



COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DEPARTMENT OF FINANCIAL INSTITUTIONS
ADMINISTRATIVE ACTION NO. 2023-AH-0012

DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

v.

PLUTUS FINANCIAL INC. d/b/a ABRA

and

WILLIAM JOHN BARHYDT

RESPONDENTS

ADMINISTRATIVE COMPLAINT

The Department of Financial Institutions (the “Department”), pursuant to Kentucky Revised Statute (KRS) 292.470, KRS 292.500, and 808 Kentucky Administrative Regulation (KAR) 10:225, hereby brings this *Administrative Complaint* against Plutus Financial Inc. d/b/a Abra and William John Barhydt. In support thereof, the Department states as follows:

PARTIES

1. The Commissioner is responsible for administering KRS Chapter 292, the Securities Act of Kentucky, and any applicable rules, regulations, and orders entered pursuant to the Act.
2. Plutus Financial Inc. d/b/a Abra is a foreign corporation incorporated in Delaware and a principal place of business at 321 Castro St., Mountain View, CA 94041. Abra has a principal office located at 1000 N. West St., Suite 1200, Wilmington, DE 19801 and a registered process agent, Cogency Global Inc., located at 850 New Burton Road, Suite 201, Dover, DE 19904. Plutus Lending LLC is a foreign limited liability corporation organized in Delaware and a principal place of business at 321 Castro St., Mountain View, CA 94041. Plutus Lending LLC has a principal office located at 3715 Northside Parkway, Building 100 – Suite 500, Atlanta, GA 30327 and a

registered process agent, Cogency Global Inc., located at 828 Lane Allen Road, Suite 219, Lexington, KY 40504. Plutus Lending LLC is a wholly-owned subsidiary of Plutus Financial Inc.

3. William John Barhydt is the Chief Executive Officer and founder of Plutus Financial, Inc. and Plutus Lending LLC. Barhydt is responsible for defining the overall business strategy for Plutus Financial Inc. and Plutus Lending LLC.

STATEMENT OF FACTS

4. On July 16, 2021, the Department began its investigation into Abra's securities-related activities, learning of the following facts and circumstances.

5. Plutus Financial Inc. developed and provides a smartphone application and digital platform for customers to buy, sell, borrow, trade, deposit, store, and send fiat currencies and cryptocurrencies. Plutus Lending LLC is a wholly-owned subsidiary of Plutus Financial Inc., lending cryptocurrencies to institutional borrowers on behalf of its parent company. For purposes of this *Administrative Complaint*, Plutus Financial Inc. and Plutus Lending LLC will be considered as a singular respondent due to Plutus Lending LLC's lending activity being inextricably linked to Plutus Financial Inc.'s Abra Earn product.

6. Plutus Financial Inc. d/b/a Abra and Plutus Lending LLC have never been registered as an issuer or investment adviser in Kentucky. Plutus Financial Inc. d/b/a Abra and Plutus Lending LLC have not registered or filed a claim of exemption from registration for the business activity described below.

7. William John Barhydt, the CEO and supervisor of Abra's business activities, has never been and is not currently registered as an issuer agent or investment adviser representative in Kentucky. Similarly, William John Barhydt has not filed a claim of exemption from registration.

8. On or about July 2020, Abra began offering Kentucky consumers what it referred to as an “Abra Earn,” which is an interest-bearing cryptocurrency account product available on Abra’s website and smartphone application. This product was offered to new customers until at least October 3, 2022.

9. Abra has continued to service existing customer Abra Earn accounts as described below but claimed on May 19, 2023 that an interest rate adjustment to 0% would take effect on June 15, 2023, effectively no longer paying interest to consumers on these accounts. According to Abra in that same message to its customers, Abra Earn assets would be available to withdraw any time prior to August 31, 2023, at which point assets would be transferred to the consumers’ Abra Trade accounts and the Abra Earn accounts would be terminated.

10. From July 2020 to at least June 15, 2023, Abra paid interest to investors who deposited virtual currency into their Abra Earn accounts. Abra generated the revenue used to pay interest largely by lending investors’ virtual currency to institutional borrowers.

11. Before investors could open an Abra Earn account, Abra required them to complete an application process for both Abra and Prime Trust for those companies to approve. Prime Trust, LLC is a Nevada entity that serves as the custodian of the Abra Earn account assets and provides API-driven open banking solutions for mobile apps, exchanges, and other services. Abra paid Prime Trust a monthly fee in order to access the virtual currency in Abra Earn accounts.

12. After customers made deposits into their Abra Earn accounts, Prime Trust batched those deposits into a reserve account, where they were made available to Abra. Abra used the funds in its reserve account for various income-generating activities, which included making loans to institutional borrowers. Abra also used the funds in its reserve account for other types of

investments, including arbitrage, exchange funds, and yield farming. Abra used the proceeds generated from these income-generating activities to pay interest to Abra Earn account holders.

13. On or about May 17, 2023, the Department searched Abra's website, <https://www.abra.com/earn/>, which is the site offering its Abra Earn product. The Department then viewed a web capture of Abra's website dated August 17, 2022 wherein Abra asserted that customers could earn up to 10% APY on cryptocurrencies deposited into an Abra Earn account. Abra noted the acceptance and payment of interest on several types of cryptocurrencies. According to Abra's Terms of Use (last updated November 15, 2021), customers would be credited with earned interest on a weekly basis. The interest rate is characterized as variable and could be updated daily, the rate itself determined allegedly at Abra's discretion. Abra further described in the Terms of Use web capture that customers were allowed to withdraw virtual currency from their respective Abra Earn accounts at any time, subject to a processing time of up to seven days.

14. Abra Earn acted as a passive investment from a consumer perspective. Abra Earn investors had no control over how Abra deployed and invested the virtual currencies in Abra Earn accounts. Furthermore, Abra required Abra Earn customers agree to give up certain rights to their virtual currency, including a requirement that Abra Earn customers allow Abra to hold the account's virtual currency in Abra's name. Abra also required Abra Earn customers agree to Abra having the ability to pledge, repledge, hypothecate, rehypothecate, sell, lend, or otherwise transfer or use any amount of such cryptocurrency.

15. Respondents are not licensed with the United States Securities and Exchange Commission nor are Respondents' Abra Earn Accounts federally registered.

16. Respondents are not registered in Kentucky to offer or sell securities in Kentucky, nor are Respondents' Abra Earn Accounts registered or permitted for sale in Kentucky.

17. Respondents are not registered with the Commodity Futures Trading Commission or its delegee, the National Futures Association.
18. Respondents' Abra 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 U.S.-registered broker-dealers.
19. The cryptocurrency contained and/or associated with Abra Earn Accounts are not insured by the Federal Deposit Insurance Corporation ("FDIC"), an agency that provides deposit insurance to depositors in the United States, or the National Credit Union Administration ("NCUA"), an agency that regulates and insures credit unions.
20. Abra failed to adequately disclose the following information to its Abra Earn investors when offering Abra Earn accounts to Kentucky consumers: the types of investments, trades, and hedging activities that it engaged in with Abra Earn account customers' virtual currencies; the identities and creditworthiness of the institutions that borrowed Abra Earn account virtual currencies; and information or statements related to Abra's financial state.
21. As of December 17, 2021, Abra had more than approximately \$817,999.98 in crypto assets under management¹ from more than 222 accounts held by Kentucky residents and businesses. Abra's summary of assets under management provided to the Department on May 17, 2023 states an exposure to Kentucky consumers of \$466,585.07 in assets under management for 78 accounts.
22. Abra's January 2023 Consolidated Balance Sheet for Plutus Financial Inc. and Plutus Financial Holdings Inc. demonstrated those related companies' liabilities exceed their assets by \$21,077,125.76. Abra's February 2023 Consolidated Balance Sheet for Plutus Financial Inc. and

¹ This is the U.S. dollar value of the crypto assets calculated for those assets on December 17, 2021.

Plutus Financial Holdings Inc. demonstrated that these liabilities were further outpacing their assets, at that time by \$21,521,315.16. As of the date of this *Administrative Complaint*, the Department has received no indication that these negative balance issues will be resolved in the immediate or foreseeable future.

23. Barhydt has promoted Abra and its products on social media and also made statements regarding Abra's solvency and ability to manage consumer accounts that omit pertinent information regarding Abra's financial health at the time.

STATUTORY AUTHORITY

24. KRS 292.310(13) defines "issuer" as:

any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions, or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued, and except that with respect to fractional undivided interests in oil, gas, or other mineral rights, the term "issuer" means the owner of any such right or of an interest in such right, whether whole or fractional, who creates fractional interests therein for the purpose of distribution;

25. KRS 292.310(19) defines a "security", in relevant part, as:

...any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, life settlement investment, voting-trust certificate, certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; or, in general, any interest or instrument commonly known as a "security[.]"

26. KRS 292.320(1) states,

It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:

(a) To employ any device, scheme, or artifice to defraud;

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

27. KRS 292.330 states, in pertinent part,

(3) It is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this chapter as an agent or is exempt from registration under subsection (4) of this section.

...
(7) It is unlawful for a broker-dealer or an issuer to employ or associate with an agent unless the agent is registered under this chapter or exempt from registration.

(8) It is unlawful for any person to transact business in this state as an investment adviser unless the person is registered under this chapter as an investment adviser...

(10) It is unlawful for an investment adviser to employ or associate with an investment adviser representative unless the representative is registered under this chapter or exempt from registration.

(11) It is unlawful for an individual to transact business in this state as an investment adviser representative unless the individual is registered under this chapter as an investment adviser representative....

28. KRS 292.340 states,

It is unlawful for any person to offer or sell any security in this state, unless the security is registered under this chapter, or the security or transaction is exempt under this chapter, or the security is a covered security.

29. KRS 292.470 states, in pertinent part,

Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order under this chapter, the commissioner may in his or her discretion bring any or all of the following remedies:

(1) Issue a cease and desist order, with or without a prior hearing, appealable to Franklin Circuit Court, against the person or persons engaged in the prohibited activities directing that person or persons to cease and desist from illegal activity. In order to issue an order without a prior hearing, the commissioner must find that the delay in issuing a final cease and desist order will cause harm to the public;

- (2) An action in the Franklin Circuit Court or any other court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with this chapter or any rule or order under this chapter. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. Upon a proper showing by the commissioner, the court may enter an order of rescission, restitution, or disgorgement directed to any person who has engaged in any act constituting a violation of this chapter or any rule or order under this chapter. The commissioner may not be required to post a bond; or
 - (3) Issue a final order, after notice and an opportunity for a hearing, containing findings of fact and conclusions of law, directing any person or persons found to have engaged in, or about to be engaged in, activity that constitutes a violation of this chapter or any rule or order under this chapter:
 - (a) To cease and desist from the activity;
 - (b) To perform any other reasonable mandates directed by the commissioner pursuant to an appropriate remedy fashioned by the commissioner and reasonably calculated to carry out the provisions of this chapter; or
 - (c) To pay fines assessed under KRS 292.500(14) and costs assessed under KRS 292.500(15).
30. KRS 292.500 states, in relevant part,
- (14) The commissioner may impose civil fines against any person who violates any provision of this chapter or any rule or order or voluntary agreement entered into under this chapter. The fine shall not exceed twenty thousand dollars (\$20,000) per violation, except when the violation is directed at or results in monetary damage to one (1) or more individuals who are sixty (60) years of age or older, the commissioner may impose an additional fine not to exceed twenty thousand dollars (\$20,000) per violation. Each act or transaction which violates this chapter or administrative regulation, or orders or agreements entered into under this chapter, shall constitute a separate violation. Any employer or principal shall be jointly and severally liable for fines imposed in connection with the conduct of employees or agents.
 - (15) The commissioner is authorized to designate that the fines imposed for violations of this chapter or administrative regulation, or any order or voluntary agreement entered into pursuant to this chapter, be deposited into the securities fraud prosecution and prevention fund established in KRS 292.322.

VIOLATIONS

31. Respondents are offering securities in the form of investment contracts in exchange for the deposit of assets with Abra. These investment contracts allow investors to passively earn profit in the form of interest on the assets deposited with Abra and qualify as securities pursuant to KRS 292.310(19) and *Securities and Exchange Commission v. W. J. Howey Co.*, 328 U.S. 293 (1946).

32. In contravention of KRS 292.340, Respondents have solicited unregistered securities in Kentucky through Abra's publicly available website and smartphone application.

33. In contravention of KRS 292.330, Respondents never been registered with the Department and have never sought registration and it is unlawful for any person to solicit or sell securities in Kentucky without first being registered with the Department to do so. Abra and the Abra Earn Accounts do not qualify for an exemption from registration.

34. In contravention of KRS 292.320, Respondents failed to disclose material information about the investment of consumer assets, the risks of investing in the product, and the potential losses that an investor can suffer after opening a Abra Earn Account. Furthermore, Respondents failed to disclose information about its liabilities significantly exceeding its assets and the reliance that Abra has on consumer asset deposits to meet its current financial obligations.

REQUEST FOR RELIEF

WHEREFORE, the Department respectfully requests the Commissioner find the aforementioned violations have occurred, and in so finding, the Commissioner further ORDER:

1. Respondents pay **RESTITUTION** to Kentucky consumers of the entire amount of each consumer's fiat currency or cryptocurrency that those consumers deposited with Abra;
2. Respondents pay a **CIVIL PENALTY** not to exceed **TWENTY THOUSAND DOLLARS (\$20,000.00)** per violation, assessed jointly and severally as well as being

immediately due and payable upon entry of a final order, and the payment of which shall be subordinated to any claim of restitution to affected consumers that is imposed by the Kentucky Department of Financial Institutions or any other U.S. state or federal regulator of securities;

3. Respondents **CEASE AND DESIST** from soliciting or selling any security in Kentucky unless that security is registered with the Department pursuant to KRS 292.340;
4. Respondents **CEASE AND DESIST** from any and all other activity that would otherwise violate the Securities Act of Kentucky; and
5. Any other relief which may be appropriate and to which the Department is entitled.

Respectfully submitted,

/s/ Brandon Adcock

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Frankfort, Kentucky 40601
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NOTICE TO RESPONDENT

1. You are hereby notified that you must respond to the complaint by filing a written answer to the allegations in the complaint with the Department within twenty (20) days of service of the complaint. You have a right to a hearing but you must request such a hearing in the response to the administrative complaint. If requested, an administrative hearing shall be held pursuant to the provisions of KRS Chapter 13B and 808 KAR 10:225. If an answer is not filed within twenty (20) days, the Department shall seek a final order from the Commissioner granting the relief requested in the complaint. You are hereby advised that you have a right to legal counsel at all stages of these proceedings, including but not limited to, preliminary matters, and including a hearing, if one is requested.
2. You are advised that all parties to these proceedings, that is the Respondent and the Department, have a right to examine, at least five (5) days prior to any hearing in this matter, a list of witnesses the parties, including the Department, expect to call at the hearing, any evidence to be used at the hearing, and any exculpatory information in the possession of the Department. The time limits established herein shall accrue from the actual date of the hearing once that date is established. However, no hearing will be set if the parties fail to timely request a hearing.
3. You are advised that any party who fails to attend or participate as required at any stage of the administrative hearing process may be held in default under this chapter.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing *Administrative Complaint* was sent on this the 16th day of JUNE, 2023 by the method indicated below to the following:

Via certified mail, return receipt requested:

Plutus Financial Inc. d/b/a Abra
1000 N. West St., Suite 1200
Wilmington, DE 19801
Respondent

Plutus Lending LLC
3715 Northside Parkway
Building 100-Suite 500
Atlanta, GA 30327
Respondent

William John Barhydt
321 Castro St.
Mountain View, CA 94041
Respondent

Cogency Global Inc.
PLUTUS FINANCIAL INC. D/B/A ABRA
850 New Burton Road, Suite 201
Dover, DE 19904.
Registered Agent for Service of Process

Cogency Global Inc.
PLUTUS LENDING LLC
828 Lane Allen Road, Suite 219
Lexington, KY 40504
Registered Agent for Service of Process

Via electronic delivery:

Office of the Commissioner
Department of Financial Institutions
500 Mero Street 2SW19
Frankfort, KY 40601

/s/ Brandon Adcock
Brandon Adcock, Counsel
Kentucky Department of Financial Institutions