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Texas State Securities Board

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MEMBER

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SOAH DOCKET NO. _____

TEXAS STATE SECURITIES BOARD,
Petitioner

§ BEFORE THE STATE OFFICE

v.

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OF

PLUTUS FINANCIAL, INC., DBA ABRA;
PLUTUS LENDING, LLC; ABRA BOOST,
LLC; AND WILLIAM JOHN "BILL"
BARHYDT,
Respondents

ADMINISTRATIVE HEARINGS

NOTICE OF HEARING

This is your OFFICIAL NOTICE that a hearing will commence at __:__ AM on **June __, 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 TO REFUND ASSETS TO CLIENTS and an ORDER ASSESSING AN ADMINISTRATIVE FINE against Plutus Financial, Inc., dba Abra ("Respondent Plutus Financial"), Plutus Lending, LLC dba Abra ("Respondent Plutus Lending"), Abra Boost, LLC ("Respondent Abra Boost") and William John "Bill" Barhydt ("Respondent Barhydt"). Although the Enforcement Division is praying for a proposal for decision for an order to refund assets to clients and an order assessing an administrative fine, as described herein, the Enforcement Division of the Texas State Securities Board (the "Enforcement Division") is limiting and/or conditioning its prayer to ensure (a) Texas investors are treated the same as investors residing elsewhere in the United States and (b) Texas investors and investors residing elsewhere in the United States receive a refund of all assets before the parties pay any administrative fine.

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").

THE RESPONDENTS

1. Beginning as early as 2014, Respondent Barhydt organized various entities that collectively operated as Abra. In 2022, Respondent Barhydt restructured Abra and, as part of the restructuring, reorganized existing companies and organized new entities as subsidiaries or affiliates of Plutus Financial Holdings, Inc. As of the date of this Notice of Hearing, both Respondent Plutus Financial and Plutus Lending have been and/or are individually doing business as Abra, and they and other entities have been and/or are also collectively doing business as Abra.
2. Respondent Abra Boost is a subsidiary of Plutus Financial Holdings, Inc. It was organized as Domestic Limited Liability Company with the Delaware Department of State, Division of Corporations. Respondent Abra Boost is being served by certified mail, return receipt requested, addressed to (1) 1000 N. West Street, Suite 1200, Wilmington, Delaware 19801, and (2) Cogency Global, Inc., its Registered Agent in Delaware, at 850 New Burton Road, Suite 201, Dover, Delaware 19904.
3. Respondent Plutus Financial is a subsidiary of Plutus Financial Holdings, Inc. It was organized as a Domestic Corporation with the Delaware Department of State, Division of Corporations, and filed as an Out of State Corporation with the California Secretary of State. Respondent Plutus Financial is being served by certified mail, return receipt requested, addressed to (1) its principal address at 1000 N. West Street, Suite 1200, Wilmington, Delaware 19801, (2) Cogency Global, Inc., its Registered Agent in Delaware, at 850 New Burton Road, Suite 201, Dover, Delaware 19904, and (3) Cogency Global, Inc., its Registered Agent in California, at 1325 J Street, Suite 1550, Sacramento, California 95814.
4. Respondent Plutus Lending is a subsidiary of Respondent Plutus Financial. It was organized as a Domestic Limited Liability Company with the Delaware Department of State, Division of Corporations, and filed as an Out of State Limited Liability Company with the California Secretary of State. Respondent Plutus Lending is being served by certified mail, return receipt requested, addressed to (1) its principal address at 3715 Northside Parkway, Building 100, Suite 500, Atlanta, Georgia 30327, (2) Cogency Global, Inc., its Registered Agent in Delaware, at 850 New Burton Road, Suite 201, Dover, Delaware 19904, and (3) Cogency Global, Inc., its Registered Agent in California, at 1325 J Street, Suite 1550, Sacramento, California 95814.
5. Respondent Barhydt is being served by certified mail, return receipt requested, addressed to (1) 321 Castro Street, Mountain View, California 94041, (2) the principal address for Respondent Plutus Financial at 1000 N. West Street, Suite 1200, Wilmington, Delaware 19801, (3) the principal address for Respondent Plutus Lending at 3715 Northside Parkway, Building 100, Suite 500, Atlanta, Georgia 30327, (4) Cogency Global, Inc., the Registered Agent for Respondent Plutus Financial in Delaware, at 850 New Burton Road, Suite 201, Dover,

Delaware 19904, and (5) Cogency Global, Inc., the Registered Agent for Respondent Plutus Lending in California, at 1325 J Street, Suite 1550, Sacramento, California 95814.

6. Respondents Plutus Financial, Plutus Lending, Abra Boost and Barhydt are represented by Christopher W. Gerold, a partner at Lowenstein Sandler LLP. The Enforcement Division is sending this Notice of Hearing to Mr. Gerold by electronic mail addressed to cgerold@lowenstein.com.

SUMMARY OF RELEVANT PRODUCTS AND SERVICES

7. Respondents Plutus Financial, Plutus Lending, Abra Boost and Barhydt have been collectively referring to Respondent Plutus Financial, Respondent Plutus Lending, Respondent Abra Boost and other parents, subsidiaries and affiliates as “Abra.”
8. Clients purchase products and services from Abra through a smartphone application. Respondent Plutus Financial developed the smartphone application and users can download and install the smartphone application from the Apple App Store and the Google Play Store.
9. Respondents Plutus Financial, Plutus Lending, Abra Boost and Barhydt have been promoting Abra’s smartphone application and its financial products and services through various social media platforms and an internet website publicly accessible at abra.com. Respondent Barhydt has also been using his social media accounts to promote Abra’s financial products and services.
10. Abra’s financial products and services include investments in digital asset depository accounts. Clients generally invest in these digital asset depository accounts by transferring custody of supported digital assets to the parties or their custodians in exchange for the payment of interest.
11. Respondents Plutus Financial, Plutus Lending and Barhydt offered and sold investments in digital asset depository accounts known as Abra Earn to accredited and unaccredited investors (“Earn Investors”) residing throughout the United States, including Texas. They purportedly ceased dealing in Abra Earn in October 2022, but did not return all assets to Earn Investors on the day they ceased dealing in Abra Earn. Instead, interest has been accruing on unwithdrawn assets that remain in Abra Earn.
12. Beginning in October 2022, Respondents Plutus Financial, Abra Boost and Barhydt began offering and selling investments in digital asset depository accounts known as Abra Boost to accredited and institutional investors (“Boost Investors”) residing throughout the United States, including Texas.
13. Respondents Plutus Financial and Barhydt, either independently or together with other subsidiaries or affiliates of Plutus Financial Holdings, Inc., have been

providing digital asset lending and exchange services to clients in the United States. They refer to the lending service as Abra Borrow and the exchange service as Abra Trade.

DESCRIPTION OF ABRA AS A “CRYPTO BANK”

14. Respondent Barhydt has been promoting the aforementioned products and services by publicly referring to “Abra” as a “crypto bank” that provides a “crypto banking service.”
15. Respondent Barhydt has also been publicly representing that “Trade, Earn [and] Borrow is the equivalent of a bank for the crypto world” and that Abra Boost is a “product which allows you to basically have crypto-based savings.”
16. Notwithstanding the aforementioned representations, Respondents Plutus Financial, Plutus Lending and Abra Boost have not obtained bank charters and are not authorized to operate as commercial or savings banks in Texas. Accordingly, clients depositing digital assets or fiat currency in accounts maintained at Respondents Plutus Financial, Plutus Lending and Abra Boost are not protected by deposit insurance through the Federal Deposit Insurance Corporation.

ABRA EARN

17. As described herein, Respondents Plutus Financial, Plutus Lending and Barhydt offered and sold Abra Earn to accredited and unaccredited investors.
18. Earn Investors purchased investments in Abra Earn by first opening and funding accounts in Abra Trade.
19. Earn Investors also opened accounts with Prime Trust, LLC (“Prime Trust”),¹ a trust company chartered and regulated by the Nevada Department of Business and Industry, Financial Institutions Division. Prime Trust earned a monthly fee for managing the possession of assets held in Earn Accounts.
20. When opening accounts at Prime Trust, Earn Investors agreed to the Terms of Service established by Respondent Plutus Financial.
21. Respondents Plutus Financial and Plutus Lending began lending assets or causing the assets to be lent to institutional borrowers, either through direct lending or DeFi lending.
22. Respondents Plutus Financial and Plutus Lending did not provide Earn Investors with the identity of the institutional borrowers or the terms of the loans with the institutional borrowers. Accordingly, Earn Investors were precluded from

¹ On June 8, 2023, BitGo Holdings, Inc., announced that it signed a term sheet to acquire the equity of Prime Core Technologies, Inc., the parent company of Prime Trust.

conducting due diligence and were unable to independently verify the risks associated with lending transactions using their assets.

23. Instead, Respondent Plutus Financial and Prime Trust conducted KYB and due diligence for institutional borrowers, and they were responsible for determining the credit worthiness, financial solvency and risks associated with the institutional borrowers.
24. Respondent Plutus Financial told Earn Investors they would earn interest that compounded on a daily basis. The interest varied depending on the digital asset but was as high as 10% for Polkadot (DOT), 10% for Tether (USDT), 7.5% for TrueUSD (TUSD) and 6% for Polygon (MATIC).

STATE REGULATORS WARNED ABRA ABOUT SECURITIES SALES

25. On or about May 12, 2021, the Texas Enforcement Division warned Respondent Plutus Financial and Respondent Barhydt that Respondent Plutus Financial's products appeared to constitute investment contracts, notes, or evidences of indebtedness that are regulated as securities in Texas.
26. It also cautioned Respondent Plutus Financial and Barhydt that any offer or sale of any security in or from Texas must satisfy laws that generally require the registration of dealers or agents and, moreover, that promoters of securities must truthfully disclose of all known material information.
27. The Texas Enforcement Division stressed the importance of compliance and explained it was authorized to pursue administrative, civil or criminal relief to protect the public from misconduct.
28. Despite receipt of the warning, Respondents Plutus Financial and Barhydt continued to offer and sell investments in Abra Earn until on or about October 3, 2022.

CHANGES TO ABRA EARN AND THE INTRODUCTION OF ABRA BOOST

29. On or about October 3, 2022, Respondent Plutus Financial purportedly ceased accepting deposits from Earn Investors that were not verified as accredited investors.
30. Although Respondent Plutus Financial ceased accepting deposits from unaccredited Earn Investors, it did not return assets to Earn Investors.
31. Instead of returning assets to Earn Investors, Respondent Plutus Financial restricted new deposits in Abra Earn and transitioned Earn Investors that qualified as institutional or accredited investors to Abra Boost.

32. Since on or about October 3, 2022, and continuing through the present, Respondent Plutus Financial, Abra Boost and Barhydt have continued offering and selling Abra Boost to institutional and accredited investors.
33. Earn Investors that did not qualify as either institutional or accredited investors and have not yet withdrawn their digital assets from Abra Earn have been earning interest on their investments.

ABRA BOOST

34. Respondent Plutus Financial is promoting Abra Boost through its website and investors must agree to its Terms of Service prior to investing in Abra Boost.
35. Boost Investors must also open and fund Abra Trade accounts and transfer assets from their Abra Trade accounts to their Abra Boost accounts in order to purchase investments in Abra Boost.
36. Prime Trust is the custodian of the Abra Trade and Abra Boost accounts.
37. Boost Investors expect to earn up to 10% interest, compounded daily, on their investments in Abra Boost.

PRIME TRUST

38. Respondents Plutus Financial and Barhydt are claiming Respondent Plutus Financial is “fully committed to working with appropriate regulatory bodies in every jurisdiction we operate in to maintain all appropriate levels of compliance and oversight.”
39. Respondents Plutus Financial and Barhydt are also describing Prime Trust as a regulated company.
40. Although Respondents Plutus Financial, Abra Boost and Barhydt are offering and selling Abra Boost to investors residing throughout the United States, as of the date of this Notice of Hearing, Prime Trust is only licensed as a money transmitter or seller of payment instruments by 15 state agencies.
41. Moreover, on January 20, 2022, the Texas Department of Banking issued Order No. 2022-002, styled In the Matter of Prime Trust, LLC, based on its findings that Prime Trust violated Chapter 151 of the Texas Finance Code by providing money transmission services while it was neither licensed by the agency nor excluded from licensing requirements.
42. Prime Trust announced it would cease all business in Texas effective January 31, 2023, and, as of the date of this Notice of Hearing, Prime Trust is not licensed by the Texas Department of Banking.

43. Although Respondents Plutus Financial and Barhydt know that Prime Trust is not licensed by the Texas Department of Banking, they are still directing Texans to open accounts that will be custodied by Prime Trust.

ASSETS UNDER MANAGEMENT IN ABRA EARN AND ABRA BOOST

44. As of May 17, 2023, the parties purport to manage assets valued at approximately \$49.96 million on behalf of 229 Boost Investors from the United States. The assets include approximately \$2.33 million on behalf of 23 Texas investors.
45. As of May 17, 2023, the parties purport to manage assets valued at approximately \$66.83 million on behalf of 9087 Earn Investors from the United States. The assets include approximately \$9.12 million on behalf of 827 Texas investors.

FINANCIAL RISKS AND POTENTIAL INSOLVENCY

46. Respondent Plutus Financial is downplaying risks associated with its digital asset depository accounts. For example, when describing Abra Earn, Respondent Plutus Financial told certain state securities regulators coordinating their investigations (the “working group”) that:

Earn users take no investment-like risks when they deposit digital assets into Interest accounts; rather, Earn users are simply moving or placing their existing assets into their Interest Accounts with the possibility of receiving interest, but notably, no risk of an investment-type loss.

47. Respondent Plutus Financial maintains a website accessible at abra.com the landing page of the website invites visitors to “[l]earn how Abra protects your funds with a commitment to sound risk management.” A hyperlink embedded in the text redirects to a webpage that describes “Abra’s ‘risk management first’ culture” in part as follows:
- A. A core tenet is “actively seek[ing] to achieve the highest standards of compliance based on current regulatory guidance,”
- B. Another core tenet is “rat[ing] all borrowers using our proprietary risk framework— all borrowers are subject to our standard and stringent due diligence or internal rating process,”
- C. In order to meet the core tenets of risk management, “Abra employs... [a]n experienced team of professional compliance, risk, securities and fraud operations experts,”

- D. The risk management process involves a “Risk team” that assesses, measures, monitors and mitigates various risks,
 - E. Liquidity risk management involves “[c]onservative liquidity buffers” that “ensure sufficient liquidity in unfavorable conditions,”
 - F. The counterparties “are systematically evaluated and reviewed against key risk factors including credit, market, liquidity, compliance, and duration risk,” and
 - G. Internal and ongoing due diligence involves “Abra collect[ing] corporate and personnel KYC/CIP records, in addition to financial statements and trading statements... and even interviews with counterparty principals, in order to determine our ability to transact with a counterparty, while protecting our rights and complying with regulation.”
48. Respondents Plutus Financial and Barhydt are representing a committee that includes Respondent Barhydt oversees risk processes, everything from “credit risk, market risk, liquidity risk, duration risk, [and] borrower concentration risk.”
49. Respondent Plutus Financial has been touting its risk management processes by comparing Respondent Plutus Financial to Voyager Digital Holdings, Inc., and Celsius Network, LLC. These firms, individually or through affiliates, sold investments in digital asset depository accounts and later filed for Chapter 11 bankruptcy, respectively, in cases jointly administered as Case No. 22-10943 and Case No. 22-10964 in the United States Bankruptcy Court for the Southern District of New York.
50. Respondent Plutus Financial published a “A Message from Our CEO, Bill Barhydt, Regarding FTX” that is currently the most recent blog entry accessible from the website. It explains there was “No Exposure to FTX and Alameda,” referring to entities controlled by Sam Bankman-Fried that, along with more than 100 other related parties, filed for bankruptcy in jointly administered Case No. 22-11068 in the United States Bankruptcy Court for the District of Delaware. It further explains Respondent Barhydt
- ... can report that Abra’s retail, lending and private crypto wealth management businesses don’t have any exposure to Alameda and have no material exposure to FTX or the FTT token. Abra did use FTX for some trading activities. We moved most assets off of FTX and hedged our exposure on those that remain.
51. In truth and in fact, as of February 2023, a subsidiary of Respondent Plutus Financial had more than \$12,000,000 at FTX.

52. Moreover, Respondent Plutus Financial and/or subsidiaries have held or currently hold various other impaired and illiquid assets, including approximately \$29,700,000 or more owed by Babel Finance, approximately \$8,800,000 or more owed by Auros Tech Limited, approximately \$30,000,000 or more owed by Genesis, and approximately \$10,000,000 or more owed by Three Arrows Capital.
53. More recently, on or about March 31, 2023, the working group interviewed Respondent Barhydt and, contemporaneously therewith, provided information to Respondent Barhydt that demonstrated one or more subsidiaries of Plutus Financial Holdings, Inc., is now or will likely soon be insolvent. Respondent Barhydt did not contest the conclusion.
54. At least as of the date of the interview, parties collectively operating as Abra were or were nearly insolvent.
55. Notwithstanding the forgoing, Plutus Financial Holdings, Inc., or an affiliate or subsidiary thereof, posted information in an official social media platform that represents:

There is no truth that Abra is bankrupt or about to be. It continues to operate normal like it always has throughout multiple bear markets since its launched [sic] back in 2014.

56. Moreover, on or about June 11, 2023, Plutus Financial Holdings, Inc., or an affiliate or subsidiary thereof, posted a message in an official social media platform that represents in part, "Abra is not bankrupt."

THE WINDING DOWN OF ABRA EARN

57. Respondent Plutus Financial is now telling Earn Investors that Abra Earn will be "shut down" and that it will transfer assets from their Abra Earn accounts to their Abra Trade accounts on either August 15, 2023, or August 31, 2023.
58. As described later herein, this Notice of Hearing does not, in any way, prohibit or otherwise prevent Respondents Plutus Financial, Plutus Lending and Barhydt, or any parents, subsidiaries or affiliates thereof, from shutting down Abra Earn and returning assets to Earn Investors.
59. As also described later herein, this Notice of Hearing does not, in any way, prohibit or otherwise prevent Respondents Plutus Financial, Plutus Lending, Abra Boost and Barhydt, or any parents, subsidiaries or affiliates thereof, from developing plans to return assets through other processes to Earn Investors, Boost Investors or other clients.

THE TRANSFER OF ASSETS TO BINANCE.COM

60. As described herein, Respondent Plutus Financial is winding down Abra Earn and telling clients it will transfer Abra Earn assets to Abra Trade accounts.
61. Respondent Plutus Financial has been claiming Abra Trade accounts are custodied at Fireblocks. As of in or around February 2023, Abra Trade and Respondent Plutus Lending collectively had assets valued at only \$43,797,138 at Fireblocks.
62. Abra Trade and Respondent Plutus Lending have been secretly transferring assets to Binance Holdings Limited DBA Binance AKA Binance.com. As of February 2023, Abra Trade and Respondent Plutus Lending had assets valued at \$118,581,732 at Binance.com.
63. Financial regulators have recently filed civil actions against Binance.com. For example, on March 27, 2023, the Commodity Futures Trading Commission filed a civil lawsuit against Binance.com and Changpeng Zhao, its principal, and others in Case No. 1:23-cv-01887, in the United States District Court for the Northern District of Illinois. The pleading alleged numerous violations of the Commodity Exchange Act and CFTC regulations and prays for relief that includes, among other things, disgorgement, civil monetary penalties, permanent trading and registration bans.
64. More recently, on June 5, 2023, the United States Securities and Exchange Commission filed a civil action against Binance.com, Changpeng Zhao, and others in Case No. 1:23-cv-01599 in the United States District Court for the District of Columbia. The pleading alleged Binance.com acted as an unregistered exchange, broker and clearing agency; offered and sold unregistered digital asset securities, failed to restrict investors from the United States from accessing Binance.com, mislead investors and engaged in other actionable conduct.
65. On June 6, 2023, in the same case, the United States Securities and Exchange Commission filed an emergency motion that, among other things, prayed for the issuance of a temporary restraining order freezing the assets of Binance.com regardless of the location of said assets.

THE PRIOR FEDERAL ACTIONS AGAINST ABRA

66. On July 13, 2020, the United States Securities and Exchange Commission entered an order in 33 Act Release No. 10801, 34 Act Release 89296, Administrative Proceeding File No. 3-19873 (the "**SEC Order**"). The order charged Respondent Plutus Financial and Plutus Technologies Philippines Corp., its subsidiary, with offering and selling security-based swaps to retail investors without registration and for failing to transact those swaps on a registered national exchange.

67. Without admitting or denying the findings in the order, Respondent Plutus Financial and its subsidiary consented to the SEC Order and agreed to a combined penalty of \$150,000.
68. On July 13, 2020, the United States Commodity Futures Trading Commission entered an order in CFTC Docket No. 20-23 (the "**CFTC Order**"). The order charged Respondent Plutus Financial and Plutus Technologies Philippines Corp. with entering into illegal off-exchange swaps in digital assets and foreign currency with U.S. and overseas customers and registration violations.
69. Without admitting or denying the findings in the order, Respondent Plutus Financial and its subsidiary consented pay a \$150,000 civil monetary penalty and agreed to cease and desist from further violations of the Commodity Exchange Act.

THE STATE SECURITIES ORDER

70. On or about April 28, 2023, the California Department of Financial Protection and Innovation entered an order against Respondents Plutus Financial and Plutus Lending (the "**CA Order**").
71. The CA Order required Respondent Plutus Financial to deposit the in-kind equivalent of all digital assets of California Earn Investors in a digital wallet controlled by a third-party company approved by the Respondent Plutus Financial, Respondent Plutus Lending and the Commissioner of Financial Protection and Innovation, to be drawn down as California Earn customers withdraw their digital assets.
72. From the time Respondents Plutus Financial and Plutus Lending agreed to the entry of the CA Order through the date of this action, Respondents Plutus Financial and Plutus Lending did not have sufficient liquid assets to satisfy all investors in the United States.
73. According to the CA Order, Respondents Plutus Financial and Plutus Lending also agreed to pay a penalty of \$1,000,000, generally subject to waiver upon satisfaction of terms and conditions of the CA Order and the allowance of withdrawal per the provisions set forth therein.
74. On or about May 27, 2023, Respondents Plutus Financial and Plutus Lending request to renegotiate the CA Order. On or about June 2, 2023, the agency notified Respondents Plutus Financial and Plutus Lending they were in breach, and it reserved all legal rights for the breach. It also explained the agency may use its discretion and not take further legal action to enforce the CA Order if Respondents Plutus Financial and Plutus Lending returned assets per a plan ending in August 2023.

REGISTRATION VIOLATIONS

75. Investments in Abra Earn and Abra Boost 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.
76. Respondents Plutus Financial, Plutus Lending and Barhydt violated Section 4003.001 of the Securities Act by offering and selling investments in Abra Earn in Texas when the securities were not registered or permitted for sale in Texas.
77. Respondents Plutus Financial, Plutus Lending and Barhydt violated Section 4004.051 of the Securities Act by offering and selling investments in Abra Earn in Texas without first being registered as dealers or agents.
78. As described later in this Notice of Hearing, in connection with the offer and sale of investments in Abra Earn in Texas, Respondents Plutus Financial, Plutus Lending and Barhydt engaged in fraud as that term is defined in Section 4001.058 of the Securities Act.
79. As described later in this Notice of Hearing, in connection with the offer and sale of investments in Abra Earn in Texas, Respondents Plutus Financial, Plutus Lending and Barhydt made offers containing statements that are materially leading or otherwise likely to deceive the public as generally referenced in Sections 4007.104, 4007.106, and other provisions of the Securities Act.
80. As described later in this Notice of Hearing, in connection with the offer and sale of investments in Abra Boost in Texas, Respondents Plutus Financial, Plutus Lending, Abra Boost and Barhydt are engaging in fraud as that term is defined in Section 4001.058 of the Securities Act.
81. As described later in this Notice of Hearing, in connection with the offer and sale of investments in Abra Boost in Texas, Respondents Plutus Financial, Plutus Lending, Abra Boost and Barhydt are making offers containing statements that are materially leading or otherwise likely to deceive the public as generally referenced in Sections 4007.104, 4007.106, and other provisions of the Securities Act.

FRAUD AND DECEPTION

82. In connection with the offer and sale of investments in Abra Earn, Respondents Plutus Financial, Plutus Lending and Barhydt intentionally failed to disclose the following material facts:
 - A. The identity of subsidiaries and affiliates of Respondents Plutus Financial and Plutus Lending, as well as any intercompany or other contracts or agreements between Respondents Plutus Financial and Plutus Lending and said subsidiaries and affiliates.

- B. The identity of officers and directors of Respondent Plutus Lending and subsidiaries and affiliates of Respondent Plutus Financial,
 - C. The operational history of Respondent Plutus Lending, Respondent Plutus Financial, and subsidiaries and affiliates of Respondent Plutus Financial,
 - D. The business repute, qualifications and experience of the officers and directors of Respondent Plutus Lending and subsidiaries and affiliates of Respondent Plutus Financial,
 - E. The capitalization of Respondent Plutus Lending, Respondent Plutus Financial and subsidiaries and affiliates of Respondent Plutus Financial,
 - F. Information describing defaults on loans funded with assets obtained from Earn Investors,
 - G. The investigation conducted by state securities regulators acting as part of the working group, as well as investigations conducted by any federal regulatory agencies,
 - H. The potential public and private causes of action and liabilities that may result from the aforementioned unregistered and unlicensed activity,
 - I. The information set forth herein relating Prime Trust, and
 - J. The SEC Order and the CFTC Order.
83. In connection with the offer and sale of investments in Abra Boost, Respondents Plutus Financial, Plutus Lending, Abra Boost and Barhydt are intentionally failing to disclose the following material facts:
- A. Any intercompany or other contracts or agreements between Plutus Financial Holdings, Inc., and Respondents Plutus Financial, Plutus Lending, and Abra Boost, as well as subsidiaries and affiliates of said entities,
 - B. The identity and responsibilities of the officers and directors of Plutus Financial Holdings, Inc., and the business repute, qualifications and experience of the officers and directors of Plutus Financial Holdings, Inc.,
 - C. The operational history of Plutus Financial Holdings, Inc., the identity and operational history of parents, subsidiaries and affiliates of Plutus Financial Holdings, Inc., and the identity and responsibilities of the officers and directors of said parents, subsidiaries and affiliates,

- D. The capitalization of Respondent Plutus Financial, Respondent Abra Boost, and Plutus Financial Holdings, Inc., as well as the capitalization of parents, subsidiaries and affiliates of Plutus Financial Holdings, Inc.
 - E. The identity of institutional borrowers and, as applicable, their history of successfully repaying principal and interest pursuant to the terms of loans effectuated by Plutus Financial Holdings, Inc., and any parents, subsidiaries or affiliates thereof,
 - F. Information describing defaults on loans funded with assets through Abra Earn and Abra Boost,
 - G. The transfer of assets of Binance.com and the risks associated therewith,
 - H. The CA Order, including subsequent dealings relating to the enforcement of the CA Order described herein,
 - I. The investigation conducted by state securities regulators acting as part of the working group, as well as investigations conducted by any federal regulatory agencies,
 - J. The information set forth herein relating to money service and money transmission licenses for Respondent Plutus Financial, Respondent Plutus Lending and Respondent Abra Boost, subsidiaries and affiliates of Respondent Plutus Financial, Respondent Plutus Lending and Respondent Abra Boost, and Prime Trust,
 - K. The potential public and private causes of action and liabilities that may result from federal and/or state enforcement actions or claims from clients or other parties alleging unregistered and unlicensed activity,
 - L. The financial impact of paying interest to Earn Investors and financial liabilities arising from sales of investments in Abra Earn,
 - M. The information set forth herein relating to the regulation of Prime Trust, and
 - N. The SEC Order and the CFTC Order.
84. Respondents Plutus Financial, Plutus Lending, Abra Boost and Barhydt have made and are making offers of investments in Abra Boost that contain statements that were and are materially misleading or otherwise likely to deceive the public due to the following undisclosed information:
- A. That the Commodity Futures Trading Commission filed a civil lawsuit against Binance.com and Changpeng Zhao, its principal, and others in

Case No. 1:23-cv-01887, in the United States District Court for the Northern District of Illinois,

- B. The actual or potential consequences of the aforementioned civil lawsuit as said consequences relate to Boost Investors or Respondents Plutus Financial, Abra Boost and Barhydt,
 - C. That the United States Securities and Exchange Commission filed a civil action and an emergency motion against Binance.com, Changpeng Zhao, and others in Case No. 1:23-cv-01599 in the United States District Court for the District of Columbia, and
 - D. The actual or potential consequences of the aforementioned civil lawsuit as said consequences relate to Boost Investors or Respondents Plutus Financial, Abra Boost and Barhydt,
85. Respondents Plutus Financial, Plutus Lending and Barhydt made offers of investments in Abra Earn that contained statements describing “Abra” as a crypto bank, and said statements were materially misleading or otherwise likely to deceive the public in part because:
- A. Respondents Plutus Financial and Plutus Lending are not chartered to operate as a bank in Texas,
 - B. Respondents Plutus Financial, Plutus Lending and Barhydt are not licensed by the Texas Department of Banking or the Texas State Securities Board, and
 - C. Earn Investors are not protected by deposit insurance from the FDIC.
86. Respondents Plutus Financial, Plutus Lending, Abra Boost and Barhydt made offers of investments in Abra Boost that contained statements describing “Abra” as a crypto bank, and said statements were materially misleading or otherwise likely to deceive the public because:
- A. Respondents Plutus Financial, Plutus Lending and Abra Boost are not chartered to operate as a bank in Texas,
 - B. Respondents Plutus Financial, Plutus Lending, Abra Boost and Barhydt are not licensed by the Texas Department of Banking or the Texas State Securities Board, and
 - C. Boost Investors are not protected by deposit insurance from the FDIC.

REMEDIES

87. The Enforcement Division is praying for a proposal for decision for the entry of an order that Respondents Plutus Financial, Plutus Lending, Abra Boost and Barhydt immediately cease and desist from violating Sections 4003.001 and 4004.051 of the Securities Act and from engaging in fraud in connection with the offer or sale of securities in Texas.
88. The Enforcement Division is also praying the Honorable Administrative Law Judge issue a proposal for decision that orders Respondents Plutus Financial, Plutus Lending, Abra Boost and Barhydt to pay a refund of principal to Texans who invested in Earn Accounts and/or Boost Accounts as set forth in Section 4007.108 of the Securities Act as follows:
- A. The Enforcement Division is praying for an order that directs refunds all principal to Texas residents that are Earn Investors and/or Boost Investors to the extent said Earn Investors and Boost Investors have not yet fully withdrawn their principal,
 - B. In the event the parties are unable to refund all principal to all Earn Investors by the end of this calendar year, the Enforcement Division is limiting and conditioning its prayer so Texas residents that are Earn Investors receive the same pro rata proportional return as Earn Investors that reside in other states, and
 - C. In the event the parties are unable to refund all principal to all Boost Investors by the end of this calendar year, the Enforcement Division is further limiting and conditioning its prayer so Texas residents that are Boost Investors receive the same pro rata proportional return as Boost Investors that reside in other states.
 - D. The Enforcement Division is not waiving any claims for the refunding of principal (a) should Respondents Plutus Financial, Plutus Lending, Abra Boost and/or Barhydt file for bankruptcy (b) should Respondents Plutus Financial, Plutus Lending, Abra Boost and/or Barhydt later obtain sufficient capital to refund all principal to Texas Earn and Boost Investors, or (c) due to other matters that relate to the interest of justice.
89. The Enforcement Division is further praying for a proposal for decision for the entry of an order that assesses an administrative fine against Respondents Plutus Financial, Plutus Lending, Abra Boost and Barhydt pursuant to Section 4007.106, calculated as follows:
- A. This administrative fine should 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.

- B. This administrative fine should include 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.
- C. This administrative find should be subordinate to the payment of refunds to all Earn Investors and all Boost Investors residing in the United States, regardless of their state of residence, so that all Earn and Boost Investors residing in the United States receive a refund of their principal prior to the payment of the administrative fine.
- D. The Enforcement Division is not waiving any claims for the assessment of the administrative fine (a) should Respondents Plutus Financial, Plutus Lending, Abra Boost and/or Barhydt file for bankruptcy (b) should Respondents Plutus Financial, Plutus Lending, Abra Boost and/or Barhydt later obtain sufficient capital to refund all principal to Texas Earn and Boost Investors, or (c) due to other matters that relate to the interest of justice.

NO IMPACT ON RETURNING ASSETS TO CLIENTS

- 90. As described herein, Abra Earn is purportedly being unwound and Earn Investors have been promised the opportunity to receive their assets.
- 91. This Notice of Hearing does not, in any way, prohibit or otherwise prevent Respondents Plutus Financial, Plutus Lending and Barhydt, or any parents, subsidiaries or affiliates thereof, returning assets to Earn Investors, Boost investors or other clients.
- 92. This Notice of Hearing does not, in any way, prohibit or otherwise prevent Respondents Plutus Financial, Plutus Lending, Abra Boost and Barhydt, or any parents, subsidiaries or affiliates thereof, from developing plans to return assets through other processes to Earn Investors, Boost Investors or other clients.

THE HEARING

- 93. The hearing will be held before the State Office of Administrative Hearings. It will commence at _____ **AM** on _____, **2023**.
- 94. 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.

95. 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

96. 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.
97. **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.**
98. **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.**
99. 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.
100. 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.

101. 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 Respondents Plutus Financial, Plutus Lending, Abra Boost and/or Barhydt.
102. 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

103. The Enforcement Division is represented by Joe Rotunda, Director, Enforcement Division, and Tina Lawrence, Assistant Director, 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. 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.
104. 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.
105. 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.
106. 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.

107. 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 15th day of June 2023.

By:

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 ____ day of June 2023, 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.

THE RESPONDENTS

Respondent Abra Boost is being served by certified mail, return receipt requested, addressed to (1) 1000 N. West Street, Suite 1200, Wilmington, Delaware 19801, and (2) Cogency Global, Inc., its Registered Agent in Delaware, at 850 New Burton Road, Suite 201, Dover, Delaware 19904.

Respondent Plutus Financial is being served by certified mail, return receipt requested, addressed to (1) its principal address at 1000 N. West Street, Suite 1200, Wilmington, Delaware 19801, (2) Cogency Global, Inc., its Registered Agent in Delaware, at 850 New Burton Road, Suite 201, Dover, Delaware 1990, its principal address reflected in filings with the California Secretary of State at 3715, and (3) Cogency Global, Inc., its Registered Agent in California, at 1325 J Street, Suite 1550, Sacramento, California 95814.

Respondent Plutus Lending is being served by certified mail, return receipt requested, addressed to (1) its principal address at 3715 Northside Parkway, Building 100, Suite 500, Atlanta, Georgia 30327, (2) Cogency Global, Inc., its Registered Agent in Delaware, at 850 New Burton Road, Suite 201, Dover, Delaware 19904, and (3) Cogency Global, Inc., its Registered Agent in California, at 1325 J Street, Suite 1550, Sacramento, California 95814.

Respondent Barhydt is being served by certified mail, return receipt requested, addressed to (1) 321 Castro Street, Mountain View, California 94041, (2) the principal address for Respondent Plutus Financial at 1000 N. West Street, Suite 1200, Wilmington, Delaware 19801, (3) the principal address for Respondent Plutus Lending at 3715 Northside Parkway, Building 100, Suite 500, Atlanta, Georgia 30327, (4) Cogency Global, Inc., the Registered Agent for Respondent Plutus Financial in Delaware, at 850 New Burton Road, Suite 201, Dover, Delaware 19904, and (5) Cogency Global, Inc., the Registered Agent for Respondent Plutus Lending in California, at 1325 J Street, Suite 1550, Sacramento, California 95814.

Respondents Plutus Financial, Plutus Lending, Abra Boost and Barhydt are represented by Christopher W. Gerold, a partner at Lowenstein Sandler LLP. The Enforcement Division is sending this Notice of Hearing to Mr. Gerold by electronic mail addressed to cgerold@lowenstein.com.

By:

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