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Commissioner
2 MARY ANN SMITH
Deputy Commissioner
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9 Attorneys for Complainant

10
11 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
12 OF THE STATE OF CALIFORNIA

13 In the Matter of:)
)
14 THE COMMISSIONER OF FINANCIAL PROTECTION)
AND INNOVATION,)
15)
16 Complainant,)
)
17 v.)
)
18 PLUTUS FINANCIAL, INC. (doing business as Abra) and)
19 PLUTUS LENDING LLC,)
)
20 Respondents.)
21)
22)

CONSENT ORDER

1 The Commissioner of Financial Protection and Innovation (Commissioner), Plutus Financial,
2 Inc. (doing business as Abra), and Plutus Lending LLC (collectively the Parties) enter into this
3 Consent Order with respect to the following.

4 **I. RECITALS**

5 A. The Commissioner has jurisdiction over the administration and regulation of offers and
6 sales of securities in California under the Corporate Securities Law of 1968 (CSL) (Corp. Code, §
7 25100 et seq).

8 B. The CSL prohibits the offer or sale of any securities within, into, or from this state
9 unless a qualification or permit has been obtained from the Department or unless the security or
10 transaction is exempt from the qualification requirements.

11 C. At all relevant times, Plutus Financial, Inc. (doing business as Abra) and Plutus
12 Lending LLC (collectively Abra) were Delaware corporations headquartered in Mountain View,
13 California.

14 D. On or about July 28, 2020, and continuing to on or about October 3, 2022, Abra offered
15 and sold in California, via general solicitation to the public, interest-bearing cryptocurrency accounts
16 called Abra Earn (Earn) to California residents. On or about October 3, 2022, Abra voluntarily ceased
17 offering Earn or accepting new deposits from existing California Earn customers. Since the inception
18 of Earn, at least 3,800 California investors deposited various virtual currencies into their Earn
19 accounts. The total value of these deposits was approximately \$254,227,689. There is currently about
20 \$19 million remaining on deposit from California customers. California Earn customers, like all Earn
21 customers, have been and continue to be able to withdraw their virtual currencies consistent with
22 Earn's Terms of Service.

23 **II. FINDINGS**

24 E. The Commissioner is of the opinion that the Earn accounts offered and sold by Abra
25 between July 28, 2020 and October 3, 2022 were securities in the form of investment contracts subject
26 to qualification under the CSL. These securities were being offered or sold in this state in issuer
27 transactions. The Department has not issued a permit or other form of qualification authorizing any
28 person to offer or sell these securities in this state. The offer or sale of these securities to the general

1 public on or before October 3, 2022, was not excepted or exempted from qualification.

2 F. Corporations Code section 25110 prohibits the offer and/or sale of non-exempt
3 securities in this state that are subject to qualification. The Department has not issued a permit or other
4 form of qualification authorizing any person to offer and sell the described securities in this state.

5 G. Corporations Code section 25401 prohibits the offer or sale of a security in the State of
6 California by means of any written or oral communication that includes an untrue statement of a
7 material fact or omits to state a material fact necessary to make the statements made, in the light of the
8 circumstances under which the statements were made, not misleading.

9 H. Abra offered and sold the Earn accounts in this state by means of omissions of material
10 facts necessary to make the statements made, in the light of the circumstances under which the
11 statements were made, not misleading. For instance, although Abra advised Earn investors that there
12 were certain risks involved when they opened an account, it failed to disclose other specific risks
13 associated with the Earn accounts. In particular, Abra failed to disclose material aspects of its
14 business that could have impacted Earn accounts, including, the types of investments, trades, and
15 hedging activities that it engaged in with Earn account customers' virtual currencies; the identities and
16 creditworthiness of the institutions that borrowed Earn account virtual currencies; and information or
17 statements related to Abra's finances.

18 I. Without admitting the Commissioner's findings, as set forth in paragraphs E through I,
19 Respondents desire to enter this Consent Order which the Commissioner finds is in the public interest
20 and consistent with the purposes fairly intended by the policies and provisions of the CSL.
21 Notwithstanding the foregoing, Abra will admit the findings for the purposes of exceptions to
22 discharge in bankruptcy proceedings under any and all jurisdictions, including the proceedings set
23 forth in Sections 523 and 1192 of the Bankruptcy Code, 11 U.S.C. §§ 523; 1192.

24 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set forth
25 herein, the Parties agree as follows:
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1 **III. TERMS AND CONDITIONS**

2 1. Purpose. This Consent Order resolves the issues before the Commissioner, set forth
3 above, in a manner that avoids the expense of a hearing and other possible court proceedings, protects
4 consumers, is in the public interest, and is consistent with the purposes, policies, and provisions of the
5 CSL.

6 2. Final Desist and Refrain Order. Under California Corporations Code section 25532,
7 Abra is hereby ORDERED to desist and refrain from the further offer or sale of Earn accounts or any
8 security that is not registered, qualified, or exempt in California and to desist and refrain from the
9 violations of Corporations Code section 25401 set forth herein.

10 3. Penalty. Abra agrees to pay to the Commissioner penalties in the amount of
11 \$1,000,000. Payment should be made in the form of a cashier’s check payable to the “Department of
12 Financial Protection and Innovation” and transmitted to the attention of “Accounting – Litigation” at
13 Department of Financial Protection and Innovation, 2101 Arena Boulevard, Sacramento, California
14 95834-2036. Notice of such payment shall be forwarded to Meg Lippincott, Senior Counsel, at the e-
15 mail address noted in Paragraph 22.

16 4. Waiver of Penalty Payment. If Abra satisfies all terms and conditions of this Consent
17 Order and California Earn customers are allowed to withdraw their digital assets pursuant to Paragraph
18 5, the Commissioner agrees to waive the penalty owed by Abra pursuant to Paragraph 3. However, in
19 the event Abra petitions for bankruptcy and returned digital assets are subject to an order or agreement
20 to turnover the returned digital assets (e.g., as a result of an adversary proceeding claiming a
21 preferential or fraudulent transfer), Abra will still be required to pay the penalty notwithstanding the
22 waiver provided for in the previous sentence. If the Commissioner learns of new or additional
23 violations of the terms of this Consent Order, or Abra fails to return California Earn customers’ digital
24 assets, the Commissioner reserves the right, in her sole discretion, to require full payment of the
25 penalty and Abra consents to the entry of a judgment for the full amount of the payment owed under
26 Paragraph 3.

27 5. Return of Digital Assets to California Earn Customers. Abra agrees to return to
28 California Earn customers the balance in their Earn accounts, as follows:

- 1 a. Abra shall continue to allow California Abra Earn Customers to withdraw their digital
2 assets from their Abra Earn accounts using Abra’s mobile app.
- 3 b. No later than 30 calendar days after the Effective Date (as set forth in Paragraph 26
4 below), Abra shall:
- 5 i. Deposit the in-kind equivalent of all digital assets of California Earn customers
6 in a digital wallet controlled by a third-party company approved by the Parties,
7 to be drawn down by Abra as California Earn customers withdraw their digital
8 assets from Abra; and
- 9 ii. Provide written notice to all California Earn customers that Abra will no longer
10 be servicing Earn accounts in California, including paying interest, and
11 California Earn customers must withdraw their assets (the “Customer Notice”).
12 Such Customer Notice shall be sent to the customer’s last known e-mail address
13 (or, if no email address is known, then to the California Earn customer’s last
14 known mailing address) and posted on the Abra app or website. The Customer
15 Notice shall say:
- 16 Pursuant to a settlement with the California Department of
17 Financial Protection and Innovation, Abra will be closing all
18 Earn accounts for California customers. Abra will no longer
19 be making interest payments. Please withdraw your digital
20 assets from your Abra Earn account immediately via Abra’s
21 mobile app. If you need assistance accessing your account
22 or withdrawing your digital assets, please contact us
23 immediately at 1-877-246-2272 or via e-mail at
support@abra.com.
- 24 The Customer Notice shall not be accompanied by any other documents or text
25 when emailed to customers unless first approved by the Commissioner.
- 26 c. No later than 60 calendar days after the Effective Date, Abra shall, for any Customer
27 Notice that cannot be delivered by email (e.g., because emails to the provided address
28 are returned as undeliverable), send by U.S. mail the Customer Notice to the customer’s
last known address. Any correspondence that is returned as undeliverable shall also be
specified in the reports to the Commissioner required under this Consent Order.

1 d. No later than 120 calendar days after the Effective Date, Abra shall, for any California
2 Earn customer who has not withdrawn their digital assets 90 calendar days after the
3 Effective Date and the initial Customer Notice appears to have been delivered, send an
4 additional Customer Notice to each such California Earn customer by email and U.S.
5 mail.

6 6. No Customer Waiver. Withdrawal of digital assets by any customer under this Consent
7 Order may not be conditioned on that customer waiving any right.

8 7. Handling of Uncollected Digital Assets. Abra shall be responsible for ensuring that any
9 outstanding digital assets owed to any California Earn customers are escheated to the State of
10 California pursuant to the provisions of the California Unclaimed Property Law (Code of Civil
11 Procedure section 1500 et seq.). Abra shall escheat any returned or unclaimed digital assets to the
12 California State Controller's Office within the period provided by Code of Civil Procedure section
13 1520 of the Unclaimed Property Law (Cal. Civ. Proc. §§ 1500-1582). In the event of escheat, notice
14 shall be sent within five business days to the Commissioner at the Notice address in Paragraph 22, and
15 shall include a copy of any escheatment report(s) submitted to the California State Controller.

16 8. Report. Abra agrees to:
17 a. submit a monthly report to the Commissioner (the Report), beginning June 10, 2023,
18 and on the 10th of each month thereafter until all California Earn digital assets are
19 distributed to customers or escheated.
20 b. include in the Report, at minimum, the following: each California Earn customer's
21 name; email address; mailing address; telephone number, digital asset balances as of
22 the Effective Date and as of the date of the Report; the success of the delivery of the
23 Customer Notice and whether it was by email or U.S. mail (the Report).
24 c. email the Report to Meg Lippincott, Senior Counsel, Enforcement Division, at
25 Meg.Lippincott@dfpi.ca.gov.
26 d. furnish, at the request of the Commissioner, within thirty (30) calendar days of the
27 request, evidence substantiating any particular distribution or escheatment.
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9. Waiver of Hearing Rights. Abra acknowledges the Commissioner is ready, willing, and able to proceed with the filing of an administrative action on the charges contained in this Consent Order. Abra hereby waives the right to any hearings, and to any reconsideration, appeal, or other right to review which may be afforded pursuant to the CSL, the California Administrative Procedure Act, the California Code of Civil Procedure, or any other provision of law. Abra further expressly waives any requirement for the filing of an Accusation pursuant to California Government Code section 11415.60(b). By waiving such rights, Abra effectively consents to this Consent Order becoming final.

10. Failure to Comply with Consent Order. Abra agrees that if it fails to comply with the terms of this Consent Order, the Commissioner may institute proceedings for any and all violations otherwise resolved under this Consent Order. The Commissioner reserves the right to bring any future actions against Abra or any of its partners, owners, officers, shareholders, directors, employees or successors for any and all unknown violations of the CSL.

11. Information Willfully Withheld or Misrepresented. This Consent Order may be revoked and the Commissioner may pursue any and all remedies available under law against Abra if the Commissioner discovers that Abra knowingly or willfully withheld or misrepresented information used for and relied upon in this Consent Order.

12. Full and Final Settlement. The parties hereby acknowledge and agree that this Consent Order is intended to constitute a full, final, and complete resolution of the violations described herein, namely, the violations of Corporations Code sections 25110 and 25401, and that no further proceedings or actions will be brought by the Commissioner in connection with these violations of Corporations Code sections 25110 and 25401, excepting therefrom any proceeding to enforce compliance with the terms of this Consent Order.

13. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner's ability to assist any other government agency (city, county, state or federal) with any prosecution, administrative, civil or criminal action brought by that agency against Abra or any other person based on any of the activities alleged in this matter or otherwise.

1 14. Headings. The headings for the paragraphs of this Consent Order are inserted for
2 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
3 the provisions hereof.

4 15. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
5 interest.

6 16. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
7 Consent Order, it has relied solely on the statements set forth herein and the advice of its own legal
8 counsel, if represented. Each of the Parties further represents, warrants, and agrees that in executing
9 this Consent Order it has placed no reliance on any statement, representation, or promise of any other
10 party, or any other person or entity not expressly set forth herein, or upon the failure of any party or
11 any other person or entity to make any statement, representation, or disclosure of anything whatsoever.
12 The Parties have included this clause: (1) to preclude any claim that any party was in any way
13 fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol
14 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

15 17. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
16 this Consent Order will be valid or binding unless it is in writing and signed by each of the Parties.
17 The waiver of any provision of this Consent Order will not be deemed a waiver of any other provision.
18 No waiver by either party of any breach of, or of compliance with, any condition or provision of this
19 Consent Order by the other party will be considered a waiver of any other condition or provision or of
20 the same condition or provision at another time.

21 18. Full Integration. This Consent Order is the final written expression and the complete
22 and exclusive statement of all the agreements, conditions, promises, representations, and covenant
23 between the Parties with respect to the subject matter hereof, and supersedes all prior or
24 contemporaneous agreements, negotiations, representations, understandings, and discussions between
25 and among the Parties, their respective representatives, and any other person or entity, with respect to
26 the subject matter covered hereby.

27 19. Governing Law. This Consent Order will be governed by and construed in accordance
28 with California law. Each of the Parties hereto consents to the jurisdiction of such court and thereby

1 irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the
2 maintenance of such action or proceeding in such court.

3 20. Effect Upon Future Proceedings. If Abra applies for any license, permit or qualification
4 under the Commissioner's current or future jurisdiction, or is the subject of any future action by the
5 Commissioner to enforce this Consent Order, then the subject matter hereof shall be admitted for the
6 purpose of such application(s) or enforcement proceedings(s). This Consent Order and the conduct
7 described herein shall not be used as sole grounds to deny registration or qualification of securities
8 issued by Abra or any parent, affiliate, of subsidiary entity. This Order is not intended to subject any
9 Covered Person to any disqualifications under the laws of the United States, any state, the District of
10 Columbia, Puerto Rico, or the U.S. Virgin Islands, or under the rules or regulations of any securities or
11 commodities regulator or self-regulatory organization, including, without limitation, any
12 disqualification from relying upon the state or federal registration exemptions or safe harbor
13 provisions. "Covered Persons" means Abra, its parent, or any of its affiliates and their current or
14 former officers, directors, employees, or other persons that could otherwise be disqualified as a result
15 of this Consent Order.

16 21. Voluntary Agreement. Abra hereby enters into this Consent Order voluntarily and
17 without coercion and acknowledges that no promises, threats, or assurances have been made by the
18 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each represent
19 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and without
20 any duress or undue influence of any kind from any source.

21 22. Notice. Any notice required under this Consent Order shall be provided to each party at
22 the following addresses:

23 To Abra:

24 Christopher W. Gerold
25 Lowenstein Sandler LLP
26 One Lowenstein Drive
27 Roseland, New Jersey 07068
28 CGerold@lowenstein.com

 To the Commissioner:

 Meg Lippincott
 Senior Counsel, Enforcement Division

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Department of Financial Protection and Innovation
320 W. 4th Street, Suite 750
Los Angeles, California 90013
Meg.Lippincott@dfpi.ca.gov

23. Counterparts. This Consent Order may be executed in one or more separate counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall together constitute a single document.

24. Signatures. A fax or electronic mail signature shall be deemed the same as an original signature.

25. Public Record. Abra hereby acknowledges that this Consent Order is and will be a matter of public record.

26. Effective Date. This Consent Order shall become final and effective when signed by all Parties and delivered by the Commissioner’s agent via e-mail to Abra’s counsel, Christopher W. Gerold, Lowenstein Sandler LLP, at the following email address: CGerold@lowenstein.com.

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27. Authority to Sign. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Consent Order and undertake the obligations set forth herein.

Dated: April 28, 2023
Los Angeles, California



CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and
Innovation

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: April 26, 2023

PLUTUS FINANCIAL, INC.

By _____
Bill Barhydt, CEO of Plutus
Financial, Inc.

PLUTUS LENDING LLC

By _____
Bill Barhydt, Manager of Plutus
Lending LLC