**Unofficial English Translation**

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| Autorité des marchés financiers c. Technologies Timechain inc. | 2022 QCTMF 60 |
| FINANCIAL MARKETSADMINISTRATIVE TRIBUNAL |
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| CANADA |
| PROVINCE OF QUÉBEC |
| MONTRÉAL |
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| FILE NO.: | 2022-015 |
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| DECISION NO.: | 2022-015-002 |
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| DATE: | October 18, 2022 |
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| BEFORE: | Mtre. ANTONIETTA MELCHIORREMtre. CHRISTINE DUBÉ |
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| AUTORITÉ DES MARCHÉS FINANCIERS |
| Applicantv. |
| **TECHNOLOGIES TIMECHAIN INC.**and**LOUIS CLÉROUX**and**JÉRÉMIE PICARD**and**MATHIEU COCHER**Respondentsand **HUI YING SUN**and**NATANIA LEMIEUX**and**CAISSE DESJARDINS**and**SCOTIABANK**and**BINANCE CANADA LTD.**and**FTX** **EXCHANGE PLATFORM**and**FIREBLOCKS**and**VIRGOCX INC.**and**APAYLO FINANCE TECHNOLOGY INC.**and**THE LAND REGISTRAR**Impleaded parties |
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| DECISION (Partial lifting of freeze orders) |
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# WARNING: On June 2, 2022, the Financial Markets Administrative Tribunal (“Tribunal”) issued an order for the non-disclosure, non-dissemination and non-publication of the identity of the investors and the residential addresses of the respondents and the impleaded parties, as well as the bank account numbers subject to the Tribunal’s freeze orders in this case, which applies to the entire file[[1]](#footnote-1).

# OVERVIEW

1. On May 30, 2022, the Tribunal issues, as a matter of urgency and *ex parte*, freeze orders, cease trade orders, orders to cease the activity of broker or adviser without being registered and measures conducive to ensuring compliance with the law, against respondents Technologies Timechain inc. (“Timechain”), Louis Cléroux, Jérémie Picard and Mathieu Cocher as well as the impleaded parties.
2. The freeze orders were made in the context of an investigation conducted by the Autorité des marchés financiers (“Autorité”) against the respondents. This investigation pertains, in particular, to alleged breaches for distributions without a prospectus and acting as securities dealer without being registered, contrary to the provisions of the *Securities Act*[[2]](#footnote-2).
3. On June 14, 2022, Timechain and Louis Cléroux, as well as Jérémie Picard, file notices of contestation with the Tribunal[[3]](#footnote-3) of the orders issued by the Tribunal. The hearing following the notices of contestation was scheduled for November 14, 15, 16, 17, 21, 23 and 25, 2022.
4. On September 16, 2022, Timechain and Louis Cléroux file an application with the Tribunal to partially lift the freeze orders, which they amend a few weeks later.
5. In their amended application, Timechain and Louis Cléroux essentially ask the Tribunal to partially lift the freeze orders issued in this case in order to enable: (i) the payment of unpaid salaries owed to certain Timechain employees; (ii) the reimbursement of deductions at source owing to Revenu Québec; (iii) the reimbursement of deductions at source owing to the Canada Revenue Agency; and (iv) the partial payment of legal fees.
6. A hearing of the amended application for a partial lifting of the freeze orders took place on October 4, 2022. The Tribunal rejects the application.
7. In reaching this conclusion, the Tribunal had to answer the following question in dispute:
* Should the Tribunal partially lift the freeze orders to allow Timechain and Louis Cléroux to use the frozen funds to enable (i) the payment of unpaid salaries owed to certain Timechain employees; (ii) the reimbursement of deductions at source owed to Revenu Québec; (iii) the reimbursement of deductions at source owed to the Canada Revenue Agency; and (iv) the partial payment of legal fees?
1. The Tribunal’s answer to this question in dispute is no, as there is no reason to favour certain Timechain “creditors”[[4]](#footnote-4) while the investigation by the Autorité is still ongoing and investors have not been repaid. Moreover, this is not a case where the payment of these creditors is intended to protect or even increase the sums owed to investors. Finally, with regard to the payment of the legal fees, Louis Cléroux has sufficient assets to cover his needs and defend himself and Timechain, if necessary.

# ANALYSIS

## Applicable law

1. In order to answer the question in dispute, it is first necessary to recall the principles underlying the freeze orders and the conditions enabling them to be lifted. These are the principles guiding the Tribunal in making this decision.
2. The Tribunal points out that a freeze order is a protective measure intended to protect sums of money collected from investors in a potentially illegal manner, and that such sums are considered better protected if they are beyond the reach of those who collected them[[5]](#footnote-5).
3. Frequently cited by the Tribunal, the decision by the British Columbia Securities Commission in *Amswiss* clearly sets out the purpose of such orders, namely: “*the purpose […] is to preserve property for persons who may have common law or statutory claims to or interests in it, for example by way of rescission or damages*”[[6]](#footnote-6).
4. Normally, freeze orders remain in place unless or until they are lifted by the Tribunal, at the end of the Autorité’s investigation in the broad sense[[7]](#footnote-7).
5. However, application can still be made to have freeze orders lifted, in whole or in part, amended or revoked[[8]](#footnote-8).
6. The Tribunal refers to its recent decision in *Autorité des marchés* *financiers* c. *Tremblay*[[9]](#footnote-9), which establishes the general principle whereby a freeze order can be lifted:

[TRANSLATION] “[28] A freeze order may be lifted by the Tribunal once the investigation by the Autorité has enabled it to determine that the assets affected by the order were not collected in contravention of the law. Alternatively, the freeze order may also be lifted once it has been determined who owns the assets affected by the order and how the Tribunal should dispose of the rights and interests of such persons in the assets. In every case, the Tribunal must ensure that the lifting of the freeze orders is not contrary to the public interest or does not affect the protection of the public.” The Tribunal may grant a lifting of the freeze orders when the claims are justified on the condition that “*the funds are not the result of illegal transactions carried out in contravention of the Securities Act or the* *Act respecting the distribution of financial products and services**, whether from verified sources* [...]”[[10]](#footnote-10).

1. As the case law shows, in order to succeed, the party applying to have the freeze order lifted must demonstrate that the frozen funds do not belong in any way to investors and were not collected through illegal activities[[11]](#footnote-11).
2. In addition, regarding the lifting of a freeze order to pay legal fees, the party must also demonstrate that it has no other assets to meet their needs and the needs of their family, and to ensure a full and complete defence[[12]](#footnote-12).
3. Finally, some decisions have permitted the lifting of freeze orders when this was necessary to preserve the integrity of the frozen assets during the investigation for the benefit of investors[[13]](#footnote-13) or the sale of depreciating assets[[14]](#footnote-14).
4. The lifting of freeze orders is exceptionally permitted by the Tribunal when necessary to avoid causing further harm to investors.

## Application of the facts to the law

1. Timechain and Louis Cléroux claim that the Tribunal must authorize the payments sought because they are part of Timechain’s current expenses, are not unreasonable and aim to pay employees for work actually done and governments for deductions at source. With regard to the payment of legal fees, they consider themselves entitled to pay them at least in part, in particular considering their collaboration with the Autorité.
2. At the hearing, Louis Cléroux describes the history of Timechain’s activities and its financing. He says that Timechain had obtained its financing through incubators made up of entrepreneurs and by issuing convertible notes.
3. According to Louis Cléroux, only 12 or 13 investors had acquired convertible notes and, to date, six investors have still not been reimbursed.
4. He claims that Timechain is indebted to these six investors only and he does not consider the people who acquired Timechain's TCS token to be "investors." Moreover, in their application to have the freeze orders partially lifted, Timechain and Louis Cléroux allege that the payments they wish to make will cause no prejudice to the unpaid investors.
5. The Autorité disputes the number of investors purported by Louis Cléroux. According to the investigator who testified at the hearing, the Autorité's investigation identified more than 20 potential investors in addition to the 6,000 people who acquired the TCS token. In addition, several people holding cryptocurrencies on the Timechain platform have still not been reimbursed.
6. Louis Cléroux explains to the Tribunal that Timechain received a formal notice from the Autorité ordering Timechain to cease its activities on May 13, 2022. A few days later, Timechain lays off all its employees and ceases its operations.
7. Between May 13, 2022 and May 30, 2022, Louis Cléroux chooses to make certain reimbursements. Louis Cléroux states that he had no doubt did not anticipate that the Autorité would ask the Tribunal to issue the freeze orders on May 30, 2022. He decides to reimburse some people rather than others because he believes he has time to reimburse all of the investors.
8. Regarding the payment of salaries and deductions at source owing to Revenu Québec and the Canada Revenue Agency, Louis Cléroux testifies that Timechain did not pay them because he was waiting for the amounts to be calculated. Those amounts were only to be calculated at the end of May 2022.
9. The Tribunal cannot lift freeze orders to allow the payment of salaries owed to certain Timechain employees or to Revenu Québec or the Canada Revenue Agency to the detriment of investors who remain unpaid.
10. The Tribunal understands that the frozen funds consist of funds that belong to investors and that were collected through activities at first glance deemed potentially illegal by the Tribunal, which issued several orders against the respondents, including freeze orders referred to in this application. Furthermore, during the hearing, Louis Cléroux admits that the sums from investors transited through the accounts blocked by the Tribunal’s orders.
11. The Tribunal notes that the Autorité’s investigation is still ongoing.
12. At the hearing, an investor not yet reimbursed testifies that he does not object to the reimbursement of deductions at source due to Revenu Québec and the Canada Revenue Agency only. In the Tribunal’s view, freeze orders cannot be lifted based on investor consent.
13. Moreover, none of the payments referred to in the application for partial lifting of the freeze orders is necessary to protect or increase the value of the investments since Timechain has ceased its activities.
14. With regard to the payment of legal fees, Louis Cléroux testifies that he had not worked in the last four months. However, he owns a building that generates monthly rental income of $4,500. The property is currently for sale and is said to have equity amounting to approximately $350,000. This amount is challenged by the Autorité’s investigator, who is more inclined to value it at approximately $530,000.
15. Given the Tribunal’s view that Louis Cléroux has sufficient assets to meet his needs and defend himself, there is no reason to lift the freeze orders in order to allow the payment of Timechain’s and Louis Cléroux’s legal fees.
16. Given the apparent breaches of the *Securities Act*, and because the Autorité’s investigation is ongoing and not all investors have been reimbursed, the Tribunal considers that the freeze orders must be maintained in the public interest and, more specifically, in order to protect the investors and preserve their interests.

**DISPOSITION**

**FOR THESE REASONS**, the Financial Markets Administrative Tribunal, pursuant to sections 93 and 94 of the *Act respecting the regulation of the financial sector* and sections 249, 250 and 255 of the *Securities Act*﻿﻿:

**REJECTS** the amended application to partially lift the freeze orders of Technologies Timechain inc. and Louis Cléroux.

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|  | **Mtre. Christine Dubé****Administrative Judge** |
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| Mtre. Karine Chênevert |
| (Borden Ladner Gervais S.E.N.C.R.L., S.R.L.) |
| For Technologies Timechain inc. and Louis Cléroux |
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| Mtre. William Korbatly |
| (Droit Légal) |
| For Jérémie Picard |
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| Mtre. Ilana Amouyal and Hamza Abouabdelmajid, articling student |
| (Litigation Services, Autorité des marchés financiers) |
| For the Autorité des marchés financiers |
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| Hearing date: | October 4, 2022 |

1. The order was made pursuant to section 115.8 of the *Act respecting the regulation of the financial sector*, CQLR, c.E-6.1. [↑](#footnote-ref-1)
2. CQLR, c. V-1.1. [↑](#footnote-ref-2)
3. In accordance with section 115 of the *Act respecting the regulation of the financial sector*. [↑](#footnote-ref-3)
4. The Tribunal noted that the Autorité claimed that Timechain and Louis Cléroux did not prove all the amounts allegedly owing. [↑](#footnote-ref-4)
5. *Nadeau* c. *Autorité des marchés financiers*, 2014 QCBDR 97. [↑](#footnote-ref-5)
6. *Amswiss Scientific Inc.* (Re), 1992 LNBCS 40. [↑](#footnote-ref-6)
7. *Autorité des marchés financiers* c. *Gestion Guychar (Canada) inc.,* 2010 QCBDRVM 13. [↑](#footnote-ref-7)
8. Section 255 *Securities Act*. [↑](#footnote-ref-8)
9. 2022 QCTMF 11. [↑](#footnote-ref-9)
10. *Autorité des marchés financiers* c. *Guilbault*, 2016 QCTMF 55. [↑](#footnote-ref-10)
11. *Autorité des marchés financiers* c. *Norbourg gestion d’actifs inc*., 2006 QCBDRVM 12; *Dumais* c. *Autorité des marchés financiers*, 2014 QCBDR 46. [↑](#footnote-ref-11)
12. *Ibid.* [↑](#footnote-ref-12)
13. *Autorité des marchés financiers* c. *McKeown*, 2010 QCBDR 60. [↑](#footnote-ref-13)
14. *Autorité des marchés financiers* c. *Tremblay*, 2022 QTMF 44. [↑](#footnote-ref-14)