

**STATE OF VERMONT
DEPARTMENT OF FINANCIAL REGULATION**

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| IN RE: |) | |
| CELSIUS NETWORK INC., |) | |
| CELSIUS NETWORK LIMITED, |) | |
| CELSIUS US HOLDING LLC, |) | |
| CELSIUS NETWORK LLC, |) | |
| CELSIUS LENDING LLC, |) | DOCKET NO. 22-021-S |
| CELSIUS KEYFI LLC, |) | |
| CELSIUS NETWORKS LENDING LLC, AND |) | |
| CELSIUS MINING LLC |) | |

EX PARTE ORDER TO CEASE AND DESIST

Based on the Motion for Ex Parte Order to Cease and Desist (the “Motion”) filed by the Securities Division of the Vermont Department of Financial Regulation (the “Department”) pursuant to 9 V.S.A. § 5602 and § 5604 and Department Regulation No. 2022-01, the Commissioner makes the following Findings of Fact and Conclusions of Law and enters the following Order:

I. FINDINGS OF FACT

Respondents

1. Celsius Network Inc. is a Delaware corporation with its principal place of business in Hoboken, New Jersey. Celsius Network Inc. owns several subsidiaries, including a 65.32% interest in Celsius Network Limited.
2. Celsius Network Limited is a private limited company formed in England and Wales, with its principal place of business in London, England. Celsius Network Limited wholly owns many subsidiaries, including Celsius US Holding LLC.
3. Celsius US Holding LLC is a Delaware limited liability company with its principal place of business in Hoboken, New Jersey. Celsius US Holding LLC wholly owns Celsius Network

LLC, Celsius Lending LLC, Celsius Mining LLC, and Celsius KeyFi LLC.

4. Celsius Network LLC is a Delaware limited liability company with its principal place of business in Hoboken, New Jersey. Celsius Network LLC provides user-facing products and services to customers in the United States, including in Vermont. Celsius Network LLC is wholly owned by Celsius US Holding LLC.
5. Celsius Lending LLC is a Delaware limited liability company with its principal place of business in Hoboken, New Jersey. Celsius Lending LLC provides consumer fiat and stablecoin loans secured by cryptocurrency deposits to Respondents' customers in the United States. Celsius Lending LLC is wholly owned by Celsius US Holding LLC.
6. Celsius KeyFi LLC is a Delaware limited liability company with its principal place of business in Hoboken, New Jersey. Celsius KeyFi LLC is wholly owned by Celsius US Holding LLC.
7. Celsius Networks Lending LLC is a Delaware limited liability company with its principal place of business in Hoboken, New Jersey. Celsius Networks Lending LLC is wholly owned by Celsius Network Inc.
8. Celsius Mining LLC is a Delaware limited liability company with its principal place of business in Hoboken, New Jersey. Celsius Mining LLC is wholly owned by Celsius US Holding LLC.
9. Celsius Network Inc., Celsius Network Limited, Celsius US Holding LLC, Celsius Network LLC, Celsius Lending LLC, Celsius KeyFi LLC, Celsius Networks Lending LLC, and Celsius Mining LLC are referred to herein collectively as the "Respondents" or "Celsius."¹

¹ The Respondents mirror the debtors in the chapter 11 case discussed *infra* at Paragraph 43.

The Crypto Interest Accounts

10. Celsius acts as a financial services company that generates revenue by providing, deploying, and investing assets in a variety of strategies, including lending digital assets and virtual currencies (collectively, “cryptocurrency” or “cryptocurrencies”) to commercial and institutional borrowers, lending fiat currency and stablecoins to retail borrowers, trading and investing in cryptocurrencies, cryptocurrency futures and derivatives, and securities, investing in blockchain and cryptocurrency staking and decentralized finance protocols, cryptocurrency mining, making venture capital and private equity investments, and engaging in other types of transactions and investments selected and conducted at Celsius’ discretion.
11. Since June 2018, Respondents have been, at least in part, financing their asset deployment and investing activities through the sale of unregistered securities in the form of interest-earning cryptocurrency accounts (the “Celsius Earn Accounts”) to residents of Vermont and other states.
12. Respondents refer to the interest-earning feature of the Celsius Earn Accounts as Celsius’ “Earn Program.”
13. Respondents conduct their business on the internet, through a website accessible to the general public at <https://celsius.network> (the “Celsius Website”), as well as through Respondents’ proprietary smartphone applications, which are also accessible to the general public.
14. Respondents permit Vermont residents and other investors who self-certify as being at least eighteen years old to invest in the Celsius Earn Accounts through the Celsius Website or smartphone applications.

15. Investors open their Celsius Earn Accounts by transferring U.S. dollars or eligible cryptocurrency to Celsius to invest in the Celsius Earn Accounts. Investors relinquish control over their deposits and Celsius takes legal and beneficial ownership of the investors' deposits.
16. Investors retain the right to withdraw their deposited cryptocurrencies, subject to certain conditions, but investors otherwise consent to Celsius' use of such cryptocurrencies consistent with the terms of the Celsius Earn Accounts, including: commingling cryptocurrencies with cryptocurrencies deposited by other investors; holding cryptocurrency held in an investor's account in Celsius' name or in another name; pledging, repledging, hypothecating, rehypothecating, selling, lending, staking, arranging for staking, or otherwise transferring or using any amount of such cryptocurrency, separately or together with other property, with all attendant rights of ownership, for any period of time and without retaining a like amount of cryptocurrency; and otherwise using or investing such cryptocurrency at the investor's sole risk.
17. In exchange for consideration (*i.e.* deposits and the attendant rights to use them as described above) received in the present, Celsius has at all relevant times promised to pay lucrative interest rates in the future. Celsius has at all relevant times promoted the interest rates through the Celsius Website and apps, which advertise annualized returns on cryptocurrencies for retail investors which significantly exceed the rates offered on short-term investment grade fixed income securities or on bank savings accounts.
18. Celsius sets the interest rates it pays on various cryptocurrencies in advance, typically on a weekly basis. Celsius sets its interest rates based on various considerations and prioritizing Celsius' need for particular types of cryptocurrencies or digital assets.

19. The accrual of interest is calculated using a daily periodic rate applied to the principal in a Celsius Interest Account and interest is paid the week after it accrues. Interest is payable on or around the first business day of each week for the interest accrued the prior week.
20. Interest payments are denominated in the same type of cryptocurrency or digital asset originally invested, or, subject to certain conditions, in Celsius' native digital token CEL.
21. Retail investors may request to withdraw their cryptocurrencies at any time, subject to a three-day processing period; however, this right is limited by Celsius' sole discretion to delay or prohibit withdrawals "for any reasonable reason."
22. Celsius has represented that, as of April 2022, it began limiting its offering of Celsius Earn Accounts in the United States to accredited investors pursuant to Section 506(c) of Regulation D promulgated by the U.S. Securities and Exchange Commission (the "Regulation D Offering").
23. Celsius Network LLC filed a Form D Notice of Exempt Offering of Securities with the U.S. Securities and Exchange Commission on April 13, 2022 for the offer and sale of Celsius Earn Accounts to accredited investors in the United States.
24. On April 29, 2022, Celsius Network LLC filed a notice including a copy of the Form D with the Department, pursuant to 9 V.S.A. § 5302(c). It is unclear the extent of sales of the Celsius Earn Accounts to Vermont residents after that date.² The Department has not confirmed whether Celsius complied with, and satisfies, all requirements of state and federal securities law for the Regulation D Offering to qualify for exemption from the registration requirements under the Securities Act.

² As of July 7, 2022, only 4 Vermont investors in Celsius Earn Accounts had completed Celsius' verification procedures to be designated as accredited investors.

25. Celsius has allowed non-accredited users in the United States, including Vermont residents, who had a balance in the Celsius Earn Accounts prior to April 15, 2022, to maintain their Celsius Earn Accounts, continue earning interest on the balances therein, and to reinvest such interest payments into Celsius Earn Accounts.
26. As of July 7, 2022, more than 250 Vermont residents had over \$3,585,000 invested in Celsius Earn Accounts. Respondents offered these Celsius Earn Accounts to Vermonters without complying with the registration requirements in Vermont law.

Celsius' API Partner Program

27. Celsius offers an Application Programming Interface ("API") that allows certain institutional users, known as Celsius "API Partners," to integrate with the Celsius platform.
28. Celsius affords its API Partners the ability to offer the Celsius Earn Accounts to retail investors in two different ways.
29. First, the Celsius "Segmented Accounts" platform allows API Partners to offer the API Partners' own customers the Celsius Earn Accounts through the API Partners' own portal. An API Partner availing itself of Celsius' Segmented Accounts structure offers the API Partner's own retail customers to access the Celsius Earn Account through the API Partner's own portal, as opposed to the API Partner's retail customers accessing the Celsius Earn Account directly from Celsius' own website. Apart from the difference in how the Celsius Earn Account is accessed, individual retail customers of API Partners offering the Segmented Account option are subject to the same rights, benefits, terms, and conditions as Celsius' own Celsius Earn Account investors.
30. Second, Celsius' API Partners can choose to access the Celsius Earn 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 Celsius Earn Account for the benefit of its individual customers, whose cryptocurrencies the API Partner has aggregated for the purpose of investing in the Celsius Earn Account on behalf of, and for the benefit of the API Partner’s individual retail customers.

31. Celsius incentivizes the API Partners by paying a fee to Segmented Account partners based on a percentage of rewards payable by Celsius to the end-user, and also pays fees to Omnibus Partners.
32. Celsius is selling unregistered securities in the form of Celsius Earn Accounts to its API Partners’ Segmented Account customers.
33. Celsius is selling unregistered securities to its API Partners who choose to open API Partner Omnibus Accounts with Celsius.

The Lack of Registration and Public Protections

34. Respondents are not licensed as money transmitters under the Vermont Money Services Act, 8 V.S.A. § 2500, *et seq.*
35. Respondents are not registered with the Vermont Department of Financial Regulation to offer or sell securities in Vermont.
36. The Celsius Earn Accounts are not registered or permitted for sale in Vermont, nor do they qualify for any exemption from registration pursuant to the Securities Act, except to the limited extent offered and sold to accredited investors pursuant to the Regulation D Offering.
37. The Celsius Earn Accounts are not registered for offer or sale with the United States Securities and Exchange Commission (the “SEC”).

38. Respondents did not file or cause to be filed a registration statement with the SEC in connection with the offer and sale of the Celsius Earn Accounts.
39. Respondents are not disclosing — and at all relevant times have not disclosed — material information to Celsius Earn Account investors that issuers of registered securities must include in a registration statement and provide to prospective investors in the form of a prospectus pursuant to Subchapter 3 of the Securities Act and Section 6-1 of the Vermont Securities Regulations.
40. The Celsius Earn Accounts are not protected by 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.
41. The Celsius Earn Accounts are 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 Freeze of Withdrawals and Bankruptcy Proceedings

42. On June 12, 2022, Celsius suspended the fulfillment of customer withdrawal requests, citing “extreme market conditions.”
43. On July 13, 2022, Respondents filed Chapter 11 bankruptcy petitions in the United States Bankruptcy Court for the Southern District of New York (Case No. 22-10964) (the “Bankruptcy Case”).

44. On July 25, 2022, Celsius filed a Motion Seeking Entry of an Order (I) Permitting the Sale of the Debtors' Mined Bitcoin in the Ordinary Course and (II) Granting Related Relief (the "Motion") in the Bankruptcy Case.³
45. Although the Motion is styled as a request for authority to sell the Respondents' mined Bitcoin, the specific authority sought by Celsius in the Bankruptcy Case is vastly broader than that and includes monetizing these assets by "sale, pledging, *hypothecation*, assignment, *investment*, use, transfer, or *other disposal*."
46. The Motion is unclear as to whether Celsius seeks to restart its platform, including the Celsius Earn Accounts, swap service, retail lending, institutional lending, and custody service, or otherwise seeks to allow the buying, selling, trading, or withdrawal of cryptocurrency assets on the Celsius platform or otherwise. Indeed, the request to monetize the Bitcoin and other cryptocurrencies "consistent with prepetition practices and in the ordinary course of business" on its face indicates that Celsius intends to do so despite the inherent risk to creditors in the Bankruptcy Case.
47. A hearing on the Motion is scheduled in the Bankruptcy Case for August 16, 2022.
48. Given the possibility that Celsius' Motion may be granted in the Bankruptcy Case and Celsius may resume offering unregistered securities to Vermont consumers, the Securities Division seeks an *ex parte* order to protect the financial health and welfare of Vermont residents who may be affected by Respondents' conduct or otherwise harmed by Respondents' violations of the Vermont Uniform Securities Act.

³ See ECF No. 187 in the Bankruptcy Case.

II. CONCLUSIONS OF LAW

49. Pursuant to 9 V.S.A. § 5301, “[i]t is unlawful for a person to offer or sell a security in this State unless: (1) the security is a federal covered security; (2) the security, transaction, or offer is exempted from registration under sections 5201 through 5203 of this chapter; or (3) the security is registered under this chapter.”
50. Pursuant to 9 V.S.A § 5102(28), the term “security” includes notes, investment contracts, evidence of indebtedness, and related types of participation in profit-sharing agreements. Section 5102(28)(D) specifies that the Securities Act’s definition of security includes “an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor and a ‘common enterprise’ means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors.” *Id.* (codifying the definition set forth in *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946), commonly referred to as the “*Howey test*”).
51. The Celsius Earn Accounts offered by Respondents, directly or through its API Partners, are securities within the meaning of 9 V.S.A. § 5102(28).
52. Except to the limited extent the Celsius Earn Accounts were offered or sold to a small number of accredited investors in the Regulation D Offering, Celsius Earn Accounts were neither federal covered securities nor registered with the Department nor exempted from registration when Respondents offered or sold them to Vermont investors.
53. Accordingly, Respondents are — and have for some time been — in violation of 9 V.S.A. § 5301.

54. Celsius' Motion states expressly that Celsius seeks to engage in a course of action that would constitute a violation of the Vermont Uniform Securities Act.
55. Moreover, if Celsius' Motion is granted in the Bankruptcy Case and Celsius resumes offering Celsius Earn Accounts to nonaccredited Vermont consumers directly or through its API Partners, Respondents will be in violation of 9 V.S.A. § 5301.

III. COMMISSIONER'S AUTHORITY

56. Pursuant to 9 V.S.A. § 5604(a)(1), the Commissioner may issue orders or directives to any person to cease and desist from specific conduct if the Commissioner finds that the person has engaged, is engaging, or is about to engage in an act, practice, or course of business which constitutes a violation of 9 V.S.A. Chapter 150, the Vermont Uniform Securities Act, which spans 9 V.S.A. § 5101 to § 5616.
57. Pursuant to 9 V.S.A. § 5604(b) and Section 1.04(O) of the Department of Financial Regulation No. 2022-01, the Commissioner may issue orders without prior notice or opportunity to be heard.
58. In light of the immediate need to protect the financial health and welfare of Vermont residents who may be affected by Respondents' conduct or otherwise harmed by Respondents' violations of the Vermont Uniform Securities Act identified herein, an *ex parte* order is appropriate in this case.

IV. ORDER

59. Based on the findings of fact and conclusions of law identified above, IT IS HEREBY ORDERED:
- A. Respondents shall cease and desist the offer and sale of Celsius Earn Accounts in Vermont directly to Vermont residents, except to the extent any such offer or sale

is properly registered or exempt from the registration requirements of the Securities Act;

- B. Respondents shall cease and desist the offer and sale of Celsius Earn Accounts to Vermont residents via Celsius' API Partners, except to the extent any such offer or sale is properly registered or exempt from the registration requirements of the Securities Act; and
- C. Respondents shall not withhold, destroy, mutilate, or by any means modify or falsify any documentary material, electronic records, or other information in their possession that is relevant to the activities and transactions described herein or that involves or relates in any way to the Celsius Earn Accounts.

Dated at Montpelier, Vermont this 12th day of August 2022.



Kevin J. Gaffney
Commissioner
Vermont Department of Financial Regulation