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Texas State Securities Board

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MEMBER

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SOAH DOCKET NO. 312-23-06226

TEXAS STATE SECURITIES BOARD,
Petitioner

§ BEFORE THE STATE OFFICE

v.

§

§

§

§ OF

SAM BANKMAN-FRIED
Respondent

§

§

§ ADMINISTRATIVE HEARINGS

SAM BANKMAN-FRIED

Service by (1) certified mail, return receipt requested, addressed to Mr. Bankman-Fried at 167 N. Green Street, Suite 1102, Chicago, Illinois 60607, (2) by registered mail addressed to Mr. Bankman-Fried at Albany Condominiums, Ltd., 303 Shirley Street, P.O. Box N-492, Nassau, The Bahamas, (3) by certified mail, return receipt requested, addressed to Mr. David Mills, counsel to Mr. Bankman-Fried, at 1205 Pacific Avenue, Suite 203, Santa Cruz, CA 95060, and (4) by electronic mail to Mr. Mills at dmills@dmills.com.

NOTICE OF HEARING

This is your OFFICIAL NOTICE that a hearing will commence at **9:00 AM on FEBRUARY 2ND, 2023**, 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 Sam Bankman-Fried (the "Respondent"). As described herein, should this matter proceed to a hearing and the Honorable Administrative Law Judge issue a proposal for decision in favor of the relief set forth herein, 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”).

FTX AND FINANCIAL SERVICES OFFERED TO TEXANS

1. Respondent is a founder and, at all times material hereto, has controlled, either directly or indirectly, various companies and businesses involved in the financial services and digital assets markets. These entities include West Realm Shires Services Inc. dba FTX US, FTX Capital Markets, LLC, and FTX US Derivatives LLC fka LedgerX (collectively “FTX”).
2. FTX US was purportedly regulated as a Money Services Business with FinCEN and as a money transmitter with various states and touted these licenses when offering Texans the opportunity to deposit fiat or cryptocurrencies in accounts that generated yield (the “EARN accounts”).
3. FTX Capital Markets, LLC, is registered as a dealer with the Texas State Securities Board. Texans were able to buy and sell publicly traded stock through the firm.
4. FTX US Derivatives LLC is a cryptocurrency exchange purportedly regulated as a derivatives clearing organization, designated contract market and swap execution facility by the Commodity Futures Trading Commission. Texans were able to buy and sell various cryptocurrencies, such as Ethereum (ETH) and Bitcoin (BTC), through the firm.
5. On November 11, 2022, FTX US and more than 130 other entities tied to Respondent filed for Chapter 11 bankruptcy in the United States Bankruptcy Court for the District of Delaware, Case 22-11071-JTD.
6. Respondent resigned from various roles and no longer is an officer and manager of the debtors.

THE EARN ACCOUNTS

7. In April 2022, the Enforcement Division filed a Notice of Hearing at SOAH relating to Voyager Digital, LTD, Voyager Digital Holdings, Inc., and Voyager Digital, LLC (“Voyager”). The Notice of Hearing alleged Voyager offered Texans the opportunity to invest in depository account that paid lucrative interest and that these investments were regulated as securities in Texas. The Notice of Hearing also alleged Voyager violated the Securities Act by offering the depository accounts in Texas without first obtaining a registration or permit for the securities, by offering the depository accounts in Texas without first being registered as a dealer or agent and by offering the depository accounts in Texas through offers containing statements that were materially misleading or otherwise likely to deceive the public. This hearing is pending.

8. In July 2022, Voyager filed for Chapter 11 bankruptcy in the United States Bankruptcy Court for the Southern District of New York, Case No. 22-10943.
9. In September 2022, FTX US won an auction to purchase assets subject to the Voyager bankruptcy for approximately \$51 million and a potential additional \$60 million payment in earnouts and incentives.
10. On October 14, 2022, the Texas State Securities Board, through its counsel, the Texas Attorney General's Office, objected to Voyager's motion for entry of an order authorizing FTX US's purchase of assets subject to the Voyager bankruptcy (the "Objection").
11. In support of the objection, the Texas State Securities Board filed a Declaration of Joseph Jason Rotunda, Director of Enforcement of the Texas State Securities Board (the "Declaration").
12. The Declaration described the EARN accounts and indicated the Enforcement Division of the Texas State Securities Board was investigating FTX for violations of the Securities Act in connection with its offer and sale of EARN accounts.
13. As the Objection and Declaration set forth the terms of the EARN accounts, the Objection and Declaration are attached hereto and incorporated herein as if fully set forth herein.

VIOLATIONS OF THE SECURITIES ACT

14. 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.
15. 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.
16. 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.
17. 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.

18. After filing the Objection and Declaration, the Enforcement Division communicated with FTX US and FTX US provided various representations relating to the EARN accounts.
19. The information provided by FTX US does not impact the conclusion that the EARN accounts are regulated as securities in Texas. FTX US, moreover, has not yet provided requested information that would verify the accuracy of the information provided to the Enforcement Division.

REMEDIES

20. 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.
21. 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.
22. 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 each illegal and fraudulent act or practice committed against Texans 65 years of age or older.
23. 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

24. The hearing will be held before the State Office of Administrative Hearings. It will commence at **9:00 AM on FEBRUARY 2ND, 2023**.
25. 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.

26. 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

27. 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.
28. **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.**
29. **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.**
30. 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.
31. 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.

32. 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.
33. 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

34. The Enforcement Division is represented by Tina Lawrence, Assistant Director, Enforcement Division, and Rachel Anderson Rynders, Attorney, Enforcement Division. Ms. Lawrence's State Bar Card Number is 24043774, her work address is 208 E. 10th Street, 5th Floor, Austin, Texas 78701, her telephone number is 512-305-8392, and her email address is tlawrence@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.
35. 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.
36. 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.
37. 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.

38. 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 22nd day of November 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 29th day of November 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.

SAM BANKMAN-FRIED

Service by (1) certified mail, return receipt requested, addressed to Mr. Bankman-Fried at 167 N. Green Street, Suite 1102, Chicago, Illinois 60607, (2) by registered mail addressed to Mr. Bankman-Fried at Albany Condominiums, Ltd., 303 Shirley Street, P.O. Box N-492, Nassau, The Bahamas, (3) by certified mail, return receipt requested, addressed to Mr. David Mills, counsel to Mr. Bankman-Fried, at 1205 Pacific Avenue, Suite 203, Santa Cruz, CA 95060, and (4) by electronic mail to Mr. Mills at dmills@dmills.com.

By: /s/ Joe Rotunda

Joe Rotunda
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