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**BEFORE THE DIRECTOR OF THE DEPARTMENT OF FINANCE
OF THE STATE OF IDAHO**

CELSIUS NETWORK INC., CELSIUS
NETWORK LIMITED, CELSIUS US HOLDING
LLC, CELSIUS NETWORK LLC, CELSIUS
LENDING LLC,

Respondents.

Docket No. 2022-07-07

**NOTICE OF INTENT TO ISSUE
ENFORCEMENT ORDER AND
OPPORTUNITY TO REQUEST A HEARING**

The Idaho Department of Finance (the "Department"), through its Securities Bureau and Financial Institutions Bureaus, pursuant to (1) the Idaho Uniform Securities Act (2004) (the "IUSA"), Idaho Code § 30-14-101 et seq., (2) the Idaho Money Transmitters Act (the "IMTA"), Idaho Code § 26-2901 et seq., and (3) the Idaho Trust Institutions Act (the "ITIA"), Idaho Code § 26-3201 et seq., (collectively, the "Acts"), hereby issues this Notice of Intent to Issue Enforcement Order and Opportunity to Request a Hearing. The Department intends to recommend to the Director of the Department that she enter an order to cease and desist that finds violations of the IUSA, IMTA, and ITIA and imposes a fine against Celsius Network Inc., Celsius Network

Limited, Celsius US Holding LLC, Celsius Network LLC, and Celsius Lending LLC (collectively referred to as “Respondents” or “Celsius”).

Pursuant to Idaho Code § 30-14-604, § 26-2923, § 26-1115, and § 67-5242, Respondents have the right to a hearing on the allegations of violations of the IUSA, IMTA, and ITIA. If the written request is not timely made, see the notice terms stated at the end of this document, the Department staff intends to recommend to the Director that she issue an Order to Cease and Desist consistent with the following.

RESPONDENTS

1. **Celsius Network Inc.** is a Delaware corporation formed on February 8, 2018, with its principal place of business in Hoboken, New Jersey. Celsius Network Inc. owns over 82% of Celsius Network Limited.

2. **Celsius Network Limited** is an England and Wales private limited company formed on February 9, 2018, with its principal place of business in London, England. Celsius Network Limited wholly owns Celsius US Holding LLC.

3. **Celsius US Holding LLC** is a Delaware limited liability company formed on October 5, 2020, with its principal place of business in Hoboken, New Jersey. Celsius US Holding LLC wholly owns Celsius Network LLC and Celsius Lending LLC.

4. **Celsius Network LLC** (“Celsius Network”) is a Delaware limited liability company formed on June 14, 2021, with its principal place of business in Hoboken, New Jersey.

5. **Celsius Lending LLC** (“Celsius Lending”) is a Delaware limited liability company formed on October 5, 2020, with its principal place of business in Hoboken, New Jersey. Celsius Lending applied to the Department for a regulated lender license on April 14, 2022, but on June

29, 2022, withdrew the application.

6. Celsius Lending is the only entity of the five that registered with the Idaho Secretary of State; it registered as a foreign limited liability company in Idaho on July 6, 2021. None of the five Celsius entities are registered with the Department in any capacity, including to sell securities, provide investment advice, provide money transmitter services, or custody assets.

7. None of the five Celsius entities are a chartered bank, trust institution, or trust company, nor do they hold any other type of financial institution charter from Idaho or any other state or the federal government.

RECITALS OF FACT

8. Celsius markets itself, particularly through its website <https://celsius.network/> and mobile phone application, as providing various digital-asset-related financial services to retail and institutional customers in the United States, including trading, borrowing, and lending services. Celsius also states that it is engaged in other income-generating digital asset activities such as proprietary trading, staking, and mining. In some situations, Celsius has held digital assets in custody for customers, including Idaho customers.

Celsius Exchange Services

9. As one of various financial services offered to consumers, Celsius indicates it provides exchange services to consumers, allowing consumers to purchase digital assets through its platforms as indicated by its recurring advertisement “Your Home For Crypto: Buy, Borrow, Swap & Earn.”

10. The IMTA at § 26-2902 provides, in relevant part:

26-2902. DEFINITIONS. Unless otherwise indicated, the following definitions shall apply to the terms set forth below wherever such terms are used in this chapter:

....

(11) "Money transmission" means the sale or issuance of payment instruments or engaging in the business of receiving money for transmission or the business of transmitting money within the United States or to locations outside the United States by any and all means including, but not limited to, payment instrument, wire, facsimile or electronic transfer.

....

(13) "Payment instrument" means any check, draft, money order, traveler's check or other instrument or written order for the transmission or payment of money, sold or issued to one (1) or more persons, whether or not such instrument is negotiable. The term "payment instrument" does not include any credit card voucher, any letter of credit or any instrument which is redeemable by the issuer in goods or services.

11. A link to the Celsius Terms of Use ("Celsius Terms") appears at the bottom of each of Celsius' web pages. Various Celsius Terms have been amended over time but the language and terms cited below have been generally applicable during the time period at issue, since approximately 2018.

12. In its various materials available to the public on its website, Celsius offers services constituting money transmission as defined in the IMTA, including purchasing digital assets on its platform through the use of ACH transfer, credit card, or wire transfer. The how-to tutorial for these services indicates the customer may request a purchase, swap (sale), or withdrawal of digital assets and/or fiat currency. Celsius purports to confirm the transaction through terms including the medium of the asset, fees, and any exchange or conversion rates. As part of the transaction, Celsius creates a payment instrument to the consumer through a three-day processing period, wherein it has a written order for the transmission or payment of money.

13. Paragraph 4. B. "Earn Rewards" of the Celsius Terms has provided:

Any conversion between a Digital Asset and another Digital Asset or Fiat currency shall be made by us in accordance with the rates and prices applicable at the actual time of conversion. Applicable rates are indexed to those used by industry-leading platforms, as we may choose to use from time to time, in our sole discretion. We

currently use rates provided by CMC Markets, Coinpaprika, and our own rates as determined by our liquidity providers. We may change these rate sources at any time and without giving notice or updating these Terms, and you shall not have any claims regarding our choice of rate sources or rates used by Celsius or made available by any third party.

Celsius Interactions with other Jurisdictions Regarding Money Transmitter Activities

14. On June 18, 2021 Celsius Network registered as a Money Services Business pursuant to the Bank Secrecy Act (BSA), administered by the Financial Crimes Enforcement Network (FinCEN). Celsius Network renewed that registration as recently as May of 2022. In both its initial registration, and renewal thereof, Celsius listed Idaho, among other states, as a location it offered money services, specifically indicating money transmission as the service offered in the registered states.

15. On September 9, 2019, Celsius Network signed a Consent Order with the State of Washington, Department of Financial Institutions. The Consent Order noted that Celsius Network admitted it was involved in unlicensed activity: “Beginning in at least June 2018, Respondent advertised, held itself out as providing money services, engaged in the business of money transmission ... without being licensed as a money transmitter ... Respondent advertised through at least one website: <http://celsius.network>.” The order further stated: “It is AGREED that Respondent shall cease and desist from holding itself out being able to or providing money services to Washington State consumers until such time as Respondent obtains a license in accordance with UMSA.”

16. Celsius did not get licensed in any state as a money transmitter. It is unclear whether it complied with the Consent Order in Washington. Celsius continued unlicensed money transmission in Idaho from 2018 through 2022.

Celsius Custody Services

17. Celsius offered a “custody” account. Celsius Terms stated, in relevant part:

Our custody (“Custody”) Service allows you to store Eligible Digital Assets in a Custody Wallet accessible through your Celsius Account. PLEASE NOTE THAT WHEN YOU USE OUR CUSTODY SERVICE TO STORE ELIGIBLE DIGITAL ASSETS YOU WILL NOT RECEIVE A FINANCING FEE, REWARDS OR FINANCIAL COMPENSATION OF ANY KIND ON ELIGIBLE DIGITAL ASSETS SO STORED.

When you use the Custody Service, you understand and agree that Celsius may act as the custodian or we may use a Third Party Custodian to provide the Custody Service....

Title to any of your Eligible Digital Assets in a Custody Wallet shall at all times remain with you and not transfer to Celsius. Celsius will not transfer, sell, loan or otherwise rehypothecate Eligible Digital Assets held in a Custody Wallet unless specifically instructed by you, except as required by valid court order, competent regulatory agency, government agency or applicable law. As title owner of assets, you bear all risk of loss. Celsius shall have no liability for any Digital Asset price fluctuations or any or all loss of Digital Assets. Notwithstanding the foregoing, Celsius may suspend your access to Services, including the Custody Service and your access to a Custody Wallet, in the event of market disruptions or periods of volatility. Celsius or a Third Party Custodian controls the private keys to the Blockchain addresses of all Custody Wallets. Celsius will use reasonable care and commercially reasonable efforts in connection with the Custody Service to store and secure Eligible Digital Assets in a Custody Wallet. You understand that your use of the Custody Service, whether provided by Celsius or a Third Party Custodian, does not create a fiduciary relationship between you and Celsius or any Third Party Custodian. Neither Celsius nor any Third Party Custodian has any fiduciary duty to you. Celsius has no duty to inquire into, supervise, or determine the suitability of any transaction you initiate involving Eligible Digital Assets in a Custody Wallet. Eligible Digital Assets in a Custody Wallet may be comingled with the Eligible Digital Assets of other Users, and Celsius is under no obligation to return the actual Eligible Digital Assets initially transferred by you to a Custody Wallet, but will return Eligible Digital Assets of the identical type reflected in your Celsius Account at the time you request such a return. ...

Eligible Digital Assets held in a Custody Wallet are subject to the other provisions of these Terms, unless where expressly stated otherwise. Celsius retains the right to set-off any Eligible Digital Assets in a Custody Wallet against any obligations you may have to us. You understand and acknowledge that the legal treatment of Digital Assets remains unsettled and may vary depending on the jurisdiction in which you reside. In the event that you, Celsius or any Third Party Custodian

becomes subject to an insolvency proceeding, it is unclear how your Digital Assets would be treated and what rights you would have to such Digital Assets. Celsius does not make any representation as to the likely treatment of Digital Assets in your Celsius Account, including those in a Custody Wallet, in the event that you, Celsius or any Third Party Custodian becomes subject to an insolvency proceeding whether in the U.S. or in any other jurisdiction. You explicitly understand and acknowledge that the treatment of Digital Assets in the event of such an insolvency proceeding is unsettled, not guaranteed, and may result in a number of outcomes that are impossible to predict reliably, including but not limited to you being treated as an unsecured creditor and/or the total loss of any and all Digital Assets reflected in your Celsius Account, including those in a Custody Wallet.

Celsius Earn Rewards Program

18. One of the key aspects of the Celsius business is its "Earn Rewards" program. To summarize this program, Celsius states that it receives certain digital assets from customers, Celsius promises to pay an on-going reward (typically more of a digital asset) for being able to hold, control, and exclusively use that digital asset, Celsius uses the digital asset in various ways to try and generate funds for its own business, and then Celsius promises to give back the digital asset to the customer, plus all earned rewards, when the customer asks for their assets (the "Earn Rewards Program" or "ERP").

19. Celsius has marketed the ERP as better than a bank account:

The Celsius business model is structured to do the exact opposite of what banks do - by giving 80% of total revenue back to our community each week in the form of earned interest. We earn profits by lending coins to hedge funds, exchanges, and institutional traders, and by issuing asset-backed loans at an average of 9% interest. We're taking the exact same 80% profit margin that banks have kept for themselves for centuries and returning it to our community of depositors.

20. Celsius's 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, that "users transfer assets with Celsius, Celsius lends funds to institutions and returns up to 80% of earnings

to users."

21. Unlike a bank, Celsius operates in a space that is lightly or unregulated and as such it has little or none of the safeguards for bank deposits to protect against unsafe use of depositor funds, against "bank runs" or liquidity shortfalls, against overconcentration of a loan portfolio, against investing in highly volatile and risky assets, against fraud and negligence, and against other unsafe and unsound management practices.

22. The Celsius Terms include important details about the ERP.

23. Celsius offers its ERP to anyone over the age of eighteen, except for residents of certain foreign jurisdictions subject to regulatory restrictions.

24. Celsius promises its customers that they earn a variable reward rate (another term for interest) on digital assets in the ERP. The promised variable rates are posted on the Celsius website and are "tiered" depending upon the nature and amount of the digital asset transferred to Celsius. For example, for a period in 2020, Celsius promised up to 6.2% "Rewards" on the first Bitcoin deposited and up to 3.51% on additional deposits of Bitcoin; at that same time, rates on other digital assets varied significantly, e.g. at one point in time, from 13.99% for the Synthetix Network Token (SNX) to 0.0% for Ripple (XRP).

25. The manner in which the reward/interest is calculated and credited to ERP accounts has been described in the Celsius Terms as follows:

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.

26. Importantly, the Celsius Terms provide that a customer in the ERP relinquishes control over the deposited digital asset such that Celsius is free to use those digital assets as Celsius sees fit, including commingling the digital assets with those of other customers and investing those pooled assets in the market and/or lending them to institutional and corporate borrowers.

27. For example, Paragraph 4. B. "Earn Rewards" of the Celsius Terms has provided:

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.

28. In addition, Paragraph 13 of the Celsius Terms, "Consent To Celsius's Use of Digital Assets," further details the status of digital assets deposited in the ERP:

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.

29. Celsius then pools the deposited digital assets together with Celsius's other assets, to, among other income-generating activities, collateralize Celsius's borrowings, purchase securities and digital assets for Celsius's own account, make loans to institutional and corporate borrowers, and mine for cryptocurrency and other digital assets.

30. Celsius does not disclose to its customers: (a) the amount of money devoted to each of its investment or other business activities; (b) the nature and creditworthiness of the borrowers of its digital assets, as well as the identity of any borrowers to whom Celsius has lent material amounts of digital assets; (c) the terms and duration of the loans; (d) the types of securities and digital assets it trades; or (e) the profits or losses derived from these activities.

31. When customers ask to withdraw their digital assets and/or earned rewards from their ERP accounts, Celsius does not provide the same digital assets that had initially been deposited. Celsius complied with any withdrawal request by utilizing its general business assets, and thus its ability to meet any withdrawal request was dependent on the solvency and assets of the business at the time of the withdrawal request.

32. Celsius ERP 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.

API Partners in the Earn Rewards Program

33. In addition to individual ERP accounts, Celsius markets a program called Application Programming Interface ("API") that allows certain institutional users, known as Celsius "API Partners," to invest digital assets from their own underlying customers into the ERP, with the API Partners receiving incentive payments.

34. Celsius offers two methods for API Partners to invest their clients' digital assets in the ERP. First, Celsius has a "Segmented Accounts" platform that allows API Partners to offer their own customers the ERP through the API Partners' own portal (as opposed to the API Partner's customers accessing the Celsius ERP account directly from Celsius's own website). Second, Celsius's API Partners can choose to access the Celsius ERP 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 ERP account for the benefit of its individual customers, whose digital assets the API Partner has aggregated.

35. Celsius incentivizes the API Partners by paying a fee based on a percentage of rewards payable by Celsius to the API Partner's Segmented Accounts or Omnibus Account.

State Enforcement Actions Alleging Securities Violations

36. On September 16, 2021, Alabama's Securities Commission issued an "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" to Celsius Network. It alleged that the Celsius ERP is an unregistered security ("investment contracts") sold in Alabama in violation

of its securities laws.

37. On September 17, 2021, New Jersey's Bureau of Securities issued a "Summary Cease and Desist Order" to Celsius Network. It alleged the Celsius ERP is an unregistered security sold in New Jersey in violation of its securities laws.

38. On September 17, 2021, the Texas State Securities Board issued a Notice of Hearing to Celsius. It alleged the Celsius ERP is an unregistered security ("investment contracts, notes, or evidences of indebtedness") sold in Texas by unregistered brokers or agents in violation of its securities laws.

39. On September 23, 2021, Kentucky's Department of Financial Institutions issued an "Emergency Order to Cease and Desist" against Celsius Network. It alleged the sale of unregistered securities (citing the Howey test), by an unregistered salesperson - "The Respondent and the securities Respondent offered do not qualify for an exemption from registration," - and securities fraud - "Celsius' API Partners program deceives customers by not disclosing to affected Kentucky consumers that the offered security is through Celsius and not the customer-facing API Partners," violations of Kentucky's securities laws.

40. On October 20, 2021, Washington state's Securities Administrator issued a "Statement of Charges and Notice of Intent to Enter Order to Cease and Desist, to Impose a Fine, and to Charge Costs" to Celsius. It alleged violations of the Washington securities statutes for selling unregistered securities, by an unregistered broker-dealer, and securities fraud.

41. Celsius opposed those various orders and the administrative proceedings are unresolved. Idaho's securities laws are based on the same or similar uniform securities laws that are the basis of Alabama, New Jersey, Texas, Kentucky, and Washington's securities laws. Similar

to those five states, Idaho's Uniform Securities Act prohibits the sale of unregistered securities, by unregistered brokers or agents, and the IUSA requires full disclosure of all material facts regarding any security product, including investment contracts.

42. Eventually in early 2022, Celsius claimed to discontinue onboarding new customers into ERP accounts. It is unclear the extent of sales of the ERP to Idaho residents after that date.

43. On April 12, 2022, Celsius Network notice filed its Form D with the SEC that stated it was offering securities in the form of "Digital assets issuable under Earn Interest Program" that had not yet been sold but would be sold pursuant to the Reg. D, 506(c) exemption from registration. Celsius made a similar notice exemption filing with the Department on April 29, 2022. It is unclear whether this new securities offering was sold to Idaho residents or whether Celsius complied with the exemption requirements to qualify as a federal covered security.

Celsius Asset Freeze and Chapter 11 Bankruptcy

44. For all investors in the Celsius ERP, Celsius promises that all digital assets may be withdrawn at any time, subject to a maximum three-day processing time.

45. However, on June 12, 2022, Celsius froze withdrawals from ERP accounts.

46. On July 13, 2022, Celsius commenced voluntary Chapter 11 bankruptcy proceedings in the U.S. Bankruptcy Court for the Southern District of New York.

47. As of June 17, 2022, in Idaho Celsius is holding more than \$59,000,000 in assets from more than 1,300 Idaho residents and businesses invested in their ERP.

48. The Department sent a request for information to Celsius dated July 1, 2022, seeking updated information, including information about the number of Idaho residents with custody accounts and the amount of assets in those accounts. Celsius has not responded.

49. The ERP sold prior to April 12, 2022, was not registered with the Department nor exempt from registration. The ERP sold post April 12, 2022, was not registered with the Department and it is not clear whether it qualified for the claimed 506(c) exemption.

50. Celsius failed to disclose to depositors that the ERP being offered by Celsius prior to April 12, 2022, was not registered as securities as required under the IUSA. Celsius further failed to disclose they were not registered to sell securities as required under the IUSA.

CONCLUSIONS OF LAW AND FINDINGS OF VIOLATIONS

OFFER AND SALE OF UNREGISTERED SECURITIES

(Violation of Idaho Code § 30-14-301)

51. Idaho Code § 30-14-102(28) defines a "security," in pertinent part, as investment contracts, notes, or evidences of indebtedness.

52. The Earn Rewards Products issued by Celsius, and offered and sold by Celsius, including through its API Partners, constitute investment contracts, notes and/or evidences of indebtedness and are securities within the meaning of Idaho Code § 30-14-102(28).

53. Celsius marketed this product to any and all retail and institutional investors (regardless of sophistication or wealth) and promised a reward or interest rate that typically was well above the return on most securities, including the return on typical securities debt instruments like corporate bonds, even "junk bonds." The investor funds were at risk in the business and pooled with all business assets, including other investor funds, to be used for any aspect of Celsius's business. Investors earned a return and were passive. Investors' returns were entirely dependent on the efforts of Celsius, specifically dependent on the success of Celsius's business and its ability to generate sufficient profits to pay such high returns. For these reasons, the ERP meets all definitions of a security under the plain language of § 30-14-102(28), the *Howey*

test, the Risk Capital test, and/or the *Reves* test.

54. Idaho Code § 30-14-301 provides, "It is unlawful for a person to offer or sell a security in this state unless: (a) The security is a federal covered security; (b) The security, transaction or offer is exempted from registration under sections 30-14-201 through 30-14-203, Idaho Code; or (c) The security is registered under this chapter."

55. Prior to April 12, 2022, Celsius's ERP was not a federal covered security, nor was it exempt from registration, nor was it registered under the IUSA. Post April 12, 2022, Celsius claimed any ERP it sold was exempt under 506(c), and thus would be a federal covered security not subject to registration with the Department, but it is unclear what ERP Celsius sold in Idaho after that date or whether those offerings were done in compliance with the requirements of the 506(c) exemption.

56. Celsius's offer and sale of securities to Idaho residents, without proper registration of such securities in Idaho (at least for all ERP sales prior to April 12, 2022), constitutes a violation of Idaho Code § 30-14-301.

UNLICENSED MONEY TRANSMITTER ACTIVITIES
(Violation of Idaho Code § 26-2903)

57. Idaho Code § 26-2903(1) provides that "no person except a person exempt pursuant to the provisions of section 26-2904, Idaho Code, shall engage in the business of money transmission without a license as provided in accordance with the provisions of this chapter."

58. Celsius is not an exempt entity as identified under Idaho Code § 26-2904, or any other applicable law or rule.

59. Celsius operated as an unlicensed money transmitter in violation of the IMTA since at least December 31, 2019, continuing through June 17, 2022.

UNAUTHORIZED TRUST ACTIVITY
(Violation of Idaho Code § 26-3204)

60. "Trust business" is defined in Idaho Code § 26-3203(30) as:

the holding out by a person to the public by advertising, solicitation or other means that the person is available to perform any service of a fiduciary in this or another state, including, but not limited to:

(a) Acting as a fiduciary; or

(b) To the extent not acting as a fiduciary, any of the following:

(i) Receiving for safekeeping personal property of every description;

(ii) Acting as assignee, bailee, conservator, custodian, escrow agent, registrar, receiver, or transfer agent; or

(iii) Acting as financial advisor, investment advisor or manager, agent or attorney-in-fact in any agreed upon capacity.

61. Digital assets are recognized as a type of intangible personal property in Idaho pursuant to the Digital Assets Act, Idaho Code § 28-5301 et seq.

62. As described above in paragraph 17, Celsius's holding itself out as being able to take custody of digital assets for Idaho residents and actually holding digital assets in custody for Idaho residents and business both constitute trust business pursuant to Idaho Code § 26-3203(30)(b)(ii), and subjects Respondents to the ITIA.

63. The ITIA states:

"Unauthorized trust activity" means:

(a) A person, other than one identified in section 26-3204(1), Idaho Code, acting as a fiduciary within this state;

(b) A person engaging in a trust business in this state at any office of such person that is not its principal office, if it is a state trust institution, or that is not a trust office or a representative trust office of such person, unless the person has been authorized by the director, in his discretion, to engage in a trust business in this state in another manner and upon such conditions as he may require;

Idaho Code § 26-3203(34).

64. Under subsection (b), Celsius is engaged in trust business in Idaho but has not been authorized by the Director and is not operating from an out-of-state trust institution office (Title

26, Chapter 34).

65. The ITIA also states: “No person shall engage in an unauthorized trust activity.” Idaho Code § 26-3204(2).

66. Celsius does not fall within any of the enumerated exemptions within the subsections of Idaho Code § 36-3205. Therefore, Celsius is not permitted to engage in trust business or unauthorized trust activity absent a trust charter.

67. Celsius has violated section § 26-3204(2) by engaging in unauthorized trust activity.

68. Idaho Code § 26-1115(1) authorizes the Director to Order a person to cease and desist from violations if a person is violating or is about to violate the ITIA.

CEASE AND DESIST ORDER

The Director, having reviewed the foregoing, and good cause appearing therefor, hereby finds Respondents have violated the Idaho Uniform Securities Act, the Idaho Money Transmitters Act, and the Idaho Trust Institutions Act as alleged above.

Now, therefore, it is hereby ordered that Respondents shall CEASE AND DESIST from violations of the Idaho Uniform Securities Act, the Idaho Money Transmitters Act, and the Idaho Trust Institutions Act, and rules promulgated thereunder, to include: offering or selling unregistered securities to Idaho residents, operating as an unlicensed money transmitter, and engaging in unauthorized trust activity.

Idaho Code § 30-14-604(d) provides that the Director may impose a civil penalty not to exceed five thousand dollars (\$5,000) for each violation, in a final order issued under Idaho Code

§ 30-14-604(c). Respondents have violated the Idaho Uniform Securities Act hundreds of times -
- every time they sold the unregistered security, the ERP, to an Idaho resident.

Idaho Code § 26-2923(1) provides that the Director may order a civil penalty of up to one thousand dollars (\$1,000) for each violation of the Idaho Money Transmitters Act, or in the case of continued violation one thousand dollars (\$1,000) for each day that the violation of the Idaho Money Transmitters Act continues, not to exceed twenty-five thousand dollars (\$25,000) in the aggregate. Respondents have violated the Idaho Money Transmitters Act hundreds of times -- every time they engage in the business of money transmission for Idaho residents without a money transmitter license.

Idaho Code § 26-1115(3) provides that the Director may impose a civil penalty not to exceed one thousand dollars (\$1,000) per day for each day a violation continues under the Idaho Trust Institutions Act. Respondents have violated the Idaho Trust Institutions Act for several years and the violation appears to be ongoing.

Respondents are ordered to jointly and severally pay a civil penalty of \$50,000, pursuant to Idaho Code § 30-14-604(d), § 26-2923(1), and § 26-1115(3) for their many and potentially ongoing violations of the Idaho Uniform Securities Act, Idaho Money Transmitters Act, and Idaho Trust Institutions Act. With a pending bankruptcy, the Department is not taking any action to collect on its civil penalty and the Department intends that its civil penalty is subrogated to the good faith and valid claims of all the harmed customers of Celsius, particularly those who invested assets in the ERP accounts and deposited assets into custody accounts.

NOTICE OF THE OPPORTUNITY TO REQUEST A HEARING

Respondents are HEREBY NOTIFIED that the foregoing Notice will result in the Department presenting and requesting a final order of the Director consistent with the above, unless Respondents timely submit a request for hearing pursuant to Idaho Code § 30-14-604, § 26-2923, § 26-1115, and § 67-5242. Such request for a hearing must be in writing and submitted to the Department within twenty-one (21) days after the service of this Notice. A copy of the request for contested case and hearing shall be served on the Department's counsel in this matter:

Loren Messerly
Deputy Attorney General
Idaho Department of Finance
P.O. Box 83720
Boise, Idaho 83720-0031
Loren.messerly@finance.idaho.gov

If Respondents timely requests a hearing, the Director of the Department, or a Hearing Officer acting on the Director's behalf, will notify Respondents of the date, time and place of the hearing, as well as the name and contact information of the presiding officer.

Any hearing and subsequent proceedings in this matter will be conducted in accordance with the Idaho Administrative Procedure Act, Idaho Code § 67-5201 et seq. and the Idaho Rules of Administrative Procedure (IDAPA 04.11.01).

DATED this 1st day of August 2022.

STATE OF IDAHO
DEPARTMENT OF FINANCE



Anthony Polidori, Deputy Director

DATED this 2nd day of August 2022.

OFFICE OF ATTORNEY GENERAL



Loren K. Messerly, Deputy Attorney General