¶¶ 41-43.

27. On January 3, 2023, Detective Metz returned to the CoinEx website, accessed Account No.1, and placed orders to sell ETH tokens and buy LBC tokens. Metz Aff. ¶ 44. CoinEx filled those orders, delivered LBC to Account No. 1, and charged a fee for both the ETH sale and the LBC purchase. Metz Aff. ¶ 44.

28. On January 3, 2023, Detective Metz opened a second CoinEx account ("Account No. 2"), funded with ETH using an external wallet, which contained cryptocurrency purchased using the U.S. dollar. Metz Aff. ¶ 45. He then placed an order with CoinEx to sell ETH and an order to buy LBC tokens which CoinEx filled. Metz Aff. ¶ 48. CoinEx charged a fee for both the ETH sale and the LBC purchase. Metz Aff. ¶ 48. CoinEx sent Detective Metz the same "Notification on Successful Registration" email described above, *see supra*, Paragraph 17, when Account No. 2 was opened. *See* Ex. 36 to Metz Aff.

B. CoinEx Unlawfully Offered, Sold, and Purchased Securities and Commodities to and from New York

29. Cryptocurrencies or virtual currencies, also referred to as digital assets, are digital units used to store or exchange value. *See* New York State Off. Of the Attorney Gen. (2018). Virtual Markets Integrity Initiative Report (Sept. 18, 2018). Cryptocurrency transactions are stored and managed on a so-called “blockchain” ledger that maintains a system of payments and receipts.³ Investors in particular cryptocurrencies execute cryptocurrency transactions by using digital wallets, which can include an online account associated with a particular cryptocurrency trading platform.⁴ Records of each transaction can only be entered into the ledger (added to the blockchain) once a computer or series of computers verify them.⁵ These computers can be owned by anyone (so-called “validators”) and located anywhere in the world.⁶

30. The validator that verifies a given transaction is entitled to receive a reward⁷, generally, a sum of the cryptocurrency verified. Individual cryptocurrency holders can pledge their holding or stake to a particular validator to help that validator increase its stake and win more verification opportunities (known as “staking”).⁸ In return for staking their cryptocurrency, investors, including passive cryptocurrency holders, receive a payment, often a portion of the validator’s verification reward.⁹ Staking is only one of the services provided by cryptocurrency

³ U.S. Dept. of Justice. (2020). Report of the Attorney General’s Cyber-Digital Task Force Cryptocurrency Enforcement Framework retrieved from <https://www.justice.gov/archives/ag/page/file/1326061/download> [last accessed February 21, 2023]

⁴ *Id.*

⁵ Linda Orenes-Lerma, How Does a Blockchain Transaction Work? (October 25, 2022), available at <https://www.ledger.com/academy/how-does-a-blockchain-transaction-work> [last accessed February 21, 2023].

⁶ *Id.*

⁷ David Rodeck, Crypto Staking Basics (August 2, 2022), available at <https://www.forbes.com/advisor/investing/cryptocurrency/crypto-staking-basics/> [last accessed February 21, 2023]

⁸ *Id.*

⁹ *Id.*

issuers to make their tokens more attractive to investors, who can then earn profits on their token purchases.

31. In the virtual currency space, a “network”¹⁰ is the individuals, organizations, and institutions that operate the system of devices and software that make up the blockchain. Many cryptocurrency networks take on social and communal qualities as founders, developers, and promoters entice investments in virtual currency by directly communicating with investors about the prospective success of the cryptocurrency and the resulting increase in value of the investor’s holding. Networks compete with one another because typically, the greater number of investors each network has, the greater chance the associated cryptocurrency will grow in value, and the greater profit that network can generate as a result.

32. CoinEx offered for sale, sold, purchased, offered for purchase, and effected transactions in multiple cryptocurrencies within New York, including the Tokens.

33. 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)(a)(i). CoinEx is engaged in the business of selling and offering to sell commodities through accounts, agreements, or contracts to accounts in New York primarily for investment purposes.

34. 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.

¹⁰ See Coinbase, Network or protocol? Token or coin? Deciphering the Difference (January 26, 2022).

1. The AMP Token

35. According to the CoinEx website, the AMP token is a part of the Flexa Network (“Flexa”). Metz Aff. ¶ 18. CoinEx provides information about AMP, including its issue date, total token supply, an introduction to the AMP network and the team behind AMP, as well as links to AMP’s official website and its white paper. *See* Ex. 7 to Metz Aff. According to the Website, “[AMP holders] can stake AMP to increase the capacity of the [Flexa network] . . . [and] receive rewards” *Id.* In addition to its AMP white paper, Flexa has a white paper for its network dated May 2019, in which Flexa states its vision is to become the open, seamless standard for cryptocurrency payments in physical retail. *See* Ex. 8 to Metz Aff. at 21.

36. Flexa claims to have created a fixed supply of 100 billion tokens. *See* Ex. 7 to Metz Aff. In an April 25, 2019, blog post titled *Introducing Flexacoin*, Flexa set forth its token distribution scheme. Metz Aff. ¶ 21. Flexa claimed to have distributed its tokens as follows:

- 10% of its tokens to its Network Development Fund to “support the development of the network over the first decade of its operation”;
- 20% to token sales;
- 20% to Flexa’s founding team and employee pool to “incentivize current and future Flexa team members, with a four-year vesting schedule”;
- 25% to Flexa’s Merchant Development Fund to “support merchant integrations and facilitate merchant acceptance of Flexa-enabled applications”; and
- 25% to developer grants to “help increase the adoption of Flexacoin for payment collateralization, with one billion per year to developers who wished to enable the Flexacoin-collateralized payments in their applications.”

Metz Aff. ¶ 21.

37. In its November 2020 AMP white paper, Flexa stated that “[e]conomic growth of the network comes from adoption and productivity output as a result of new technology

innovations” See Ex. 11 at 27, to Metz Aff. Flexa used its network’s white paper to introduce the people behind Flexa, referring to them as “Our Team.” See Ex. 8 at 21, to Metz Aff. Flexa frequently used blog postings, such as its January 28, 2021 blog, titled *Flexa’s 2020 in Review*, to emphasize its team’s importance to the future success of the network, highlighting their work, improvements, partnerships, and upgrades to the network, such as the technology innovations it tied to its economic growth. Metz Aff. ¶ 23. In its September 8, 2020, blog post, Flexa discussed the “time and effort that Flexa . . . committed to the development of the Amp platform” and emphasized that “. . . the future of Flexa is even brighter now that [they’re] building on Amp” Flexa stated: “At Flexa, [they] take [their] responsibility to the Flexa community very seriously” Metz Aff. ¶ 20.

38. According to Flexa, its team worked to achieve AMP liquidity in partnerships with digital currency platforms and was delighted “to share that [their] longstanding partners at [a well-known cryptocurrency trading platform] will be the *very first market* to support the new Amp token for exchange.” (emphasis in original). Metz Aff. ¶ 20. Through its management team’s efforts, the Flexa network made its token available for purchase and sale on multiple other secondary trading platforms, including CoinEx. And in its January 28, 2021 blog, Flexa publicized how its team worked throughout the Covid-19 pandemic to ensure a “formative year in the network’s history,” that it “doubled down . . . to ensure Flexa payments remained reliable,” and that it continued “[u]pgrading the network for the future.” Metz Aff. ¶ 23.

39. Additionally, Flexa promoted the AMP token as a medium for accruing value, i.e., profit. Metz Aff. ¶ 22. According to the AMP white paper “[e]conomically, Amp serves as a vehicle for accruing value within a collateralized Network, aligning the interest of all participants.” Metz Aff. ¶ 22. Flexa used the AMP white paper to promote the “staking” of user

tokens, that is, creating a mechanism for AMP holders to passively earn rewards and share in the economic benefits created. *Id.* The AMP white paper also states that “[t]he Amp . . . token value (i.e., the utility of the collateral itself) projections involve . . . *platform growth* [and] *staking composition* . . .” *Id.* (emphasis added).

40. Flexa’s management team has and continues to bear the responsibility of the administrative, marketing, and technical development of the Flexa network and the AMP token. Through its white papers, one of which is linked through the CoinEx website. *see* Ex. 7 to Metz Aff., and many of its blog posts, Flexa has led AMP investors to believe that their AMP tokens would appreciate in value so long as the network continued to develop and grow.

2. The LBC Token

41. CoinEx offered, sold, purchased, and offered to purchase a cryptocurrency called the LBRY Credits (“LBC”) on its platform. There is a fixed supply of 1,083,202,000 LBC tokens. *See* Ex. 13 to Metz Aff. CoinEx describes LBRY as a network “for accessing and publishing digital content” *Id.* LBC is the cryptocurrency used throughout the LBRY, Inc. Network (“LBRY”). *Id.* CoinEx provided information about LBC on the CoinEx website, including information on its token supply, an introduction to the LBRY network, a description of the LBRY team, and links to the LBRY website and white paper. *Id.*

42. According to the LBRY website’s frequently asked section titled *What is LBRY doing with non-mined Credits?* the first 400 million of its LBC token supply was reserved for LBRY and was used to raise money and develop its network over time. Metz Aff. ¶ 25. The allocation was as follows: 200 million allocated to a Community Fund for spreading usage and adoption; 100 million to an Institutional Fund to allow for “the formation of institutional

partnerships, as well as for grants and donations to nonprofits and other [NGOs] with similar values as LBRY”; and 100 million for an Operational Fund to be used for “operational purposes.” Metz Aff. ¶ 25. LBRY states that its operational fund exists “[t]o allow LBRY to function and profit” and is “reserved for LBRY, Inc. itself.” *Id.* LBRY also pooled assets it received from investors in exchange for LBC and deployed those assets to fund its business operations. Specifically, in 2020, as reported in its blog post titled *Quarterly Credit Report: Second Quarter 2020*, LBRY sold 7,028,356 LBC from its operational fund token reserve on the open market and issued another 359,341 LBC to its employees. Metz Aff. ¶ 26.

43. LBRY has publicly declared that “no one believes in the LBRY protocol more or has more incentive for its success than LBRY.” Metz Aff. ¶ 26. According to its website, www.lbry.com/team, the LBRY team is comprised of a Chief Executive Officer, Chief Technical Officer, Director of Operations, Protocol Engineers, Blockchain Engineers, App Engineer, and its Economic, Media, Legal and Ethics Advisors. Metz Aff. ¶ 27.

44. LBRY promoted LBC as an investment that would grow in value over time through the company’s development of the LBRY network, thereby purporting to intertwine LBRY’s financial fate with the commercial success of the LBC token. For instance, in response to a price spike in the value of LBC in its earlier days, LBRY posted an article on its publicly available website titled *\$1.2B Market Cap and We Don’t Care*, which stated that the “long-term value proposition of LBRY is tremendous, but also dependent on our team staying focused on the task at hand: building this thing.” Metz Aff. ¶ 27. LBRY further stressed that its “... focus now and henceforth will be on the long-term value of the LBRY protocol. *Id.* Over the long-term, the interests of LBRY and the holders of Credits [also known as LBC] are aligned.” *Id.*

LBRY's statements were made available to CoinEx users by the links CoinEx placed on its website. *See* Ex. 13 to Metz Aff.

3. The LUNA Token

45. LUNA is a cryptocurrency created by Terraform Labs ("Terraform"). Metz Aff. ¶ 28. The Website provides investors with information about the LUNA token, including Luna's distribution scheme, an introduction to the Terraform network, and links to the Terraform network's official website and whitepaper. *See* Ex. 17 to Metz Aff. From its inception, the LUNA token was promoted as an investment that would increase in value as a result of the development of other Terraform applications. Metz Aff. ¶ 29. The Terraform whitepaper issued in April 2019 explains that LUNA was "growth-driven" and further discussed the creation of applications to create demand and encourage its use. *See* Ex. 19 to Metz Aff.

46. Terraform founder Do Kwon frequently spoke about LUNA's growth potential and value as an investment. For instance, on March 22, 2021, using his publicly known Twitter handle, Do Kwon described LUNA as being "designed to defend Terra stability at a diverse array of market conditions and accrue value to the moon at all of those market conditions." Metz Aff. ¶ 30. Do Kwon further used Twitter to promote the ability of LUNA token holders to earn double-digit returns by staking their assets, as he did on November 20, 2021. *Id.* Additionally, on March 9, 2022, in a Tweet exchange with a critic, Do Kwon argued that people who purchased LUNA were not poor precisely because they had purchased LUNA, propagating the notion that buying LUNA would generate profit for purchasers. *Id.*

47. The price of LUNA increased substantially once Terraform projects launched. *See* Exs. 21.1 – 21.2 to Metz Aff. The creation of demand for LUNA was largely dependent upon

Terraform, which drove the growth of LUNA by creating other applications and platforms such as its Mirror Protocol, which allowed users to invest in “synthetic stocks,” using tokens that tracked the prices of stocks and allowed users to purchase and sell tokens and its Anchor Protocol, which also allowed users to make a token deposit and receive 20% annual yields (which were heavily subsidized by Terraform). *Id.* The growth and adoption of the LUNA token remained largely dependent upon Terraform projects. Terraform told investors that, if they used LUNA on these platforms, they would earn returns upwards of 20% interest. *Id.* As expected, the price of LUNA saw a substantial increase with the launch of these other Terraform applications and platforms. *Id.*

48. Terraform used sales of LUNA to raise funds for its operations, including its other projects. Metz Aff. ¶ 32. In a blog post titled *Introducing Project Dawn*, Do Kwon publicly announced that Terraform committed to “unlock at most 3 million LUNA per month for all operating costs . . .” and that those LUNA would cover expenditures “for critical infrastructure improvements and core technologies to supplement the accelerating growth of the Terra ecosystem” and would also finance “all other [Terraform] operating costs such as employee token distribution.” Metz Aff. ¶ 32. The blog post, and other communications by Terraform, were available to CoinEx users because CoinEx provided a link to the Terraform website. *See* Ex. 17 to Metz Aff.

4. The \$RLY Token

49. The \$RLY token is the native token of the Rally Network (“Rally”). Metz Aff. ¶ 33. CoinEx describes Rally as a platform that gives creators the ability to monetize their content by allowing their fanbase to support the creators and unlock rewards while doing so. Metz Aff.

¶ 33. The CoinEx website provides information to investors about the \$RLY token, which includes a link to the official Rally Network website and information about the \$RLY token distribution. *See* Ex. 23 to Metz Aff. In a blog post dated October 8, 2020, titled *RLY Governance Token Supply*, Rally announced to its market that it created a fixed supply of 15 billion \$RLY and promised to release the tokens over the course of eight (8) years. Metz Aff. ¶ 34. The post informed investors that 70% of the token supply would go to the Rally community, i.e., the purchasers of \$RLY, and just under 30% of the remainder would go to Rally team members and seed investors. \$RLY investors were told that the tokens retained for its management team had vesting and length of service conditions of up to four years to incentivize its employees to remain on board with the network. Metz Aff. ¶ 34.

50. Rally often showcased its curated executive team to the public, publicizing their credentials and responsibilities within the network in its white paper and in blog posts. Metz Aff. ¶ 35. For instance, on April 28, 2021, in a blog post titled *Rally Raises \$57M for Community Treasury to Fund Community Driven Growth*, Kurt Patat, the Global Head of Communications for Rally, promoted the experience and past accomplishments of the newest additions to Rally's management team. Metz Aff. ¶ 35. The blog post also announced that Rally raised \$57 million in funding for its community treasury through \$RLY sales. *See* Ex. 26 to Metz Aff. The Rally team publicized its efforts to advance its network across its platform as well as others. In one such post in February 2022, Rally's team used Twitter to announce that \$RLY was "now supported on [a well-known cryptocurrency trading platform], the next generation cryptocurrency exchange & custodian for buying, selling, storing, & earning digital assets." Metz Aff. ¶ 36.

51. Rally repeatedly told investors that \$RLY token sales help to build the broader network. For example, in a February 2021 blog post titled *Community Treasury Fundraise*

Update... and Next Steps, Rally stated that as of that date, “of the \$RLY sold for [its] Community Treasury, over 97% [was] subject to a 24-month lock up as part of the Community Agent’s priority to balance stability of the Rally Network,” and that “. . . the Rally Network is now holding robust funds that can enable the next level of growth and innovation.” Metz Aff. ¶ 38. Rally further stated, “[w]ith this larger pool in the treasury, the community can begin planning ways to significantly scale the Rally Network and empower even more development and engagement.” *Id.*

52. \$RLY investors were led to expect profits from their investments, including by the \$RLY Liquidity Provider Rewards Program, which Rally’s management team advertised in an October 2020 blog post, as a means by which \$RLY investors could earn profit, i.e., rewards on the Rally Network. Rally’s liquidity program rewarded \$RLY investors who provided liquidity to its shared pools. Metz Aff. ¶ 37. In its blog, Rally explained that “[t]o participate, [\$RLY token holders] provide liquidity to any of the . . . pools . . . then visit vaults.rally.io/liquidity to deposit [their liquidity provider] tokens and begin earning \$RLY rewards.” *See* Ex. 28 to Metz Aff. According to Rally, 350 million \$RLY were earmarked for distribution as rewards. *Id.*

53. The Tokens are promoted as profit opportunities that were contingent on the growth of their respective networks, Flexa, LBRY, Terraform, and Rally. The growth and development of these networks are dependent on the managerial efforts of the founders and management teams of these tokens. Those management teams led investors to reasonably believe a profit could be earned from their entrepreneurial and managerial efforts. Additionally, sums of each token’s distribution were reserved for their founders and management teams, thereby tying

the fortunes of the token holder to the management teams, creating a common enterprise.

Accordingly, the Tokens are securities.

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

54. 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. CoinEx is a commodity broker-dealer and a securities broker and dealer. Accordingly, CoinEx is required to file registration statements with OAG and failed to do so.

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

55. 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).

56. The Martin Act further provides in GBL§ 359-3(14)(c) that the form and content of the required registration statement “may include information pertaining to the business history for the last preceding five years, record of criminal convictions, litigation history, and educational background of the registrant and the registrant’s partners, officers, directors or other

principals . . . and the names of persons employed as commodity salespersons or commodity investment advisors by the registrant.”

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

58. 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).

59. 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” GBL § 359-e(14)(a)(ii).

60. The Martin Act defines commodities as “any foreign currency, and any other good, article, or material” GBL § 359-e[14]. Virtual currencies are commodities under the Martin Act. *See James v. iFinex Inc.*, 185 A.D.3d 22, 28 (1st Dept. 2020) (finding that “. . . the Martin Act's definition of commodities . . . is broad enough to encompass [a virtual currency].”).

2. CoinEx is an Unregistered Commodity Broker-Dealer

61. The Tokens are commodities under the Martin Act. They are sold primarily for speculation or investment, rather than for consumption. CoinEx told investors that they should “hold[] some cryptos” in the introductory email sent upon opening a CoinEx account, and CoinEx used its blog to educate investors on how to make passive income, *supra*, section II (B). Metz Aff. ¶¶ 7; 15; 45.

62. As described above, *see supra*, section II, CoinEx offered for sale and sold the Tokens to Detective Metz through CoinEx accounts within New York State in October 2022 and January 2023.

63. The CoinEx website has offered commodity broker-dealer services and has been continuously available to New York State since at least October 2022. Metz Aff. ¶¶ 39-50.

64. 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.

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

66. CoinEx has not filed a registration statement with the OAG to register as a commodity broker-dealer. Jaffe Aff. ¶ 7.¹¹ OAG is aware of no exemption that would alleviate CoinEx of its obligations under GBL § 359-e (14)(b) and 13 N.Y.C.R.R. § 13.2.

67. CoinEx’s failure to register means the OAG has no information about CoinEx’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.

¹¹ References herein to “Jaffe Aff. ¶” refer to paragraphs within the Affidavit of OAG Legal Assistant Edward Jaffe, filed in support of this Petition.

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

68. 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).

69. Section 359-e(3)(a) of the Martin Act provides in relevant part that “[t]he registration statement relating to . . . brokers . . . shall contain such information pertaining to the business history for the last preceding five years, criminal record, and educational background of the applicant and his or its partners, officers, directors, or other principals . . .”

70. Under GBL § 359-e(1)(a), “dealer” means “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” Under GBL § 359-e(1)(b), a “broker” means “any person, firm, association, or corporation, other than a dealer... engaged in the business of effecting transactions in securities for the account of others within or from this state....”

71. 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. CoinEx is an Unregistered Securities Broker or Dealer

72. The Tokens CoinEx offered to sell, sold, and offered to purchase and purchased within New York are securities under New York law.

73. As alleged above, *see supra*, section II, CoinEx offered to sell, sold, and offered to purchase and purchased and effected transactions in the Tokens for Accounts within New York State in from at least October 2022. Metz Aff. ¶¶ 39-48.

74. The Tokens are securities, and as such, CoinEx acted as a securities broker or dealer with respect to these transactions.

75. CoinEx's website has offered securities broker or dealer services and has made its services continuously available to New York State since at least October 2022. Metz Aff. ¶¶ 39-50.

76. CoinEx has failed to register with the OAG as a securities broker or dealer. Jaffe Aff. ¶ 7.

77. As stated above, *supra* ¶ 67, CoinEx's failure to register means important information that OAG is entitled to regarding the background of CoinEx's principals was not obtained before CoinEx engaged in selling and buying commodities and securities in New York.

78. CoinEx's October 2022 and January 2023 transactions in commodities and securities, as well as its continuous offers through its website within New York, are illegalities under Section 63(12).

III. COINEX REPRESENTED THAT IT IS AN EXCHANGE IN VIOLATION OF GBL § 352-c(3)

79. CoinEx represents itself as an exchange in violation of GBL §352-c(3), which provides in relevant part that:

It shall be illegal and prohibited for any . . . corporation . . . engaged 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 “ex-change,” 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).

80. First, CoinEx represents on the Website that it is an “exchange.” On the homepage of the Website, CoinEx introduces itself as a “Global Cryptocurrency Exchange” where investors can “trade cryptos, anytime, anywhere.” Metz Aff. ¶ 5.

81. Second, the Website has a page titled “Exchange” that displays a virtual currency programming interface that provided investors with what appears to be real-time and historical data on the virtual currencies available for trading on the CoinEx platform, including but not limited to the Tokens. *See* Ex. 1.5 to Metz Aff.

82. Third, CoinEx bears “Ex,” an abbreviation and derivative of the word “Exchange” in its name, “CoinEx.” CoinEx is engaged in the sale of securities and commodities as those terms are used in the Martin Act.

83. CoinEx is neither registered with the Securities and Exchange Commission (“SEC”) as a national securities exchange nor designated as a contract market by the

Commodities Futures Trading Commission (“CFTC”) as required by GBL § 352-c(3). Jaffe Aff.

¶¶ 8-9. Accordingly, CoinEx violated GBL § 352-c(3).

IV. COINEX FAILED TO COMPLY WITH OAG SUBPOENA

84. As part of its investigation into CoinEx, the OAG served a subpoena *ad testificandum* on CoinEx to appear on January 9, 2023, and to provide testimony concerning the digital asset trading activities of its platform. *See* Christie Aff. ¶¶ 3-4.¹²

85. The subpoena lawfully served on CoinEx on December 22nd 2022, pursuant to [cite statute] states 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).

86. However, on January 9, 2023, no representative appeared before OAG on behalf of CoinEx. Christie Aff. ¶¶ 5.

87. Under GBL § 353, 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).

¹² References herein to “Christie Aff. ¶” refer to paragraphs within the Affirmation of Assistant Attorney General Shantelee Christie filed in support of this Petition.

CONCLUSION

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

EVIDENCE

89. The Affirmation of Shantelee Christie (“Christie Aff.”), sworn to on February 22, 2023, filed herewith and exhibits thereto, summarizes Respondent’s illegalities in violation of Executive Law § 63(12).

90. The affidavit of Senior Detective Brian N. Metz, sworn to on February 19, 2023, together with exhibits thereto (“Metz Aff.”), sets forth the Respondent’s illegalities, as well as certain publicly available information regarding Respondent; and the Affidavit of Edward Jaffe sworn to February 17, 2023, together with exhibits thereto (“Jaffe Aff.”), averring that Respondent is not registered with OAG as required by Sections 352-c(3) and 359-e of the Martin Act, filed herewith, describes Respondent’s 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

91. The Attorney General repeats and realleges the paragraphs above as if fully stated herein.

92. The acts and practices of Respondent alleged above violated New York General Business Law § 359-e insofar as Respondent is 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.”

93. In separate and discrete transactions, Respondent 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.

94. Respondent is not registered with the OAG as a commodity broker-dealer and is not exempt from such registration requirements.

95. Each sale and offer to sell a commodity through commodity contracts by Respondent is a fraudulent practice that is unlawful under Art. 23-A of the New York General Business Law.

96. Respondent has repeatedly and persistently violated GBL § 359-e and 13 N.Y.C.R.R. 13.

97. Respondent’s conduct constitutes repeated and persistent illegality in violation of Executive Law§ 63(12).

98. Respondent is 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 AMP, LBC, LUNA, and \$RLY 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”)
GBL § 359-e; 13 N.Y.C.R.R. 10**

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

100. The acts and practices of Respondent alleged above violated New York General Business Law § 359-e insofar as CoinEx 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).

101. 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

102. CoinEx is not and has not registered with OAG as a securities broker or dealer and is not exempt from such registration requirement.

103. 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).

104. Respondent has repeatedly and persistently violated GBL § 359-e(3) and 13 N.Y.C.R.R. 10.

105. Respondent's conduct constitutes repeated and persistent illegality in violation of Executive Law § 63(12).

106. Respondent is 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 AMP, LBC, LUNA, and \$RLY tokens.

**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)**

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

108. The acts and practices of CoinEx alleged above violated New York General Business Law § 352-c(3) insofar as Respondent was 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.

109. CoinEx was not registered with the SEC 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 CFTC, pursuant to section five of the Commodity Exchange Act.

110. Respondent has repeatedly and persistently violated GBL § 352-c(3).

111. Respondent's conduct constitutes repeated and persistent illegality in violation of Executive Law § 63(12).

112. Respondent currently represents that it is an “exchange” and has used an abbreviation of the word “exchange,” specifically “Ex” in its name, CoinEx.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that the Court issue an order and judgment against Respondent:


- (a) Permanently enjoining Respondent under Section 63(12) of the N.Y. Executive Law from engaging in a business requiring registration under GBL § 359-e;
- (b) directing Respondent to identify all members of the public within the State of New York from or to whom Respondent purchased or sold commodities and securities, 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 Respondent 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 CoinEx to implement geo-blocking based on IP addresses and GPS location to prevent access to CoinEx’s mobile app, website, and services from New York;
- (e) directing Respondent to make full monetary restitution, disgorge all sums received in connection with or as a result of the violations of law alleged herein as to all transactions identified in (b) 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 Respondent 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
February 22, 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.:

Shantelee Christie, 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.



Shantelee Christie

Dated: New York, New York
February 22, 2023