



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

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DIVISION OF ECONOMIC JUSTICE  
INVESTOR PROTECTION BUREAU

March 13, 2019

**VIA NYSCEF**

The Honorable Joel M. Cohen  
Supreme Court, New York County  
60 Centre Street, Room 570  
New York, NY 10007

Re: *In the Matter of iFinex Inc., et al.*, Index No. 450545/2019

Dear Justice Cohen:

The Office of the Attorney General (“OAG”) writes pursuant to the Court’s instruction at the March 6, 2019 hearing to submit proposed modifications to the *ex parte* Order in the above-captioned matter. (See Transcript at 66:6-9; 69:1-6.) After a number of meet-and-confer sessions between the OAG and Respondents, agreement was reached on some, but not all, aspects of a modified order. As such, the OAG respectfully requests that the Court adopt the OAG’s proposed order, which has been submitted with this letter.

There are three areas of disagreement between the OAG and Respondents.

*First*, the parties have been unable to agree on language narrowing the scope of the injunction regarding the use of the U.S. dollar reserves held by Tether. (Proposed Order at subparagraph (i).) As instructed by the Court, the OAG proposal makes clear that Respondents are enjoined from making further transfers from Tether’s U.S. dollar reserves to Bitfinex or affiliated parties. The proposed language also expressly clarifies that the injunction does not prevent Tether from using its U.S. dollar reserves to fulfill bona fide redemption requests by holders of tethers that are unaffiliated with the Respondents, which was never the intention of the OAG. Quite the opposite – bona fide holders of tether should be able to redeem those tokens for cash, as Tether has long represented to the market. Further, the OAG’s proposed modifications do not restrain Tether from placing the reserves in legitimate interest-bearing or similar cash-equivalent accounts, as the OAG understands Tether to have previously done. Together, these proposed modifications provide clarity to Respondents, and to the market, regarding what can and cannot be done with the tether cash reserves. Most importantly, these proposed modifications allow Respondents to conduct their business while maintaining the status quo and

protecting tether holders. (*See* Transcript at 20:12-17.)

Based on our meet-and-confer sessions, Respondents' proposed subparagraph (i) appears to go beyond the status quo, by permitting Respondents to conduct "activities in the ordinary course of business consistent with Tether's terms of service." Despite the OAG's request, Respondents have not clarified what that means, including what practices they might, in the future, deem to be permitted by Tether's terms of service. Besides being vague, the proposed changes could allow Respondents to avoid the injunction simply by declaring an activity to be permitted by the terms of service. The Court should decline to introduce that lack of clarity into its new order.

*Second*, the parties have agreed in concept that the injunction should be modified to make clear that Tether may pay employees, vendors, contractors, and the like, as it goes about conducting its business. (Proposed Order at subparagraph (ii).) However, the OAG's proposed modification to subparagraph (ii) ensures that any such payments be made from funds outside of the tether reserves, such as, from funds gained through Tether's transaction fees. They should not be made from the reserves. The intention here is to prevent the tether cash reserves from being dissipated via transfers to company insiders (as compensation, "payroll," or other euphemism). The Court should decline to adopt Respondents' ambiguous proposal that would invite dispute on this point.<sup>1</sup>

*Third*, and finally, the OAG's proposed order sets forth a simple procedure for the parties to follow upon the expiration of the new order, which OAG believes should be no fewer than ninety days from its entry. Under the procedure that the OAG proposes, Respondents have a time certain by which they can move to lift the injunction, and the OAG will be held to a time certain to respond. The parties may also extend the injunction by stipulation. The OAG's proposal also makes clear that the Order remains pending a decision by the Court. The OAG believes that this procedure is consistent with the Court's request to have defined, meaningful check-points to ensure that Respondents are fulfilling their obligations to produce documents and information in connection with the OAG's ongoing investigation, while offering Respondents the ability to seek the Court's timely review of the matter. (*See* Transcript at 21; 48.)

The OAG's understanding of Respondents' proposal is that it does not fulfill the Court's direction, and indeed only invites confusion. Besides being unrealistically short, (Transcript at 63:5-21), Respondents' proposal does not address the method by which the parties will make their positions known in advance of expiration, and raises the possibility that the OAG will be forced to move for an extension without understanding what has been, or will be, produced by Respondents. That is not what the Court ordered the parties to do. (Transcript at 64:4-22.)

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<sup>1</sup> Respondents proposed and the OAG accepted a small change in subparagraph (iii) to remove the words "or in connection with the Attorney General's investigation," as it related to the preservation of relevant documents and information.

Accordingly, the OAG requests that the Court adopt its proposed order as submitted.

Respectfully,

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