

**STATE OF ALABAMA
ALABAMA SECURITIES COMMISSION**

IN THE MATTER OF)	
)	
Celsius Network, LLC)	ADMINISTRATIVE ORDER
)	SC-2021-0012
)	
)	
<u>RESPONDENT</u>)	

**ORDER TO SHOW CAUSE WHY THE ALABAMA SECURITIES COMMISSION
SHOULD NOT ORDER RESPONDENTS TO CEASE AND DESIST FROM FURTHER
OFFERS OR SALES OF SECURITIES IN THIS STATE**

The Alabama Securities Commission ("Commission"), having the authority to administer and provide for the enforcement of all provisions of Title 8, Chapter 6, Code of Alabama 1975, the Alabama Securities Act ("Securities Act"), upon due consideration of the subject matter hereof, has determined as follows:

RESPONDENT

1. **Celsius Network, LLC** ("Celsius") is a Delaware limited liability company with offices at 221 River Street, 9th Floor, Hoboken, New Jersey. Celsius conducts its business on the internet, through a website accessible to the general public at <https://www.celsius.network> (the "Celsius Website"), which is also accessible through Celsius' own proprietary app via smartphone.

SUMMARY

Celsius is a financial services company that generates revenue through cryptocurrency trading, lending, and borrowing, as well as by engaging in propriety trading. Since June 2018, Celsius has been, at least in part, funding its lending operations and propriety trading through the sale of unregistered securities in the form of cryptocurrency interest-earning accounts. Celsius

refers to these unregistered securities as its “Earn Rewards” account.

Celsius solicits investors to invest in the Earn Rewards accounts by having investor deposit certain eligible cryptocurrencies into the investors’ accounts at **Celsius**. **Celsius** then pools these cryptocurrencies together to fund its various income generating activities, including lending operations and proprietary trading. In exchange for investing in the Earn Rewards product, investors are promised an attractive interest rate that is paid weekly in the same type of cryptocurrency as originally invested, or, subject to certain conditions, in **Celsius**’ native digital token CEL (which are not currently available for U.S.-based account holders).

The Celsius Earn Rewards accounts are not registered with the Commission or any other securities regulatory authority, or otherwise exempt from registration. Celsius Earn Rewards accounts are not protected by the Securities Investor Protection Corporation (“SIPC”), insured by the Federal Deposit Insurance Corporation (“FDIC”), or insured by the National Credit Union Administration (“NCUA”). This lack of protective scheme subjects **Celsius** investors to additional risks not borne by investors who maintain assets with most SIPC member broker-dealers, banks and savings associations, or credit unions.

Despite the lack of safeguards that SIPC, FDIC, and the NCUA would offer or the regulatory oversight of registration, **Celsius** held the equivalent of more than \$14 billion from the sale of these unregistered securities in violation of the Securities Law as of August 18, 2021.

STATEMENT OF FACTS

2. **Celsius** offers and sells its Earn Rewards program in the form of individual and corporate accounts. Investors in these accounts (“Earn Rewards Investors”) deposit certain popular cryptocurrencies with **Celsius** who, in turn, purports to pay “up to 17.78% APY.” The purported Earn Rewards rates advertised by **Celsius** are well in excess of the rates currently being offered by short-term investment grade fixed income securities or bank savings accounts.

3. When an investor signs up with **Celsius**, **Celsius** verifies their age, identity, and

address, provides an identification document, and completes a user agreement and a KYC (Know Your Customer) protocol. A link to the Celsius Terms of Use (“Celsius Terms”) appears at the bottom of each of Celsius’ web pages. Celsius offers its Earn Rewards accounts to anyone over the age of eighteen, except for residents of certain foreign jurisdictions subject to regulatory restrictions.

4. Celsius accepts specific brands of cryptocurrencies for deposit in the Earn Rewards accounts. The Celsius website states that Celsius does not require a minimum amount of cryptocurrency for deposit in an Earn Rewards account. Celsius also pays interest on deposits of certain stablecoins in its Earn Rewards accounts, as explained on the Celsius website.

5. Earn Rewards Investors earn a variable interest rate on Earn Rewards accounts and may withdraw their digital assets at any time, subject to a maximum three-day processing time as specified by Celsius. The variable interest rates for the Earn Rewards Investors are posted on the Celsius website. Celsius’ interest rates for deposits of certain cryptocurrencies in its Earn Rewards accounts are “tiered” depending upon the nature and amount of the cryptocurrency invested. Prior to the issuance of this order, Earn Rewards Investors were entitled to 6.2% “Rewards” or interest on their first Bitcoin deposited and 3.51% on additional deposits of Bitcoin. Rates on other cryptocurrencies ranged from 13.99% for the Synthetix Network Token (SNX) to 0.0% for Ripple (XRP). The manner in which interest is calculated and credited to Earn Rewards Investors is illustrated on the Celsius website and specified in the Celsius Terms:

“Rewards are payable based on a daily periodic rate applicable to the Loaned Digital Assets. The daily periodic rate is calculated by dividing the then-applicable annual reward rate by three hundred sixty-four (364) days; then it is further divided down to the hour, minute, and second of that day. Loaned Digital Assets, including those received as Rewards from previous weeks, will begin gaining Rewards according to the hour, minute, and second on the timestamp verifying the completion of the applicable transaction and shall cease and/or decrease the amount paid as Rewards at the moment when the User has entered an external transmission, withdrawal or transfer of rights (via CelPay) request, or posted any Loaned Digital Assets as collateral for a Fiat Loan. Therefore, any Loaned Digital Asset transferred mid-week will receive Rewards with no distinction, based on the rates calculated for the relative time within the allocation period.”

6. The Celsius Terms provide that an Earn Rewards Investor relinquishes control over the deposited cryptocurrency to Celsius and that Celsius is free to use those assets as Celsius sees fit, including commingling the Earn Rewards Investor's cryptocurrency with those of other Earn Rewards Investors investing those pooled assets in the market and/or lending them to institutional and corporate borrowers. Having relinquished control over the deposited cryptocurrency in their Earn Rewards accounts, the Earn Rewards Investors are passive investors.

7. Specifically, Paragraph 4. B. "Earn Rewards" of the recently amended Celsius Terms provides:

"Our Earn Rewards service allows you to earn a financing fee from Celsius, referred to as "Rewards", in the form of Digital Assets (either in-kind, i.e. in the same Digital Asset you deliver, or in CEL Tokens, where permitted) in exchange for entering into open-ended loans of your Eligible Digital Assets to Celsius under the terms hereof. By lending your Eligible Digital Assets to Celsius you grant Celsius all rights and title to such Digital Assets, for Celsius to use in its sole discretion."

Paragraph 13 of the recently amended Celsius Terms, "Consent To Celsius's Use of Digital Assets," goes into greater detail as to the status of cryptocurrency deposited with Celsius by Earn Rewards Investors:

"In consideration of the Rewards payable to you on your Celsius Account and the use of our Services, you grant Celsius, subject to applicable law and for the duration of the period during which the Eligible Digital Assets are loaned to us through your Celsius Account, all right and title to such Digital Assets, including ownership rights, and the right, without further notice to you, to hold such Digital Assets in Celsius' own Virtual Wallet or elsewhere, and to pledge, re-pledge, hypothecate, rehypothecate, sell, lend, or otherwise transfer or use any amount of such Digital Assets, separately or together with other property, with all attendant rights of ownership, and for any period of time, and without retaining in Celsius' possession and/or control a like amount of Digital Assets or any other monies or assets, and to use or invest such Digital Assets in Celsius' full discretion. You acknowledge that with respect to the Digital Assets used by Celsius pursuant to this paragraph:

- (i) You will not be able to exercise rights of ownership;
- (ii) Celsius may receive compensation in connection with lending or otherwise using Digital Assets in its business to which you have no claim or entitlement;

and

- (iii) In the event that Celsius becomes bankrupt, enters liquidation or is otherwise unable to repay its obligations, you may not be able to recover or regain ownership of such Digital Assets, and other than your rights as a creditor of Celsius under any applicable laws, you may not have any legal remedies or rights in connection with Celsius' obligations to you."

8. Celsius pools the deposited cryptocurrencies with other Celsius assets to, among other income-generating activities, collateralize Celsius' borrowings, purchase securities and digital assets for Celsius' own account, make loans to institutional and corporate borrowers, and mine for cryptocurrency. Celsius does not disclose to the Earn Rewards Investors the amount of money or digital assets devoted to each of these investment activities, the nature, identity or creditworthiness of the borrowers, the terms and duration of the loans, the assets actually loaned or traded, or the profits or losses derived from these activities.

9. Celsius' founder, Alex Mashinsky, stated in a March 7, 2021 article he authored for the DataDriveInvestors website, reposted in the "Media" tab on the Celsius website, "[u]sers transfer assets with Celsius, Celsius lends funds to institutions and returns up to 80% of earnings to users."

10. As of the date of this Order, the Earn Rewards product is not currently registered with the Commission nor subject to a perfected exemption from registration. A check of the Edgar database indicates that the Earn Rewards product is not registered with the SEC nor subject to a perfected exemption from registration under Federal securities law. A review of Celsius' offering materials and website offered no disclosure that the Earn Rewards product was not registered with either the SEC or the Commission.

11. Celsius offers an Application Programming Interface ("API") that allows certain institutional users, known as Celsius "API Partners," to integrate with the Celsius platform. The API allows API Partners the ability to offer Earn Rewards accounts to retail investors in two

different ways:

(i) The **Celsius** “Segmented Accounts” platform allows API Partners to offer such partner’s customers Earn Rewards accounts through the API Partners’ designated portal. Apart from the difference in how the Earn Rewards account is accessed, individual retail customers of API Partners Earn Rewards Investors are subject to the same rights, benefits, terms, and conditions as **Celsius**’ own Earn Rewards Investors.

(ii) **Celsius**’ API Partners can choose to access the **Celsius** Earn Rewards accounts through what **Celsius** refers to as an “Omnibus Account.” In the Omnibus Account, the API Partner maintains a direct relationship with **Celsius** and invests in a Earn Rewards account for the benefit of the API Partner’s individual customers. The cryptocurrencies of the API Partner’s individual customers are aggregated and invested in a single Earn Rewards account on behalf of, and for the benefit of the API Partner’s individual retail customers.

CONCLUSIONS OF LAW

12. Pursuant to Section 8-6-2(10), Code of Alabama 1975, the definition of security includes any “investment contract.” The investment programs, identified as the “Celsius Earn Reward”, constitute the solicitation of an investment of money; from which an investment return is expected; with such investment return based on the managerial efforts of **RESPONDENT**. The solicited investments, identified as the **Celsius** “Earn Rewards program”, are “investment contracts” and are securities under the Securities Act.

13. Pursuant to Section 8-6-4, Code of Alabama 1975, it is unlawful for any person to offer or sell any security in this state unless said security is: (1) registered under the Securities Act; (2) the security is exempt from registration under section 8-6-10; or (3) the transaction is exempt

under section 8-6-11. The securities offered by **RESPONDENT**; to wit: the investment contracts described as "Earn Reward program", are neither registered nor subject to a perfected exemption from registration in Alabama and are being offered and/or sold in violation of the Securities Act.

14. Pursuant to Section 8-6-30, Code of Alabama 1975, the burden of proving an exemption from registration or an exception from a definition under the Securities Act is on the person claiming the exemption or exception. **RESPONDENT** must demonstrate compliance with the registration provisions of the Act or demonstrate why such instruments should not be required to be registered.

15. Pursuant to Section 8-6-16, Code of Alabama 1975, the Commission may issue a cease-and-desist order, with or without prior hearing, against any person whom the Commission has reason to believe is participating in any act or practice constituting a violation of the Securities Act.

This Order is appropriate in the public interest for the protection of investors and consistent with the purposes of the Securities Act.

This Order does not prevent the Commission from seeking such other civil or criminal remedies that may be available to it under the Securities Act.

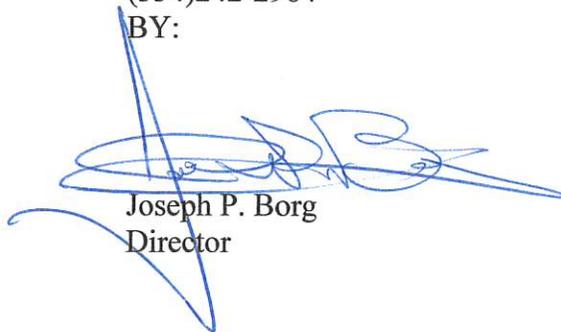
If the allegations set forth herein are found to be true, through either administrative adjudication or default of the **RESPONDENT**, it is the intention of the Commission to impose sanctions upon the **RESPONDENT**. Such sanctions may include, inter alia, an administrative assessment imposed on **RESPONDENT**, an additional administrative assessment for investigative costs arising from the investigation of the violation(s) described herein against **RESPONDENT**, and a permanent order to bar **RESPONDENT** from participation in any securities related industry in the state of Alabama. Failure to respond within 28 days of service of this Order shall be deemed a waiver of the right to a hearing and will result in the entry of a final order directing **RESPONDENT** to cease and desist from violating the Alabama Securities Act and permanently barring **RESPONDENT** from participation in any securities related industry in the state of Alabama.

ACCORDINGLY, IT IS HEREBY ORDERED that **RESPONDENT SHOW CAUSE** to the Commission within 28 days of the date of this **ORDER**, why **RESPONDENT** and any affiliate, subsidiary, officer, director, or partner thereof, should not be ordered to cease and desist from any further violations of the Alabama Securities Act.

Entered at Montgomery, AL, this 16th day of September, 2021.

ALABAMA SECURITIES COMMISSION
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BY:



Joseph P. Borg
Director

