

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF BANKING AND SECURITIES

In the Matter of:

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

ORDER NO: 22-72-S

**ORDER TO CEASE AND DESIST, NOTICE
OF INTENT TO IMPOSE CIVIL
PENALTIES, NOTICE OF INTENT TO
CHARGE COSTS, AND NOTICE OF
OPPORTUNITY TO REQUEST A HEARING**

Respondents.

The Director of the Department of Commerce, Community, and Economic Development, Division of Banking and Securities (“Administrator”), has conducted an investigation into certain activities of Celsius Network ETWORK, Inc., Celsius Network Limited, Celsius US Holding, LLC, Celsius Network , LLC, AND Celsius Lending, LLC (“Respondents”) and has determined that Respondents violated certain provisions of the Alaska Securities Act, Alaska Statute (“AS”) 45.56 *et seq.*

I. FINDINGS OF FACT

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. Celsius Network Inc. is not registered to do business in Alaska and has not registered any of its products with the Division of Banking and Securities in any capacity.

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. Celsius Network Limited is not

1 registered to do business in Alaska and has not registered any of its products with the
2 Division of Banking and Securities.

3 3. Celsius US Holding LLC is a Delaware limited liability company formed on
4 October 5, 2020 with its principal place of business in Hoboken, New Jersey. Celsius US
5 Holding LLC is not registered to do business in Alaska and is not registered with the
6 Division of Banking and Securities in any capacity.

7 4. Celsius Lending LLC is a Delaware limited liability company formed on October 5,
8 2020 with its principal place of business in Hoboken New Jersey. Celsius Lending LLC is
9 not registered as a foreign limited liability company in Alaska and is not registered with the
10 Division of Banking and Securities in any capacity.

11 5. Celsius Network LLC is a Delaware limited liability company formed on June 14,
12 2021 with its principal place of business in Hoboken, New Jersey. Celsius Network LLC is
13 not registered to do business in Alaska and has not registered any of its products with the
14 Division of Banking and Securities. As of July 19, 2022, 526 Alaska residents, with assets
15 under management totaling \$13,915,422.74, were actively registered with Celsius Network
16 LLC.

17 6. “Cryptocurrency” refers to a type of digital asset which is designed as a store of
18 value and can be used for various types of transactions with other users of the
19 cryptocurrency. The best-known cryptocurrency ecosystems are Bitcoin and Ethereum. In
20 most cases, transactions involving a particular cryptocurrency are recorded on a
21 “blockchain,” a publicly available ledger system which relies on users’ collective computing
22 power to record transactions. The above-named entities will be collectively referred to in
23 this Statement of Charges as “Respondents” or “Celsius.” Celsius provides various virtual
24 currency-related financial services to retail and institutional customers in the United States,

1 including trading, borrowing, and lending services. Celsius is also engaged in other income-
2 generating virtual currency activities such as proprietary trading, staking, and mining

3 **THE OFFER AND SALE OF SECURITIES NATIONWIDE**

4 7. From approximately August 2020 until April 2022, Celsius offered their Earned
5 Interest Program (“EIP”) to Alaska customers. The EIP enabled customers to earn interest,
6 called “rewards,” on virtual currencies that the customer deposited with Celsius. Celsius
7 offered the EIP through two methods: (1) Earned Interest Accounts (“EIAs”) that customers
8 can open directly with Celsius, or (2) the API Partners Program, where partner companies
9 can utilize Celsius’ platform to offer their customers the opportunity to participate in the
10 EIP. To earn income to pay interest to EIP customers, Celsius engaged in numerous
11 activities, including lending the customers’ virtual currencies to retail and institutional
12 borrowers.

13 8. Celsius promoted the EIP to Alaska residents primarily online. Celsius maintained a
14 website at <https://celsius.network>, through which it provided information about its EIP, a list
15 of supported virtual currencies and their corresponding interest rates, and an updated total of
16 Celsius users and “community assets” on deposit with Celsius. Celsius also promoted the
17 EIP on social media and in numerous “Ask Mashinsky Anything” (“AMA”) YouTube
18 videos featuring its CEO, Alex Mashinsky.

19 9. Celsius has advertised interest rates of up to 17% APY on particular virtual
20 currencies, much higher than the rates currently being offered for short-term, investment
21 grade, fixed income securities or for bank savings accounts. Celsius does not insure EIAs
22 against losses incurred by customers, nor are EIAs insured by the Federal Deposit Insurance
23 Corporation, the Securities Investor Protection Corporation (“SIPC”), or National Credit
24 Union Administration. This lack of protection subjects Celsius investors to additional risks

1 not borne by investors who maintain assets with most SIPC member broker-dealers, banks,
2 or credit unions.

3 10. Celsius allows anyone 18 years and older and residing in a permissible jurisdiction
4 to open EIAs on its website and mobile app. Celsius collects customer information,
5 including photo identification, to verify the customer's identity for "Know Your Customer"
6 ("KYC") and anti-money laundering ("AML") purposes.

7 11. Celsius also requires customers to accept its Terms of Service upon signing up for
8 an EIA, including the transfer of "all right and title" in the virtual currency from the
9 customer to Celsius. Beginning around August 2021, Celsius began informing customers,
10 through the Terms of Service, that their deposit of virtual currencies into the EIA constituted
11 a loan from the customer to Celsius, and that the interest that Celsius paid to the customer
12 was a finance fee.

13 12. When an EIP customer funds their EIA with a supported virtual currency, Celsius
14 then transfers the virtual currency into its own wallet, where it is pooled with virtual
15 currency from other EIP customers and other Celsius assets. Celsius then deploys the EIP
16 virtual currency towards various income generating activities (see Paragraph 19) Celsius
17 credits the customer's EIA with interest on a weekly basis. The customer can choose
18 between receiving interest in like-kind virtual currency or, where available, in CEL Tokens,
19 Celsius' own virtual currency. Celsius pays interest to the customer until the customer
20 withdraws their virtual currencies or uses their virtual currencies as collateral against loans
21 that the customer takes out from Celsius. Celsius allows EIA customers to withdraw their
22 virtual currencies at any time, subject to a maximum three-day processing period.

23 13. However, beginning some time in 2020 until approximately July 2021, Celsius
24 transferred Alaska customers' EIP virtual currencies to a third-party custodian for holding.

1 Celsius maintains that the virtual currencies held by the custodian were not deployed in
2 income-generating activities, though these Alaska customers still earned interest on their
3 virtual currencies like any other EIP customer. According to Celsius, CEL Tokens are only
4 available to accredited investors in the United States. Celsius maintains a trading platform
5 where customers can buy and sell CEL Tokens. On information and belief, CEL tokens
6 were offered to Alaska residents.¹

7 14. Celsius revisits the interest rate also on a weekly basis. According to Celsius, it
8 determines interest rates based largely on “market demand” for a particular virtual currency.
9 For certain virtual currencies such as Bitcoin and Ether, Celsius further sets the interest rate
10 using a tiered structure. Celsius offers other companies the opportunity to provide the EIP to
11 their own customers by becoming an API Partner. Celsius conducts due diligence on a
12 potential API Partner prior to the establishment of the relationship. An API Partner can
13 provide Celsius’ EIP to its own customers through two different types of accounts:
14 Segmented and Omnibus. Both types of API accounts are subject to the same restrictions
15 and conditions as those on Celsius’ own platform.

16 15. With Segmented Accounts, the API Partner’s customers establish a direct
17 relationship with Celsius. Celsius onboards those customers in the same way it brings on its
18 own customers, including verifying customer identities for KYC/AML purposes. The API
19 Partner’s customers must also open their own Celsius EIA and accept Celsius’ Terms of
20 Service, though the customer accesses their account through the Partner’s platform. Celsius
21 pays interest directly into the customer’s account.

22 16. Omnibus Accounts, on the other hand, require the API Partner to establish its own
23

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¹ The Division reserves the right to amend this order if further investigation so warrants.

1 EIP account with Celsius. Celsius pays interest into that account, and the API Partner then
2 distributes the interest to its own customers. Celsius does not maintain a relationship with
3 the API Partner’s customers and does not know their identities. However, Celsius conducts
4 additional due diligence into the Partners’ business.

5 17. With regard to institutional and retail lending, Celsius manages most, if not all,
6 aspects of the loan and lending process. Among other things, Celsius obtains borrower
7 information, assesses their credit risks, tailors terms of the loans, including any required
8 collateral, in accordance with the borrower’s risk profile, monitors counterparty risk after
9 the loan has been funded, liquidates posted collateral where needed, and services the loans.

10 18. Celsius uses the income it receives from these activities to pay interest to EIP
11 customers and for operating expenses, among other uses.

12 19. Celsius requires EIP customers to agree to the commingling and deployment of
13 their virtual currencies in this manner in Celsius’ Terms of Service. Celsius customers agree
14 to relinquish all rights and title to the virtual currency and to allow Celsius to “pledge, re-
15 pledge, hypothecate, rehypothecate, sell, lend, or otherwise transfer or use any amount of
16 [the virtual currency], separately or together with other property,....and to use or invest such
17 [virtual currency].” EIP customers have no control over how their virtual currencies are
18 deployed by Celsius.

19 20. In offering the EIPs to Alaska residents, Celsius failed to fully disclose material
20 aspects of its business and the EIP including, but not limited to, the types of trading and
21 investment activities that it engages in using EIP virtual currencies, the identities and
22 creditworthiness of those who borrow EIP virtual currencies, the amount of virtual
23 currencies used in each income-generating activity, and Celsius financial statements or other
24 information reflecting its financial state.

1 21. In addition, Celsius's statements that it provides 80% of its revenue to its customers
2 is misleading, as EIP customers are only entitled to earning interest at set rates determined
3 by Celsius.

4 22. In offering EIA's to Alaska residents, Celsius held out its offerings as "safe,"
5 advertised "24/7 access" and "[i]t's your crypto, after all." Celsius failed to fully disclose
6 materials aspects of its EIAs, including, but not limited to, the types of trading and
7 investment activities Celsius engages in, the identity and creditworthiness of those who
8 borrow digital assets, the amount of digital assets used in each income-generating activity,
9 the risk that third-party custody services might lose access to digital assets, the risk that
10 lenders to which Celsius sent digital asset collateral would be unable to return Celsius'
11 collateral in a timely manner, and the risk that in the event of a sudden request for
12 withdrawals that Celsius's own attempts to unwind illiquid positions may prevent it from
13 having adequate assets to meet customer withdraw demands, and Celsius's characterization
14 of its financial state.

15 23. Starting in 2021 and through early 2022, numerous states with laws substantially
16 similar to Alaska entered orders against Celsius characterizing Celsius's EIA as an
17 unregistered security. Celsius did not, and to this date has not, registered any of its products
18 with either the Division or the Securities and Exchange Commission as a security.

19 24. In 2022 a competitor of Celsius with a program substantially identical to Celsius's
20 EIA entered into a consent order with the Division to pay a fee of over \$900,000 and to
21 register the competitor's offerings as a security.

22 25. Late on Sunday evening, June 12, 2022, Celsius froze essentially all of its
23 customers' accounts, including all or substantially all of the Alaska customer accounts.

24 26. On July 13, 2022, Celsius filed for bankruptcy under Chapter 11 of the Bankruptcy

1 Code. It is unclear when or whether Alaskans will have access to their frozen accounts.

2 27. Celsius Network Limited is not currently registered as a broker-dealer in the state of
3 Alaska and has not previously been so registered.

4 **FAILURE TO COMPLY WITH REGISTRATON REQUIREMENTS**

5 28. Celsius Network LLC is not currently registered to sell the Earned Interest Program
6 in the state of Alaska and has not previously been so registered, nor has it filed a claim of
7 exemption from registration.

8 29. During the Relevant Period, Celsius offered and sold securities in Alaska that were
9 not registered or permitted for sale in Alaska as required by AS 45.56.100.

10 30. During the Relevant Period, Celsius offered and sold securities in Alaska without
11 being registered as a dealer or agent as required by AS 45.56.300.

12 **II. CONCLUSIONS OF LAW**

13 1. The Celsius Earned Interest Accounts are “securities” as defined in AS
14 45.56.900(32).

15 2. During the Relevant Period, Celsius violated AS 45.56.100 by offering and selling
16 securities that were not registered or permitted for sale in Alaska.

17 3. During the Relevant Period, Celsius violated AS 45.56.300 by offering and selling
18 securities in Alaska without being registered as a dealer or agent.

19 4. During the Relevant Period, Celsius violated AS 45.56.500 and AS 45.56.520 by
20 including on its website statements that were materially misleading or otherwise likely to
21 deceive the public concerning its collateral practices and the risks associated with its lending
22 activity.

23 5. The foregoing violations of AS 45.56.100 and AS 45.56.300 constitute the basis for
24 the assessment of a civil penalty against Celsius pursuant to AS 45.56.690(d).

1 **III. ORDER AND NOTICE**

2 1. Pursuant to AS 45.56 and on the basis of the Findings of Fact and Conclusions of
3 Law, the Administrator ORDERS:

4 2. Celsius to cease and desist from offering or selling the Earned Interest Accounts
5 or any security that is not registered, qualified, or exempt to new investors in Alaska and cease
6 and desist accepting further investments or funds in the Earned Interest Accounts by current
7 Alaska investors, unless and until the Celsius Earned Interest Accounts or other securities are
8 registered or otherwise exempt in Alaska. This Order shall be binding upon

9 3. This Order shall be binding upon Celsius, its parent and affiliates, and its
10 respective successors and assigns with respect to the provisions above and all future
11 obligations, responsibilities, undertakings, commitments, limitations, restrictions, events,
12 and conditions.

13 **Penalties Assessed but not Collected**

14 An administrative penalty in the amount of \$2,837,000.00 is justified by the facts
15 recited in this Order and considering the factors set forth in the Alaska Securities Act, AS
16 45.56. On or about July 13, 2022 the Respondent filed a petition for bankruptcy relief
17 pursuant to Title 11, Chapter 11 of the United States Code (“U.S.C.”) in United States
18 Bankruptcy Court for the Southern District of New York. The automatic stay imposed by
19 the Bankruptcy Code—specifically, 11 USC § 362(a)—does not apply to the
20 commencement or continuation of an action or proceeding by a governmental unit to
21 enforce such governmental unit's police or regulatory power, by virtue of the exception set
22 out at 11 USC§ 362(b)(4). Accordingly, the State of Alaska Department of Commerce
23 Community and Economic Development, Division of Banking & Securities—a
24 governmental unit as defined under 11 USC § 101(27)—is expressly excepted from the

1 automatic stay in pursuing enforcement of the State's Securities Act, and in seeking to assess
2 a monetary judgment for such violations. However, so long as the automatic stay is in effect
3 in the Respondent's bankruptcy proceedings, the State of Alaska Department of Commerce
4 Community and Economic Development, Division of Banking & Securities will not seek to
5 execute or collect upon any monetary judgment assessed without first approaching the
6 United States Bankruptcy Court where the Respondent's bankruptcy case is pending as
7 necessary.

8 **No Effect on Governmental Regulatory Authority**

9 For the avoidance of doubt, nothing in the Sale Order or the APA shall authorize or
10 require the transfer of any Assets to a Purchaser unless and until the Purchaser is registered
11 as appropriate with the State of Alaska Department of Commerce Community and Economic
12 Development, Division of Banking & Securities and otherwise complies with all non-
13 bankruptcy law. Nothing in this Order or related documents discharges, releases, precludes,
14 or enjoins: (i) any liability to any governmental unit as defined in 11 U.S.C. § 101(27)
15 (“Governmental Unit”); (ii) any liability to a Governmental Unit under police and regulatory
16 statutes or regulations that any entity would be subject to as the owner or operator of
17 property after the date of the closing of the Sale; or (iii) any liability to a Governmental Unit
18 on the part of any Person other than the Debtors. Nor shall anything in this Order or related
19 documents enjoin or otherwise bar a Governmental Unit from asserting or enforcing, outside
20 this Court, any liability described in the preceding sentence. Further, nothing in this Order or
21 related documents authorize the transfer or assignment of any governmental (a) license, (b)
22 permit, (c) registration, (d) authorization or (e) approval, or the discontinuation of any
23 obligation thereunder, without compliance with all applicable legal requirements and
24 approvals under police or regulatory law. Nothing in this Order or related documents shall

1 relieve any entity from any obligation to address or comply with information requests or
2 inquiries from any Governmental Unit. Nothing in this Order or related documents shall
3 affect any setoff or recoupment rights of any Governmental Unit. Nothing in this Order
4 divests any tribunal of any jurisdiction it may have under police or regulatory law to interpret
5 this Order or to adjudicate any defense asserted under this Order.

6 **NOTICE OF INTENT TO IMPOSE CIVIL PENALTIES**

7 Pursuant to AS 45.56.690, and based upon the Findings of Fact and Conclusions of
8 Law, the Administrator intends to order Respondent to pay a civil penalty in the amount of
9 \$2,837,000.00 to the State of Alaska. This fee is reasonable in light of the harm to Alaskans,
10 Celsius's failure to act despite knowing its products were securities under Alaska law, recent
11 and comparable assessments against Celsius's competitors offering substantially identical
12 products, and the involuntary nature of this proceeding.

13 **NOTICE OF INTENT TO CHARGE COSTS**

14 Pursuant to AS 45.56.800, and based upon the Findings of Fact and Conclusions of
15 Law, the Administrator intends to order that Respondent shall be liable for and shall pay the
16 costs, fees, and other expenses incurred in the administrative investigation of this matter, in
17 an amount not less than \$5,000.

18 **NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

19 Respondent is hereby notified that the foregoing Notice will result in the
20 Administrator presenting and requesting a final order consistent with the above unless
21 Respondent timely submits a request for a hearing under AS 45.56.690. Such request for
22 hearing must be in writing and submitted to the Administrator within thirty (30) days after
23 the service of this Notice.

24 If Respondent timely requests a hearing, the Administrator will notify the

1 Respondent of the date, time and place of the hearing, as well as the name and contact
2 information of the presiding hearing officer.

3 Any hearing and subsequent proceedings in this matter will be conducted under the
4 Alaska Securities Act (AS 45.56. *et seq*) and associated regulations and the Alaska
5 Administrative Procedures Act (AS 44.64.010 *et seq*) and associated regulations.

6
7 Julie Sande, Commissioner
8 Department of Commerce, Community,
9 and Economic Development

9 10/19/22
10 Date

/s/ Robert H. Schmidt
11 Robert H. Schmidt, Director
12 Division of Banking and Securities

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