

In the High Court of New Zealand
Wellington Registry

I Te Kōti Matua o Aotearoa
Te Whanganui-a-Tara

CIV-2024-485-404

Under Part 19 of the High Court Rules and Part 16 of the Companies Act 1993

In the matter of an application **Digital Asset Exchange Limited (in liquidation)**, a company having its registered office at Floor 15, 215 Lambton Quay, Wellington, 6011 and carrying on business as a cryptocurrency exchange

And

In the matter of an application by **David Ian Ruscoe** and **Malcolm Russell Moore** of **Grant Thornton New Zealand Limited**, insolvency practitioners of Wellington and Auckland respectively

Applicants

Interlocutory application for procedural directions and directions to convert cryptocurrency into NZD

Dated: 17 March 2025

MinterEllisonRuddWatts.

PO Box 105 249 Auckland City 1143
T +64 9 353 9700
Solicitor acting: Ana Simkiss | ana.simkiss@minterellison.co.nz
Partner responsible: Sean Gollin | sean.gollin@minterellison.co.nz

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TO: The Registrar of the High Court at Wellington

AND TO: Jenny Cooper KC

AND TO: Account holders, creditors and shareholders of Digital Asset Exchange Limited (in liquidation)

This document notifies you that –

1. The applicants, David Ian Ruscoe and Malcolm Russell Moore, liquidators of Digital Asset Exchange Limited (in liquidation) (**Dasset** or **Company**)(the **Liquidators**), hereby apply to the Court for orders:
 - (a) for procedural directions for the conduct of this case as follows:
 - (i) that the Court appoint Jenny Cooper KC, barrister, as independent *amicus curiae* to assist the Court in any way the Court deems necessary, including as a contradictor, to ensure the just and efficient conduct of this litigation. This appointment is on the basis that counsel appointed as *amicus curiae*:
 - (A) shall act only on instructions from the Court;
 - (B) must act independently;
 - (C) will not be representing the interests of any party or creditor, or group of creditors; and
 - (D) does not owe professional duties to any party or creditor.
 - (ii) that if the Court appoints *amicus curiae* in accordance with paragraph 1(a)(i) above, then at any time:
 - (A) the Court may give directions to the *amicus curiae*; and
 - (B) the *amicus curiae* may approach the Court to seek directions;

including directions on how, and in relation to what matters, the *amicus curiae* should assist the Court by making submissions or otherwise;

- (iii) that the reasonable costs and disbursements of *amicus curiae* may be met from the Company and/or trust assets, on the basis they are necessary and reasonable expenses of the liquidation and/or of administering the trust assets;
- (iv) that Isac J be appointed as the Judicial Officer in this proceeding;
- (v) that the matter be set down for a two-day hearing in the Wellington High Court after 10 June 2025; and
- (vi) that the Liquidators and all parties who have filed and served a notice of opposition or a notice indicating that they wish to be heard on this matter shall take the following steps in advance of the hearing:
 - (A) no less than 20 working days before the hearing, all parties will file and serve a joint list of issues;
 - (B) no less than 15 working days before the hearing, the Liquidators will file and serve written submissions in support of the Originating Application; and
 - (C) no less than 8 working days before the hearing, all other parties will file and serve written submissions; and
- (b) permitting the Liquidators to convert Digital Assets into fiat currency up to the amount of \$901,748.38 which is estimated to be the maximum amount necessary to meet the actual and reasonable costs of this liquidation and this proceeding to date, and the anticipated future costs of this liquidation and this proceeding until the determination of this proceeding;
- (c) that all documents filed in this proceeding may be served on Account Holders and Creditors in accordance with the orders previously

granted by the Court in this proceeding on 18 July 2024 and in CIV-2023-404-1803 on 24 August 2023, by:

- (i) uploading copies of the proceedings and any orders to grantthornton.co.nz/DASSET/;
 - (ii) sending an email to all known Account Holders and Creditors with a link to the documents hosted at grantthornton.co.nz/DASSET/;
 - (iii) for any Account Holders or Creditors for whom no email address is held, by posting copies of the proceedings to the last postal address provided by that person (if any); and
 - (iv) sending to the address for service given by any person who has filed a document in this proceeding; and
- (d) that this application, together with the memorandum and affidavit filed in support, will be served on all Account Holders, shareholders and Creditors in the manner set out at 1(c) above;
- (e) that any sealed order of the Court as to procedural directions made in response to this application (**Procedural Orders**) shall be served in accordance with 1(c) above;
- (f) that any Account Holder or Creditor who wishes to oppose, or to be heard in relation to, the Originating Application may no later than 15 working days (as defined in the High Court Rules 2016) after service of the Procedural Orders, file in the Court and serve on the Liquidators:
- (i) a notice of their intention to appear in this proceeding; or
 - (ii) a notice of opposition and affidavit evidence in support of that opposition;
- (g) that any Account Holder or Creditor may apply to the Court to set aside or vary any of the Procedural Orders or other interlocutory directions and orders made pursuant to the Liquidators' application(s) with appropriate notice being given to the Liquidators by applying to

the Court within 10 working days of the sealed orders being served on that Account Holder or Creditor in accordance with paragraph 1(c) above; and

- (h) that leave is reserved for the Liquidators to apply for such further orders as are necessary.

2. The grounds on which each order is sought are as follows:

- (a) the Liquidators were appointed by special resolution of the shareholders on 14 August 2023;
- (b) the issues upon which the directions are sought are matters arising in the liquidation of the Company;
- (c) On 12 July 2024 the Liquidators filed:
 - (i) an originating application seeking directions from the Court to (among other things) determine whether the Company holds the Digital Assets on trust for Account Holders or not (**Originating Application**);
 - (ii) an interlocutory application for orders as to service and other procedural matters to bring the Originating Application to the attention of potentially affected parties (**Interlocutory Application**); and
 - (iii) an affidavit of Malcolm Russell Moore dated 8 July 2024 (**July Affidavit**); and
- (d) on 18 July 2024, this Court made orders sought in the Interlocutory Application (the **Initial Orders**);
- (e) all documents filed in this proceeding have been served on all Account Holders and Creditors in accordance with the Initial Orders. The Liquidators have received no objection or indication that any person served wishes to oppose or to be heard on the Originating Application;
- (f) the Initial Orders included an order that the solicitor-client costs of the Interlocutory Application shall be met, in the first instance, from the

pool of realised Digital Assets as a necessary and reasonable expense incurred by the Liquidators in carrying out their duties as liquidators, or alternatively as trustees administering the trust. The Liquidators have not yet converted any of the Digital Assets into New Zealand Dollars and now seek an order permitting them to do so in order to give effect to the orders already made and to meet future costs until final orders are made;

- (g) it is appropriate that the Liquidators' reasonable costs (including legal fees) and disbursements be met before other distributions are made from the proceeds of the Digital Assets, as these costs are necessarily incurred in the interests of all claimants to those assets and for the discharge of their duties, either as liquidators, or alternatively as trustees administering a trust, whether the Digital Assets and their realised value are later determined by the Court to be beneficially owned by the Company or Account Holders;
- (h) the orders sought in this application are necessary for the Liquidators to continue to progress the liquidation efficiently, including this proceeding;
- (i) the orders sought will facilitate the efficient and pragmatic resolution of the liquidation and this proceeding; and
- (j) the grounds set out in the memorandum of counsel filed with this application.

3. This application is made in reliance upon:

- (a) Rules 1.2, 4.27, Part 19 and Subpart 2 of Part 7 (Rule 7.43A) of the High Court Rules 2016 and the associated commentary in McGechan on Procedure;
- (b) section 284(1) of the Companies Act 1993;
- (c) the affidavit of Malcolm Russell Moore sworn 8 July 2024;
- (d) the affidavit of Malcolm Russell Moore sworn 17 March 2025;

- (e) as to efficiency: *Re Waller* HC Auckland CIV-2005-404-7051, 26 July 2006; *Re Roslea Path Ltd (in liquidation)* [2013] 1 NZLR 207; *Graham (as liquidators of Defendant Co) v Arena Capital Ltd (in liq)* [2017] NZHC 973; *McIntosh v Fisk* [2017] NZSC 78; *Re Fisk* [2018] NZHC 2007;
- (f) as to the appointment of counsel: *Re Landbase Nominee Co Ltd* (1989) 4 NZCLC 65,093; *Re Registered Securities* (1990) 5 NZCLC 66,248; *Re Trans Capital Ltd (in liquidation)* HC Wellington M84/99 26 May 2000 per Wild J; *Solicitor General v Moodie* HC Wellington CIV-2005-485-001026, 25 July 2006; *Ruscoe v Cryptopia Ltd (in liquidation)* [2020] NZHC 728, [2020] 2 NZLR 809; and
- (g) as to payment of costs and expenses, the trustees right to indemnification from trust assets for recovery and preservation of the same: section 81 of the Trusts Act 2019; *LSF Trustees Ltd v Footsteps Trustee Company Ltd (in liq)* [2017] NZHC 2619; *Ranolf Company Ltd (in liq) v Bhana* [2017] NZHC 1183; *Ruscoe v Cryptopia Ltd (in liq)* [2020] NZHC 728, [2020] 2 NZLR 809; *Ruscoe v Houchens* [2024] NZHC 419.

DATED at Auckland this 17th day of March 2025



S C D A Gollin / A E Simkiss
Counsel for the Applicants