SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 3EFM

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IN THE MATTER OF THE INQUIRY BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Petitioner,

- v -

IFINEX INC., BFXNA INC., BFXWW INC., TETHER HOLDINGS LIMITED, TETHER OPERATIONS LIMITED, TETHER LIMITED, TETHER INTERNATIONAL LIMITED

Respondents.

INDEX NO. 450545/2019

MOTION DATE 04/30/2019

MOTION SEQ. NO. 002

DECISION AND ORDER

----------X

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71

were read on this motion to Vacate or modify ex parte order and for immediate stay.

This case involves an investigation by the New York Attorney General (Petitioner) into the evolving business of trading cryptocurrencies, including whether such trading involves "securities" that are within the ambit of the Martin Act.[1] Petitioner has broad statutory authority to investigate potential violations of the Act, which covers, among other things, fraudulent practices "relating to the purchase, exchange, investment advice or sale of securities or commodities." N.Y. Gen. Bus. Law § 352.

On April 24, 2019, this Court (James, J.) granted an *ex parte* application submitted by the Office of the Attorney General (OAG) under N.Y. Gen. Bus. Law § 354

[1] N.Y. Gen. Bus. Law Article 23-A (§§ 352 *et seq.*).

to require the Respondents[2] to provide information in aid of Petitioner's investigation of potential violations of the Martin Act. The April 24 Order (the "Order") included a preliminary injunction restraining Respondents from, *inter alia*, violating the Martin Act, engaging in "fraudulent, deceptive, or illegal acts," and "employing any device, scheme, or artifice to defraud or obtain money or property by means of false pretense, representation, or promise," including but not expressly limited to certain broad categories of financial transactions.[3]

Respondents were not given prior notice of the application, despite having been in close contact with the OAG in connection with the investigation beforehand. Accordingly, the Order was entered based solely on the OAG's presentation of the facts and law. Respondents promptly moved, by order to show cause, to vacate or modify the April 24 Order, and for an immediate stay of the Order.

Having now heard both sides of the story, the Court grants Respondents' motion in part and denies it in part for the reasons set forth on the record at a hearing on May 6, 2019 and as summarized herein. In a nutshell, the Court finds that Petitioner is entitled to the Order requiring Respondent to promptly produce evidence, but that the preliminary injunction contained in the Order should be modified.

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[2] Respondents iFinex, Inc., BFXNA Inc., and BFXWW Inc. are together referred to herein as "Bitfinex," while Respondents Tether Holdings Limited, Tether Operations Limited, Tether Limited, and Tether International Limited are together referred to herein as "Tether."

[3] A copy of the signed Order is included as an exhibit to an affidavit submitted by Respondents in support of the instant motion. (NYSCEF Dkt. No. 35.) The signed Order apparently was not uploaded to NYSCEF as a stand-alone document.

Background

As alleged by Petitioner, Bitfinex is in the business of "operat[ing] a virtual currency trading platform on which several dozen virtual currency securities and commodities (like bitcoin) are exchanged." (Pet'r's Mem. of Law) (NYSCEF Dkt. No. 56). Tether issues one such virtual currency, also called tether. "Unlike most virtual currencies, for which the market price fluctuates, often wildly, tether is a so-called 'stablecoin,' a term which refers to a virtual currency that is always supposed to have the same real-dollar value—in the case of tethers, one U.S. dollar per tether." (*Id.*) Both entities are allegedly "operated by the same small group of executives and employees, and share common ownership." (*Id.*)

OAG has been investigating Respondents since 2018, focusing on whether they have violated the Martin Act by, among other things, misrepresenting to New York investors[4] the amount of dollar reserves backing virtual tethers. OAG also says it is examining "the nature of the relationship between Bitfinex and Tether," "Bitfinex's ability to process client withdrawal requests," and "the manner in which Respondents' senior executives are compensated." (*Id.*) Although Respondents have provided information in connection with Petitioner's investigation, the OAG maintains that Respondents have not fully complied with its requests.

On or about February 21, 2019, Respondents' counsel advised the OAG that "Bitfinex and Tether were in the process of contemplating a transaction that would permit Bitfinex to draw upon Tether's cash reserves on an as-needed basis."

[4] Respondents dispute that it is accurate to label tether holders and/or traders as "investors."

(Affirmation of Brian M. Whitehurst in Support of OAG's *Ex Parte* Application ("Whitehurst Aff.") ¶72) (NYSCEF Dkt. No. 58). OAG expressed concern that "the contemplated transaction would constitute a conflict of interest" since "Bitfinex and Tether are owned and operated by the same people." (*Id.* ¶74). More broadly, the impending transaction "raised serious concerns" at OAG "about the viability of Bitfinex as an ongoing concern, the possibility that Tether's cash reserves would be dissipated and unrecoverable, and whether Bitfinex and Tether ha[d] misled their clients (including both clients of the Bitfinex trading platform, and holders of tethers)[.]" (*Id.* ¶76). OAG requested additional information about the circumstances behind the contemplated transaction, as well as fuller details about the transaction itself. (*Id.* ¶77).

About a month later, on or about March 29, 2019, Respondents notified OAG that the transaction had closed two days prior. The deal provided Bitfinex with a "line of credit" on Tether's cash reserves (the funds ostensibly backing the tether currency) for up to $900 million. (Pet'r's Mem. of Law; *see* Whitehurst Aff. ¶¶72-87). OAG asserts that the facts of this "line of credit" transaction "differed significantly from what OAG was [previously] told." (Whitehurst Aff. ¶85). As relevant here, the transaction—which also included transfers of $625 million from Tether to Bitfinex in November 2018—allegedly left Tether with $150 million in remaining reserves that OAG suspected could be further dissipated at any time. (Pet'r's Mem. of Law). OAG continued to question the propriety of the transaction itself, which it sees as an inherent conflict of interest between the same small cadre of Bitfinex and Tether principals. Moreover, according to OAG, Respondents did not disclose these cash transfers to investors, nor did they produce

sufficient information about them to OAG in response to OAG's requests for information. (Whitehurst Aff. ¶¶92-93).

Respondents, for their part, vehemently deny Petitioner's characterization of the "line of credit" transaction. They assert that "the terms were negotiated on an arm's length basis on commercially reasonable terms, with each company represented by sophisticated, independent counsel." (Resp't's Mem. of Law) (NYSCEF Dkt. No. 52). At any rate, Respondents argue, "the Attorney General has no authority to dictate how Bitfinex and Tether do business with one another, or the amount of reserves that Tether must hold." (*Id.*)

After OAG learned additional details regarding the "line of credit" transaction, Petitioner sought an *ex parte* order under the Martin Act "directing Respondents to produce documents, records and information which are material and necessary to OAG's ongoing investigation," and "granting preliminary injunctive relief under § 354 pending the completion of OAG's investigation, in order to maintain the status quo and avoid continuing and future harm to New York investors." (Whitehurst Aff. ¶¶5-6).

The Court signed Petitioner's proposed order, which can be broken down into two parts. First, the Court directed Respondents to produce documents and communications addressing a number of different subjects, including information about Tether and Bitfinex's business operations, relationships, customers, tax filings, and more.

Second, the Order included a preliminary injunction, incorporating language provided by Petitioner. The injunction provides, in pertinent part, that:

> [A]ll Respondents, their directors, officers, principles [sic], agents, employees, contractors, assignees and all other persons acting, or having acted, in aid or

> furtherance of the same are hereby preliminarily restrained from violating Article 23-A of the GBL, and from engaging in fraudulent, deceptive, or illegal acts, and are further restrained and enjoined from employing any device, scheme, or artifice to defraud or to obtain money or property by means of false pretense, representation, or promise, including but not limited to:
>
> i. Further action by Bitfinex or Tether to access, loan, extend credit, encumber, pledge, or make any other claim, of any variety or description, on the U.S. dollar reserves held by Tether;
>
> ii. Making any distribution or dividend to any principle [sic], executive, employee, agent, investor, or associate of Bitfinex and Tether from funds that have been loaned, extended, pledged, or otherwise taken from the U.S. dollar reserves held by Tether; and
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> iii. Directly or indirectly tampering with, mutilating, altering, erasing, removing, destroying or otherwise altering or disposing of any and all . . . [files and media] . . . wherever located . . . relating to any relevant or potentially relevant documents, communications, or information called for by the subpoenas dated November 27, 2018, the letter of February 26, 2018, or in connection with the Attorney General's investigation, or this Order . . . .

Order (NYSCEF Dkt. No. 35).

Legal Analysis

A. The Court Has Authority to Vacate, Stay, or Modify the April 24 Order

The Court is authorized "at any time" to "vacate or modify" a preliminary injunction, *see* CPLR 6314, and whether to do so is left to the Court's "sound discretion." *Rosemont Enters. v. Irving*, 49 A.D.2d 445, 448 (1st Dep't 1975). In this case, the fact that the April 24 Order was obtained in an *ex parte* proceeding provides a sound reason to take a fresh look at the Order with the benefit of the facts and arguments presented by the Respondents.

B. The Scope of N.Y. Gen. Bus. Law § 354

As noted above, Petitioner has broad authority to investigate and address potential violations of the Martin Act. *See*, *e.g.*, *CPC Int'l* v. *McKesson Corp.,* 70 N.Y.2d 268, 277 (1987) (purpose of the Martin Act was "to create a statutory mechanism in

which the Attorney-General would have broad regulatory and remedial powers to prevent fraudulent securities practices by investigating and intervening at the first indication of possible securities fraud on the public"); *Kralik* v. *239 E. 9th St. Owners Corp.,* 5 N.Y.3d 54. 58 (2005) (same). The Act authorizes Petitioner to "investigate and enjoin fraudulent practices in the marketing of stocks, bonds and other securities within or from New York." *Assured Guar. (UK) Ltd v. J.P. Morgan Inv Mgt. Inc.,* 18 N.Y. 3d 341, 349 (2011).

N.Y. Gen. Bus. Law § 354 gives Petitioner powerful tools to obtain information in aid of her investigation and instructs this Court to facilitate Petitioner's exercise of her statutory authority. Section 354 provides, in full:

> Whenever the attorney-general has determined to commence an action under this article, [she] may present to any justice of the supreme court, before beginning such action, an application in writing for an order directing the person or persons mentioned in the application to appear before the justice of the supreme court or referee designated in such order and answer such questions as may be put to them or to any of them, or to produce such papers, documents and books concerning the alleged fraudulent practices to which the action which he has determined to bring relates, and it shall be the duty of the justice of the supreme court to whom such application for the order is made to grant such application. The application for such order made by the attorney-general may simply show upon [her] information and belief that the testimony of such person or persons is material and necessary. The provisions of the civil practice law and rules, relating to an application for an order for the examination of witnesses before the commencement of an action and the method of proceeding on such examination, shall not apply except as herein prescribed. The order shall be granted by the justice of the supreme court to whom the application has been made with such preliminary injunction or stay as may appear to such justice to be proper and expedient and shall specify the time when and place where the witnesses are required to appear. The justice or referee may adjourn such examination from time to time and witnesses must attend accordingly. The testimony of each witness must be subscribed by him and all must be filed in the office of the clerk of the county in which such order for examination is filed.

N.Y. Gen. Bus. Law § 354.

As is clear from its text, the dominant purpose of section 354 is to facilitate Petitioner's gathering of facts. The "order" to which it repeatedly refers is one "directing the person or persons mentioned in the application to appear before the justice of the supreme court or referee designated in such order and answer such questions as may be put to them or to any of them, or to produce such papers, documents and books concerning the alleged fraudulent practices to which the action which he has determined to bring relates. . . ." It provides that it is the *duty* of the Court to grant the application for "such order." By contrast, the decision to grant a preliminary judgment or stay is left to the discretion of the Court, "as may appear to such justice to be proper and expedient."

C. <u>The Order to Provide Documents and Information is Confirmed</u>

Against that backdrop, Respondents' motion to vacate, modify or stay the portion of the Order mandating production of documents and information must be denied. Respondents claim that the investigation is outside the broad scope of the Martin Act because "tether" does not constitute a "security." Petitioner disagrees with that assertion and, more importantly for present purposes, advises the Court that she requires additional facts to make a determination. While Respondents may ultimately prevail on their argument, at this point it is premature and inconsistent with section 354 for the Court to interpose itself to truncate Petitioner's investigation. The court-appointed Special Referee will work with the parties with respect to the scope and timing of compliance.

D. The Preliminary Injunction Should Be Modified

The parties agree that the decision to impose a preliminary injunction in connection with Petitioner's investigation is within the discretion of the Court. As set forth in section 354: "The order [directing parties to appear and/or produce documents] shall be granted by the justice of the supreme court to whom the application has been made *with such preliminary injunction or stay as may appear to such justice to be proper and expedient* and shall specify the time when and place where the witnesses are required to appear" (emphasis added). The reference to preliminary injunctive relief is a portion of a sentence focused on fact-gathering, which in turn is part of a paragraph that is almost entirely about fact-gathering. It must be viewed in the context of section 354 as a whole and the justification provided by Petitioner for the relief sought. It does not provide a roving mandate to regulate commercial activity by subjects or targets of a Martin Act investigation.

i. **The Preliminary Injunction Standard**

"A preliminary injunction is an extraordinary provisional remedy which will only issue where the proponent demonstrates (1) a likelihood of success on the merits, (2) irreparable injury absent a preliminary injunction, and (3) a balance of equities tipping in its favor. The granting of such relief is committed to the sound discretion of the motion court." *Harris v. Patients Med., P.C.*, 169 A.D.3d 433, 434 (1st Dep't 2019). As the Court of Appeals has observed, "because preliminary injunctions prevent the litigants from taking actions that they are otherwise legally entitled to take in advance of an adjudication on the merits, they should be issued cautiously and in accordance with appropriate procedural safeguards." *Uniformed Firefighters Ass'n of Greater New York*

v. City of New York, 79 N.Y.2d 236, 241 (1992); *see also*, *e.g.*, *Margolies v. Encounter, Inc.*, 42 N.Y.2d 475, 479 (1977) (a preliminary injunction "operates as a substantial limitation on the defendant's interests prior to any adjudication of the respective rights of the parties on the merits of the controversy between them").

That standard, in varying formulations, has been in place for many years and pre-dates the Martin Act. *See*, *e.g.*, *W.T. Grant Co. v. Srogi*, 52 N.Y.2d 496, 517 (1981); *Craushaw v. McAdoo*, 47 Misc. 420, 422, 94 N.Y.S. 386 (Sup. Ct. Kings Cty. 1905) ("Applications for preliminary injunctions are governed by principles of law as well established as the principles which the plaintiffs assert as the basis for their actions.").

In *State v. Fine*, 72 N.Y.2d 967 (1988), the Court of Appeals held that "a preliminary injunction under the Martin Act, as under CPLR article 63, should be granted only upon a showing of a likelihood of success on the merits, irreparable injury if the relief is not granted, and a balancing of the equities." *Id*. at 968-69. Although *Fine* did not arise in the context of a section 354 investigatory request, it stands for the proposition that OAG's broad authority to enforce the Martin Act does not warrant abandonment of traditional analytical tools for assessing whether preliminary injunctive relief is appropriate.

Petitioner's contention that the words "proper and expedient" in section 354 suggest that the Court should apply a more lenient standard for granting a preliminary injunction in this case is not persuasive. Petitioner offers no meaningful guidance for what "proper and expedient" means in this context (other than to suggest that she should not be required to show a likelihood of success on the merits) or how it would be applied. The fact that the statute references the availability of preliminary injunctive

relief does not warrant deviating from the long-standing analytical framework employed for granting such relief. The bottom line is that OAG's proposed relief "prevent[s] the [Respondents] from taking actions that they are otherwise legally entitled to take in advance of an adjudication on the merits," and therefore "should be issued cautiously and in accordance with appropriate procedural safeguards." *Uniformed Firefighters,* 79 N.Y.2d at 241 (1992).[5]

In the end, the words used to describe the standard are less important than the overarching principle that the decision whether to grant a preliminary injunction is within the discretion of the trial court. Thus, even if it is assumed that "proper and expedient" is in some sense intended to be a "standard," the Court nevertheless would apply the traditional prudential factors in determining whether a proposed preliminary injunction is appropriate.

ii. **OAG Is Entitled to Preliminary Injunctive Relief**

Applying the foregoing standards, the Court finds that Petitioner has made a sufficient showing to warrant a targeted preliminary injunction preventing Respondents from continuing to let dollars flow out of Tether's reserves via the type of extraordinary transaction that triggered Petitioner's concern.

Likelihood of success on the merits: Although not yet tested in a full adversary proceeding, the petition and supporting materials provide a sufficient showing that

[5] Petitioner cites two cases for the proposition that "proper and expedient," rather than CPLR Article 63, is the appropriate standard for assessing a request for a preliminary injunction under section 354. *See Schneiderman v. Eichner*, 2016 WL 3212049 (Sup. Ct. N.Y. Cty.) (April 7, 2016); *Schneiderman v. 15 Broad Street*, 2014 WL 1682835 (Sup. Ct. N.Y. Cty.) (April 29, 2014). Those decisions do not, however, preclude application of the traditional three-part test for granting preliminary injunctions. To the extent they can be read otherwise, the Court respectfully disagrees with them.

Respondents' proposed transaction may undermine representations regarding tether upon which investors and traders rely to warrant maintaining the status quo while Petitioner's investigation continues. *See Four Times Square Assocs., L.L.C. v. Cigna Investments, Inc.*, 306 A.D.2d 4, 5 (1st Dep't 2003) ("It is well settled that a likelihood of success on the merits may be sufficiently established even where the facts are in dispute and the evidence is inconclusive."); *State v. Kozak*, 91 Misc. 2d 394, 395 (Sup. Ct. N.Y. Cty. 1977) ("It is not a requirement for the issuance of a preliminary injunction that the plaintiff establish with absolute certainty that it will succeed in the litigation.") (granting preliminary injunction under Martin Act).[6]

Irreparable injury: Petitioner's contention is that if Tether continues to export dollars to Bitfinex in transactions outside the ordinary course of business, it will likely lead to an irreversible dissipation of Respondents' assets, inflicting irreparable harm to users of tether and Bitfinex alike and undermining public perception of tether as a stablecoin. In Petitioner's view, Bitfinex's ability to draw on Tether's reserves – without "adequate security or ability to repay" – not only constitutes potential fraud, but raises "serious questions . . . about the ongoing financial position of the companies." (Pet'r's Mem. of Law). If that is the case, OAG argues, there is "a significant possibility" that the remaining reserves will be "unrecoverable," which would pose "serious risks" to Bitfinex traders and tether holders. (*Id.*) That is not to say that Petitioner will be able to make

[6] The Court agrees with Petitioner's position that she is not required to establish her case at this stage with the same rigor that might be expected when and if the investigation is completed and an enforcement action is brought. At the same time, the Court must be wary of restraining commercial activity based on assertions made during an admittedly incomplete investigation. It is, as with most exercises of discretion, a delicate balancing of competing interests.

such a showing after her investigation, only that she has shown sufficient risk of irreparable harm to warrant maintaining the status quo pending further investigation. *See State v. First Inv'rs Corp.*, 156 Misc. 2d 209, 220 (Sup. Ct. N.Y. Cty. 1992) (imposing "asset freeze injunction" under Martin Act in order to "restrain defendants from dissipating their property"); *see generally Barbes Rest. Inc. v. ASRR Suzer 218, LLC*, 140 A.D.3d 430, 432 (1st Dep't 2016) ("A preliminary injunction would maintain the status quo . . . and prevent the dissipation of property that could render a judgment ineffectual.").

Balance of equities: As described below, the Court believes a revised preliminary injunction can strike a proper balance between protecting the public from potential violations of the Martin Act and protecting Respondents against undue restrictions on their legitimate business activities.

iii. **The Preliminary Injunction Should Be Modified**

As noted above, the Court finds that the preliminary injunction should be tailored to address OAG's legitimate law enforcement concerns while not unnecessarily interfering with Respondents' legitimate business activities. With that goal in mind, the existing preliminary injunction drafted by the OAG is troubling in several respects.

First, it is vague. "[A] decree granting injunctive relief, whether temporary or permanent, 'must define specifically what the enjoined person must or must not do, in language so clear and explicit that a layman can understand what he is expected to do, or refrain from doing, without placing the one enjoined in the position of acting at his peril. Stated otherwise, an injunction should plainly indicate to the defendant specifically all the acts which he is thereby restrained from doing without calling upon him for

inferences, or any conclusions only to be arrived at by a more or less uncertain process of reasoning, and about which the parties might well differ in opinion either as to facts or law.'" *Xerox Corp. v. Neises*, 31 A.D.2d 195, 197-98 (1st Dep't 1968) (citations omitted); *see May's Furs & Ready to Wear v. Bauer*, 282 N.Y. 331, 342–43 (1940) (injunction was improperly "couched in exceedingly sweeping terms," thus "offend[ing] against the well-settled principle of equity, that an injunction must clearly inform a defendant of the acts he is forbidden to commit"); *see also Ronnie Van Zant, Inc. v. Cleopatra Records, Inc*, 906 F.3d 253, 258 (2d Cir. 2018) ("Injunctions must be specific and definite enough to apprise those within its scope of the conduct that is being proscribed.") (internal citations omitted).

The preliminary injunction here does not meet that test. It proscribes generally violating the law, committing fraud, and the like, which does not provide sufficiently clear notice – particularly at this stage of the investigation – as to what Respondents are "expected to do, or refrain from doing" beyond the line-of-credit transaction that has been the focus of OAG's attention in connection with the proposed injunction. *Xerox*, 31 A.D.2d at 198; *see L.V.M. v. Lloyd*, 318 F. Supp. 3d 601, 620 (S.D.N.Y. 2018) ("requir[ing] that an injunction be more specific than a simple command that the defendant obey the law"). Moreover, even the description of the proscribed transactions is unclear, and there is a significant risk that the existing preliminary injunction will chill legitimate commercial activity.[7]

[7] While general "cease and desist" language may be appropriate during or after a Martin Act *litigation*, when the proscriptions may be clearer in context, the investigation here has not crystallized to a point where Respondents can reasonably know what they are prohibited from doing.

Second, it is overbroad. Petitioner contends that she does not intend to restrict Respondents' ordinary course of business activities, but the existing language creates a risk of doing just that. Her petition is based on specific conduct that she contends will render Respondent's public statements regarding Tether's holdings of dollars to be false or misleading. Although Petitioner should not be limited to describing one particular *form* of transaction, which might be easily evaded in substance, there must be a closer connection between the alleged harm and the restraint. *See Cent. Park Sightseeing LLC v. New Yorkers for Clean, Livable & Safe Streets, Inc.*, 157 A.D.3d 28, 36 (1st Dep't 2017) (modifying "overbroad" preliminary injunction in First Amendment context by narrowing its application).

Finally, it is not "preliminary." Rather than being a temporary stopgap en route to a final decision on the merits, here there is no way to predict how long the investigation (and therefore the injunction) will last or even whether it will *ever* be formally terminated. It would not be equitable to saddle Respondents with an injunction of indefinite duration. *See OraSure Techs., Inc. v. Prestige Brands Holdings, Inc.*, 42 A.D.3d 348, 349 (1st Dep't 2007) (denying preliminary injunctive relief where "balancing of the equities" weighed in defendant's favor "because a preliminary injunction would be potentially taking the [defendant's] product off the shelves for an indefinite amount of time") (internal quotation marks omitted).

Typically, a preliminary injunction "ensure[s] the preservation of the status quo pending a final resolution of th[e] action," such as trial. *Delta Enter. Corp. v. Cohen*, 93 A.D.3d 411, 412 (1st Dep't 2012). Otherwise, "[i]t is familiar law that preliminary injunctions which in effect determine the litigation and give the same relief which is

expected to be obtained by the final judgment" are disfavored by courts and thus rarely granted. *Xerox*, 31 A.D.2d at 197 (internal citations omitted); *see 7th Sense, Inc. v. Liu*, 235 A.D.2d 236, 237 (1st Dep't 1997) (affirming lower court's narrowing of preliminary injunction because "the breadth and duration of the original preliminary injunction would improperly have had the effect of a permanent injunction").

Here, the existing preliminary injunction has no natural end point such as the conclusion of a trial on the merits. Indeed, the Court of Appeals has held that an "injunctive order issued pursuant to section 354 of the General Business Law" does not automatically "expire[ ] *eo instanti* with the commencement of a section 353 plenary action." *Attorney-Gen. of State of N.Y. v. Katz*, 55 N.Y.2d 1015, 1017 (1982). Based on the specific facts and circumstances of this case, the Court believes it is appropriate to set reasonable temporal boundaries that can be adjusted as the investigation proceeds.

In sum, the Court concludes that a proper and expedient preliminary injunction in this case should be closely tied to the risk of harm upon which Petitioner relied in seeking preliminary injunctive relief; should not restrain Respondents' ordinary business activities any more than necessary; and should expire within a reasonable period subject to being extended upon application to the Court for good cause shown.[8]

Accordingly, it is hereby:

[8] Petitioner's suggestion (*See* NYSCEF Dkt. Nos. 74-75) that the burden should be on Respondents to terminate the injunction, rather than upon Petitioner to extend it, is inconsistent with the fundamental principle that the party seeking an injunction bears the burden of demonstrating the need for such relief. *See, e.g.*, *Jayaraj v. Scappini*, 66 F.3d 36, 40 (2d Cir. 1995) (vacating preliminary injunction where lower court impermissibly "shifted the burden of proof to the non-moving party").

ORDERED that Respondents' motion to vacate, modify or stay the April 24 Order is **granted** to the extent that the preliminary injunction set forth in the Order is modified, and is otherwise **denied**; it is further

ORDERED that the preliminary injunction in the April 24 Order is modified to provide that: Respondents, their directors, officers, principals, agents, employees, contractors, assignees and all other persons acting on their behalf are preliminarily enjoined from the following activity:

i. Any action by Tether to loan, extend credit, or transfer assets, or engage in any similar transactions outside the ordinary course of Tether's business that would result in Bitfinex or other affiliated parties having claims on the U.S. dollar reserves being held by Tether, including but not limited to the line-of-credit transaction that was the principal focus of the Petition;

ii. Making any distribution or dividend to any principal, executive, employee, agent, equity holder, or associate of Bitfinex and Tether from funds that have been loaned, extended, pledged or otherwise taken from the U.S. dollar reserves held by Tether. For the avoidance of doubt, the foregoing shall not preclude payments in the ordinary course of business, including payroll or payments to vendors, consultants, or contractors; and

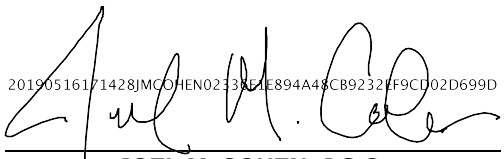
iii. Directly or indirectly tampering with, mutilating, altering, erasing, removing, destroying or otherwise altering or disposing of any and all books, records, documents, files, correspondence, assets, accounts, personnel files, cassette tapes or other recordings of any type, computers, computer or other disks and hard drives, other types of tapes and document recordings, computer records or videotapes of any type,

however created, evidences of electronic transmissions or documents, produced or stored, or other tangible items, wherever located, including but not limited to places of business and home addresses, residences and places of storage, relating to any relevant or potentially relevant documents, communications, or information called for by the subpoenas dated November 27, 2018, the letter of February 26, 2018, or this Order, including but not limited to personal communications of Bitfinex and Tether principals, employees, agents, contractors, investors, or associates on encrypted devices or from "ephemeral" or other self-deleting applications; it is further

ORDERED that the preliminary injunctive relief granted herein shall expire ninety (90) days from the date of this Order, subject to Petitioner's right to petition this Court to extend the time; and it is further

ORDERED that fourteen (14) days prior to the expiration of the injunctive relief set forth above, Petitioner may submit a letter to the Court setting forth the basis upon which any or all of the injunctive provisions should be extended. Respondents may submit a letter in response within seven (7) days, after which the Court will determine whether it is necessary to hold a hearing.

This is the Decision and Order of the Court.



5/16/2019
DATE

JOEL M. COHEN, J.S.C.

CHECK ONE:		**CASE DISPOSED**			**X**	**NON-FINAL DISPOSITION**	
		GRANTED		**DENIED**	**X**	**GRANTED IN PART**	**OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**	
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**	**REFERENCE**