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SOAH DOCKET NO.

TEXAS STATE SECURITIES BOARD,
Petitioner

§ BEFORE THE STATE OFFICE

§

§

§

v.

§

OF

§

ALEXANDER MASHINSKY
Respondent

§

ADMINISTRATIVE HEARINGS

ALEXANDER MASHINSKY

Service by (1) certified mail, return receipt requested, addressed to 140 E. 63rd Street, Penthouse 4, New York, New York 10065; (2) 221 River Street, 9th Floor, Hoboken, New Jersey 07030; and (3) certified mail, return receipt requested, addressed to The Harley Building, 77-79 New Cavendish Street, London W1W 6XB, United Kingdom.

NOTICE OF HEARING

This is your OFFICIAL NOTICE that a hearing will commence at ____ **AM** on _____, __ **2022**, before an Administrative Law Judge. The hearing is being held via videoconference for the purpose of determining whether to issue a proposal for decision for the entry of a CEASE AND DESIST ORDER, an order ASSESSING AN ADMINISTRATIVE FINE, and an order for PAYING REFUNDS against Alexander Mashinsky (the "Respondent"). As described herein, should this matter proceed to a hearing and the Honorable Administrative Law Judge assess an administrative fine and order payment of refunds to investors, the Enforcement Division agrees to defer any award of an administrative fine until or unless investors receive a full refund of principal.

This hearing will be held pursuant to the Securities Act, Tex. Gov't Code §§ 4001.001-4008.105 (the "Securities Act"), the Rules and Regulations of the State Securities Board, 7 Tex. Admin. Code §§101.1-139.27 (2019) (Tex. State Sec. Bd.) (the "Board Rules"), the Administrative Procedure Act, Tex. Gov't Code Ann. §§2001.001-2001.902 (the "Administrative Procedure Act"), and the Rules of Practice and Procedure of the State Office of Administrative Hearings, 1 Tex. Admin. Code Chapter 155 (2019) (State Ofc. of Admin. Hearings) (the "SOAH Rules").

RESPONDENT AND CELSIUS NETWORK, INC., ET AL.

1. Respondent is the Chief Executive Officer of Celsius Network, Inc. This company owns several subsidiaries including the majority of equity issued by Celsius Network Limited.
2. Respondent is the Chief Executive Officer of Celsius Network Limited. This company is incorporated in England and Wales and owns various subsidiaries, including Celsius US Holding, LLC.
3. Respondent is the Chief Executive Officer of Celsius US Holding, LLC. This company owns subsidiaries operating in the United States, including Celsius Network, LLC and Celsius Lending, LLC.
4. Respondent is the Chief Executive Officer of Celsius Network, LLC. This company provides services for customers in the United States.
5. Respondent is the Chief Executive Officer of Celsius Lending, LLC. This company provides consumer loans secured by cryptocurrency deposits to customers in the United States.

THE EARN ACCOUNTS

6. Celsius Network, Inc., Celsius Network Limited, Celsius US Holding, LLC, Celsius Network, LLC, and Celsius Lending, LLC (collectively "Celsius Network"), while controlled by Respondent, purported to generate revenue through cryptocurrency trading, lending, and borrowing, as well as engaging in proprietary trading, mining, and other types of transactions.
7. Celsius Network has, in part, illegally funded the lending operations, proprietary trading, and other business through the sale of unregistered securities in the form of cryptocurrency interest-earning accounts.
8. Celsius Network refers to the unregistered cryptocurrency interest-earning accounts as Celsius Network's "Earn Rewards" program ("Earn Accounts").
9. They permitted Texans and other investors at least eighteen years old to apply to invest in Earn Accounts through Celsius Network's website or smartphone application. As many as 17,000 Texans may have invested in the Earn Accounts.
10. Investors opened accounts by transferring eligible cryptocurrency to the Celsius Network to invest in Earn Accounts. Investors relinquished control over their cryptocurrency and the Celsius Network took full legal and beneficial ownership of the investors' cryptocurrency.

11. Celsius Network thereafter commingled cryptocurrencies with cryptocurrencies deposited by other investors, invested in traditional financial assets and cryptocurrency assets, loaned those cryptocurrencies to institutional and corporate borrowers, and engaged in other activities at the Celsius Network's discretion.
12. In exchange for consideration received in the present, Celsius Network was promising to pay lucrative interest rates in the future. The Celsius Network was promoting the interest rates through its website, which advertised an annual return of up to 17.78 percent on certain cryptocurrencies for retail investors - well in excess of rates offered for short-term, investment grade, fixed income securities or for bank savings accounts.
13. Celsius Network set the interest rates in advance and adjusted the interest rates on a periodic basis. It claimed it set its interest rates based on various considerations and prioritized its need for particular types of cryptocurrencies.
14. Celsius Network incentivized smaller investors to invest in the Earn Accounts by paying higher rates of interest on smaller investments of principal for certain cryptocurrencies. As an example, the Celsius Network purported to pay higher rates of interest on investments up to 1 Bitcoin and up to 100 Ethereum and lower rates of interest on investments of more than 1 Bitcoin and more than 100 Ethereum.
15. The accrual of interest began "as soon as any funds are credited to [an investor's] Celsius account."
16. In Texas and the United States, interest payments were denominated in the same type of cryptocurrency originally invested. In other jurisdictions, subject to certain conditions, Celsius Network may have paid interest in its native digital token, CEL.
17. Retail investors were told they could withdraw their cryptocurrencies at any time, subject to certain processing times.

CELSIUS' API PARTNER PROGRAM

18. Celsius Network offered an Application Programming Interface ("API") that allowed certain institutional users, known as Celsius "API Partners" ("Celsius API Partners"), to interface with the Celsius Network's platform. Celsius API Partners were then able to offer and sell the unregistered Earn Accounts.
19. Celsius Network provided two different types of accounts whereby Celsius API Partners' clients could access Earn Accounts: segmented accounts ("Segmented API Accounts") and omnibus accounts ("Omnibus API Accounts").
20. Investors who invested in Earn Accounts through a Celsius API Partner's Segmented API Account or Omnibus API Account were subject to the same rights,

benefits, terms, and conditions as investors who invested in Earn Accounts directly from the Celsius Network.

21. Segmented API Accounts allowed Celsius API Partners to offer Earn Accounts through their own platforms. For Segmented API Accounts:
 - A. Investors created accounts through the Celsius API Partner's platform;
 - B. Celsius Network purportedly performed the onboarding and customer due diligence for investors from Celsius API Partners;
 - C. Investors accepted the Celsius Network's terms and conditions; and
 - D. Celsius API Partners received a fee based on the percentage of interest payable by the Celsius Network to the investor.

22. Omnibus API Accounts allowed Celsius API Partners to offer and sell Earn Accounts to their investors on an aggregated basis. For Omnibus API Accounts:
 - A. Celsius API Partners maintained one account with the Celsius Network where it transferred the aggregated funds of its investors;
 - B. Celsius Network did not perform customer due diligence on the Celsius API Partner's investors, had no relationship with the investors, and did not know their identities;
 - C. Celsius Network's only contractual relationship was with the Celsius API Partner; and
 - D. Celsius Network paid Celsius API Partners a fee that was exclusive of the interest paid on investments in the Earn Accounts.

LACK OF PUBLIC PROTECTIONS

23. Celsius Network was not licensed as a Money Service Business in Texas and was not able to lawfully conduct currency exchange or money transmission activities defined by Chapter 151 of the Texas Finance Code.

24. The Earn Accounts were not expressly protected by the Securities Investor Protection Corporation, otherwise known as the SIPC, a federally mandated, non-profit, member-funded United States corporation created under the Securities Investor Protection Act of 1970 that mandates membership of most US-registered broker-dealers.

25. The Earn Accounts were also not insured by the Federal Deposit Insurance Corporation, otherwise known as the FDIC, an agency that provides deposit

insurance to depositors in the United States, or the National Credit Union Administration, otherwise known as the NCUA, an agency that regulates and insures credit unions.

THE NOTIFICATION AND REQUEST FOR COMPLIANCE

26. On or about May 14, 2021, the Enforcement Division of the State Securities Board (the "Enforcement Division") notified Celsius Network that Celsius Network may have offered securities in Texas that may not comply with the Securities Act.
27. The Enforcement Division also explained the regulation of the securities market in Texas, including the laws that require the registration of securities, the registration of dealers and agents, and the truthful disclosure of all known material facts.
28. Celsius Network nevertheless continued to offer Earn Accounts to Texans.

EARN ACCOUNT FREEZES AND CHAPTER 11 BANKRUPTCIES

29. On June 11, 2022, a member of the public referred to herein as "Mike" posted a message on social media that claimed he was "hearing about [EARN] accounts being locked" and that he "hope[d] retail can get out."
30. On the same day, Respondent posted a public response on social media that read as follows:

Mike do you know even one person who has a problem withdrawing from Celsius?. [sic]

why spread FUD and misinformation. [sic]

If you are paid for this then let everyone know you are picking sides otherwise our job is to fight Tradfi together...

31. Although Respondent's public response suggested Celsius Network was not freezing Earn Accounts, the very next day, on June 12, 2022, Celsius Network froze Earn Accounts. Respondent and Celsius Network collectively announced the freeze through the website for Celsius Network, a blog, and social media.
32. On July 13, 2022, Celsius US Holding, LLC, Celsius Networks Lending, LLC, Celsius Network, LLC, Celsius Network, Inc., Celsius Mining, LLC, Celsius Lending, LLC, and Celsius KeyFi, LLC (collectively the "Debtors"), filed for Chapter 11 bankruptcy in the United States Bankruptcy Court for the Southern District of New York. The Debtors moved for joint administration of the cases under the Chapter 11 case for Celsius Network, LLC, Case No. 22-10964.

33. The Debtors represented the case proceeding involves more than 100,000 creditors on a consolidated basis and they estimated assets on a consolidated basis of between \$1 billion and \$10 billion and estimated liabilities on a consolidated basis of between \$1 billion and \$10 billion.

VIOLATIONS OF THE SECURITIES ACT

34. The Earn Accounts are investment contracts, evidences of indebtedness, and notes and are therefore regulated as securities as that term is defined by Section 4001.068 of the Securities Act.
35. Respondent violated Section 4003.001 of the Securities Act by offering and selling securities in Texas that were not registered or permitted for sale in Texas.
36. Respondent violated Section 4004.051 of the Securities Act by offering and selling securities in Texas without first being registered as a dealer or agent.
37. In connection with the offer of Earn Accounts in Texas, Respondent intentionally failed to disclose material facts, including but not limited to the amount of money or cryptocurrency devoted to permissive uses, the identity, nature, and creditworthiness of borrowers, the type and nature of transactions involving digital assets, equities, options, and futures, the risks associated with individual digital assets, equities, options, and futures, the profits and/or losses derived from transactions, and financial information reflecting the assets and liabilities and cashflow.

REMEDIES

38. The Enforcement Division is praying for a proposal for decision for the entry of an order that Respondent immediately cease and desist violating Sections 4003.001 and 4004.051 of the Securities Act, and Respondent immediately cease and desist from engaging in fraud in connection with the offer or sale of securities in Texas.
39. The Enforcement Division is also praying the Honorable Administrative Law Judge issue a proposal for decision that orders Respondent to pay a refund of principal to Texans who invested in unregistered Earn Accounts as set forth in Section 4007.108 of the Securities Act.
40. The Enforcement Division is further praying for a proposal for decision for the entry of an order that assesses an administrative fine against Respondent pursuant to Section 4007.106. This prayer is for an administrative fine that does not exceed the greater of \$20,000 per violation or the gross amount of any economic benefit Respondent gained as a result of violating Sections 4003.001 and 4004.051 of the Securities Act or as a result of engaging in fraud in connection with the offer or sale of securities in Texas. In any event, this prayer includes an additional amount

of not more than \$250,000 for all illegal and fraudulent acts and practices committed on Texans 65 years of age or older.

41. The Enforcement Division prioritizes the payment of refunds to investors over the assessment of an administrative fine. It will therefore pray the Honorable Administrative Law Judge prioritize the payment of refunds to investors and subordinate any assessment of an administrative fine until or unless Texans receive a return of principal deposited in Earn Accounts.

THE HEARING

42. The hearing will be held before the State Office of Administrative Hearings. It will commence at ____:____ AM on _____, 2022.
43. The State Office of Administrative Hearings may conduct the hearing via Zoom. Zoom is a video conferencing platform for meetings held through the internet. The State Office of Administrative Hearings will provide instructions for accessing the hearing via Zoom.
44. At the hearing, the Enforcement Division will present testimony and other admissible evidence in support of its prayer for a proposal for decision for the entry of a cease and desist order, order assessing an administrative fine, and order for the payment of refunds against Respondent. Respondent will be afforded the right to present such testimony and other evidence related thereto.

LEGAL NOTIFICATIONS

45. Legal authority and jurisdiction for this matter exist under Section 4007.102 of the Securities Act, Section 2003.021(b) of the Texas Government Code and Rule 155.51 of the SOAH Rules.
46. **IF YOU DO NOT FILE A WRITTEN ANSWER OR OTHER WRITTEN RESPONSIVE PLEADING TO THIS NOTICE OF HEARING ON OR BEFORE THE 20TH DAY AFTER THE DATE ON WHICH THIS NOTICE WAS MAILED TO YOU OR PERSONALLY SERVED ON YOU, THE FACTUAL ALLEGATIONS IN THIS NOTICE COULD BE DEEMED ADMITTED, AND THE SECURITIES COMMISSIONER MAY DISPOSE OF THIS CASE WITHOUT A HEARING AND MAY GRANT THE RELIEF SOUGHT IN THIS NOTICE. THE RESPONSE MUST BE FILED IN AUSTIN, TEXAS, WITH THE SECURITIES COMMISSIONER AND THE STATE OFFICE OF ADMINISTRATIVE HEARINGS, AND ALSO SERVED ON THE STAFF OF THE STATE SECURITIES BOARD. IF YOU FAIL TO ATTEND THE HEARING, EVEN IF A WRITTEN ANSWER OR OTHER RESPONSIVE PLEADING HAS BEEN FILED AND SERVED, THE FACTUAL ALLEGATIONS IN THIS NOTICE COULD BE DEEMED ADMITTED, AND THE SECURITIES COMMISSIONER MAY DISPOSE OF THIS CASE WITHOUT A HEARING AND MAY GRANT THE RELIEF SOUGHT IN THIS NOTICE.**

47. **PARTIES THAT ARE NOT REPRESENTED BY AN ATTORNEY MAY OBTAIN INFORMATION REGARDING CONTESTED CASE HEARINGS ON THE PUBLIC WEBSITE OF THE STATE OFFICE OF ADMINISTRATIVE HEARINGS AT WWW.SOAH.TEXAS.GOV, OR IN PRINTED FORMAT UPON REQUEST TO THE STATE OF ADMINISTRATIVE HEARINGS.**
48. Respondent may access the Securities Act and the Board Rules through the website of the State Securities Board at www.ssb.texas.gov. Respondent may also access the SOAH Rules through the website of the State Office of Administrative Hearings at www.soah.texas.gov and the Administrative Procedure Act through Texas Legislature Online at statutes.capitol.texas.gov.
49. The Securities Act authorizes the Texas State Securities Board to pursue administrative, civil, or criminal enforcement cases. The Securities Act and Board Rules also authorize the Texas State Securities Board to share information with and refer cases to other governmental agencies with administrative, civil, or criminal jurisdiction. These other governmental agencies include, without limitation, state and federal regulatory agencies, law enforcement agencies and prosecutors' offices. Therefore, any information provided, filed, or otherwise supplied by Respondent may be shared with these other government agencies and/or used in other cases. Whether the Texas State Securities Board makes its files available to other governmental agencies or refers cases to other government agencies is typically confidential pursuant to Section 28 of the Texas Securities Act.
50. Pursuant to Board Rule 105.13, and to the extent consistent with the bankruptcy proceedings, the Enforcement Division is now respectfully requesting and will continue to respectfully request the State Office of Administrative Hearings order all costs charged to the Texas Securities Board by any court reporting service be assessed against Respondent.
51. Persons with disabilities who need special accommodations at the hearing, whether held at the State Office of Administrative Hearings or through an audio or video conferencing platform, should contact the Docketing Department of the State Office of Administrative Hearings at 512-475-4993 at least one week prior to the hearing.

CONTACT AND FILING INFORMATION

52. The Enforcement Division is represented by Joe Rotunda, Director, Enforcement Division, and Rachel Anderson Rynders, Attorney, Enforcement Division. Mr. Rotunda's State Bar Card Number is 24029808, his work address is 208 E. 10th Street, 5th Floor, Austin, Texas 78701, his telephone number is 512-305-8392, and his email address is jrotunda@ssb.texas.gov. Ms. Anderson Rynders' State Bar Card Number is 24103132, her work address 208 E. 10th Street, 5th Floor,

Austin, Texas 78701, her telephone number is 512-305-8392, her facsimile number is 512-355-0404, and her email address is rrynders@ssb.texas.gov.

53. The Docketing Office of the State Office of Administrative Hearings is located at 300 W. 15th Street, Austin, Texas 78701, and it may be contacted by telephone at 512-745-3445 and by facsimile at 512-475-4994.
54. The State Office of Administrative Hearings may conduct the hearing via audio or video conferencing. The audio and video conferencing platforms are secure, free meetings held telephonically or through the internet. The State Office of Administrative Hearings will provide instructions for all hearings held telephonically or through a video conferencing platform.
55. Persons with disabilities who need special accommodations at the hearing, whether held at the State Office of Administrative Hearings or through an audio or video conferencing platform, should contact the Docketing Department of the State Office of Administrative Hearings at 512-475-4993 at least one week prior to the hearing.
56. Pursuant to Board Rule 105.8, all documents filed by any party, other than business records and transcripts, must be contemporaneously served upon Marlene Sparkman, General Counsel and Securities Commissioner's Representative. Ms. Sparkman's address is 208 E. 10th Street, 5th Floor, Austin, Texas 78701, her telephone number is 512-305-8300, her facsimile number is 512-305-8336, and her email address is msparkman@ssb.texas.gov.

Signed on this, the 4th day of August 2022

By: /s/ Joe Rotunda
Joe Rotunda
State Bar No. 24029808
Director, Enforcement Division
Texas State Securities Board
208 E. 10th Street, 5th Floor
Austin, Texas 78701
T: 512-305-8392
F: 512-355-0404
E: jrotunda@ssb.texas.gov

CERTIFICATE OF SERVICE

I hereby certify that on this, the ___th day of August 2022, true and correct copies of this Notice of Hearing are being served on the following parties through the means set forth below:

MARLENE SPARKMAN

General Counsel for the State Securities Board and the Securities Commissioner's Representative, is being served by electronic mail addressed to msparkman@ssb.texas.gov.

ALEXANDER MASHINSKY

Service by (1) certified mail, return receipt requested, addressed to 140 E. 63rd Street, Penthouse 4, New York, New York 10065; (2) 221 River Street, 9th Floor, Hoboken, New Jersey 07030; and (3) certified mail, return receipt requested, addressed to The Harley Building, 77-79 New Cavendish Street, London W1W 6XB, United Kingdom.

By: _____
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