

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

_____)	
In re:)	Chapter 11
)	
CELSIUS NETWORK LLC, et al., ¹)	Case No. 22-10964 (MG)
)	
Debtors.)	(Jointly Administered)
_____)	

JOINDER

Now comes the Vermont Department of Financial Regulation (Vermont), through counsel, pursuant to FRCP Rule 20 and joins in the Motion of the United States Trustee pursuant to 11 U.S.C. § 1104(c) for the appointment of an examiner in the above-captioned Chapter 11 cases. In support of this joinder, Vermont states as follows:

INTRODUCTION

1. The above-captioned Celsius debtors commenced these bankruptcy cases by filing voluntary Chapter 11 petitions on July 13, 2022 (Petition Date).

2. Debtors continue to operate their businesses as Debtors in possession pursuant to 11 U.S.C. §§ 1107 and 1108. No trustee or examiner has been appointed to date. The cases are being jointly administered pursuant to an Order of this Court dated July 19, 2022, DE # 53.

3. Debtors have not yet filed their schedules and statements.

4. On August 19, 2022, the first meeting of creditors was commenced pursuant to 11 U.S.C. § 341 (the 341 meeting).

5. On August 18, 2022, the United States Trustee filed a Motion for Entry of an Order Directing the Appointment of an Examiner (the Examiner Motion). Vermont concurs with the concerns raised by the United States Trustee, including the list of specific questions raised on

¹ Debtors include Celsius Network LLC, Celsius KeyFi LLC, Celsius Lending LLC, Celsius Mining LLC, Celsius Network Limited, Celsius Networks Lending LLC, and Celsius U.S. Holding LLC. The Debtor's principal place of business is 121 River Street, PH05, Hoboken, New Jersey 07030.

page 21 of the Examiner Motion, but wishes to highlight additional concerns raised to date during the course of a multistate investigation by state securities regulators.

6. The appointment of an Examiner is both in the best interests of creditors, within the meaning of 11 U.S.C. § 1104(c)(1), and mandatory pursuant to 11 U.S.C § 1104(c)(2).

**THE REGULATORY INVESTIGATION AND STATE CONCERNS
ABOUT UNREGISTERED SECURITIES OFFERINGS AND FRAUD**

7. As of the Petition Date, at least 40 state securities regulators were engaged in a multistate investigation arising from, inter alia, concerns about potential unregistered securities activity, mismanagement, securities fraud, and market manipulation by Celsius and its principals. As noted by the United States Trustee, at least six of those states had taken regulatory enforcement action against Celsius as of the Petition date, and several more states done so since then.²

8. At a minimum, Celsius has been operating its business in violation of state securities laws. That improper practice alone warrants investigation by a neutral party.

9. Vermont and other state regulators are especially concerned about losses suffered by retail investors; for example, middle-class, unaccredited investors who may have invested entire college funds or retirement accounts with Celsius. The appointment of an Examiner is critical to ensure the interests of these investors are protected.

10. During the course of the multistate investigation, it has become clear that Celsius, through its CEO Alex Mashinsky and otherwise, made false and misleading claims to investors about, inter alia, the company's financial health and its compliance with securities laws, both of which likely induced retail investors to invest in Celsius or to leave their investments in Celsius despite concerns about the volatility of the cryptocurrency market. These claims included, at a minimum,³

- A. Representations as to the company's ability to meet its obligations and to safeguard customer assets, when in fact Celsius lacked sufficient assets to repay its obligations at the time such statements were made. For example:

² On August 12, 2022, Vermont issued an *ex parte* order directing Celsius to cease and desist the offer and sale of Celsius Earn Accounts to Vermont residents.

³ Several investor letters to the Court since the Petition Date have identified specific misrepresentations made to investors during various "Ask Mashinsky Anything" or "AMA" sessions presented on YouTube.

- a. On June 7, 2022, Celsius published a blog post stating: “Celsius has the reserves (and more than enough ETH) to meet obligations, as dictated by our comprehensive liquidity risk management framework.”⁴ Preliminary internal financial records provided by Celsius to members of the multistate regulator group show that Celsius had a deeply negative net worth on June 7, 2022, lacked sufficient assets to repay its obligations to depositors and other creditors, and had ETH-denominated liabilities in excess of its ETH-denominated assets. *Declaration of Ethan McLaughlin at ¶ 4 and 6c.*
- b. On May 11, 2022, CEO Alex Mashinsky tweeted:



Preliminary internal financial records provided by Celsius to members of the multistate regulator group show that Celsius experienced unrealized losses of approximately \$454,074,042 between May 2 and May 12, 2022. The company was insolvent and depositor funds were not safe. *Declaration of Ethan McLaughlin at ¶ 4 and 6d.*

- B. Statements that Celsius was profitable or financially healthy when Celsius experienced catastrophic losses in 2021 and failed to earn sufficient revenue to support returns to Earn Account investors. For example:
 - a. On July 31, 2021, CEO Alex Mashinsky tweeted:

⁴ Celsius, *Damn the Torpedoes, Full Speed Ahead*, MEDIUM (June 7, 2022), celsiusnetwork.medium.com/damn-the-torpedoes-full-speed-ahead-4123847832af.



Alex Mashinsky ✓
@Mashinsky

...

The other guys need to raise money every few months because they subsidize their already low rates and make al their income from fees.

So Celsius is profitable and always act in its users best interest while Blockfi has hidden fees and charges you comissions on every move.

4:08 PM · Jul 31, 2021 · Twitter Web App

30 Retweets 3 Quote Tweets 427 Likes

In fact, preliminary analysis of financial records provided to the multistate regulators group indicates that Celsius experienced massive losses in the first seven months of 2021. It also experienced two material adverse events in June and July of 2021.⁵ *Declaration of Ethan McLaughlin* at ¶ 6e.

- C. Representations as to Celsius’ compliance with applicable laws and regulations, when Celsius was actually subject to several pending actions and investigations by regulators for violating securities laws. In an interview with KitCo news on December 3, 2021, for example, CEO Alex Mashinsky was asked to respond to a hypothetical person saying Celsius sounded like a scam. Mashinsky replied, “[S]tates and other regulators have looked into Celsius. They came back: ‘thumbs up, there’s no problem. We did not find anything...’ And we just raised 750 million dollar round. So, our investors, they dug all the way in [and]made sure everything is kosher—no problems.” Kitco News, *This is when Bitcoin will hit \$140k, according to Alex Mashinsky, CEO of Celsius*, YouTube (December 3, 2021).⁶

11. During the 341 meeting, Celsius admitted, through its CFO Chris Ferraro, that the company’s insolvency started with financial losses in 2020 and through 2021, belying the claims

⁵ See Declaration of Alex Mashinsky, DE #23, ¶ 93; StakeHound announced it had “misplaced the keys” to 35,000 Ether, or about \$87.77 million as of July 31, 2021, and in July 2021, a lender to Celsius was unable to return collateral, resulting in a \$509 million uncollateralized claim.

⁶ In fact, Celsius only raised \$600 million. See Declaration of Alex Mashinsky, DE# 23 at 92

in Celsius's "First Day" declarations that the company's insolvency stemmed from the fall of the crypto market during Spring 2022 and the related "run on the bank," and further demonstrating the falsity of Celsius's representations to investors. State and federal securities laws required Celsius to publicly disclose financial statements and a range of material information about its financial condition, business, and risk factors. Instead, Celsius and its management kept its massive losses, asset deficit, and deteriorating financial condition secret from investors.

12. Celsius also admitted at the 341 meeting that the company had never earned enough revenue to support the yields being paid to investors. This shows a high level of financial mismanagement and also suggests that at least at some points in time, yields to existing investors were probably being paid with the assets of new investors.

13. Credible claims have been asserted publicly, through letters to this Court and otherwise, that Celsius and its management engaged in the improper manipulation of the price of the CEL token, including by using the proceeds of investor deposits to acquire CEL tokens and increase its Net Position in CEL.⁷

14. Preliminary analysis of financial data provided by Celsius to members of the multistate regulator group is consistent with these claims.

- A. From May 24, 2021 to December 14, 2021, Celsius increased its Net Position in CEL by 41,955,119 CEL tokens, when the market price of CEL generally ranged between \$3.86 and \$8.00. *Declaration of Ethan McLaughlin at ¶ 6f.*
- B. From May 2, 2022 through July 1, 2022, Celsius increased its Net Position in CEL by an additional 40,089,731.33 CEL tokens, with over half of this increase occurring after Celsius froze withdrawals on June 12, 2022. The market price of CEL generally ranged between \$0.155 and \$2.077 during this period. *Declaration of Ethan McLaughlin at ¶ 6g.*
- C. Celsius has not provided the multistate regulator group with sufficient information to determine whether Celsius purchased CEL tokens or otherwise increased its Net Position in CEL during periods prior to May 14, 2021. *Declaration of Ethan McLaughlin at ¶ 7.*

⁷ "Net Position in CEL" refers to the total number of CEL tokens and CEL-denominated assets held by Celsius, minus CEL-denominated liabilities, such as CEL owed to depositors and CEL held as collateral owed to borrowers. For example, if the Company held 200 CEL tokens but owed 50 CEL tokens to Earn account depositors, its Net Position in CEL would be 150 CEL tokens.

15. The increase in Celsius's Net Position in CEL was in addition to the tens of millions of CEL tokens that Celsius purchased and paid out to depositors as interest.

Declaration of Ethan McLaughlin at ¶ 9.

16. By increasing its Net Position in CEL by hundreds of millions of dollars, Celsius increased and propped up the market price of CEL, thereby artificially inflating the company's CEL holdings on its balance sheet and financial statements. Excluding the Company's Net Position in CEL, liabilities would have exceeded its assets since at least February 28, 2019. These practices may also have enriched Celsius insiders, at the expense of retail investors.

Declaration of Ethan McLaughlin at ¶ 6.

17. By increasing its Net Position in CEL, Celsius invested depositor assets in a long position in CEL that was inconsistent with its purported "market neutral" investment strategy.

18. During the 341 meeting, Celsius admitted, through its CFO Chris Ferraro, that the decline in the price of CEL contributed to its insolvency.

19. An Examiner should investigate whether Celsius improperly deployed assets to manipulate the market price of CEL, thereby artificially inflating the value of the company's net position in CEL on its balance sheet and financial statements.

20. An Examiner should investigate whether or not the company's actions and practices improperly enriched Celsius insiders and other holders of CEL tokens at the expense of retail investors in Earn accounts.

CONCLUSION

For all of the reasons stated herein and in the Examiner Motion, Vermont respectfully requests that an Examiner be appointed with broad powers to investigate the Debtors and their financial affairs.

Dated: September 7, 2022

Vermont Department of Financial Regulation

By: /s/ Jennifer Rood
Jennifer.rood@vermont.gov

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re: Chapter 11
CELSIUS NETWORK LLC et al.¹ Case NO. 22-10964 (MG)
Debtors (Jointly Administered)

DECLARATION OF ETHAN MCLAUGHLIN PURSUANT TO 28 U.S.C. §1746

I, Ethan McLaughlin, under penalty of perjury, make the following declaration:

1. I am an attorney admitted to practice in in the State of Vermont. I am employed as an Assistant General Counsel at the Vermont Department of Financial Regulation.
2. I make this Declaration in support of the Department's Joinder in the Motion of the United States Trustee for an Order directing the appointment of an Examiner.
3. I am one of the attorneys at the Department engaged in a multistate investigation by securities regulators into the unregistered offering of Celsius Earn Interest Accounts by the Debtors.
4. As part of the investigation, states requested and obtained certain financial and business records from certain of the Debtors, including balance sheet analyses of Celsius Network Limited (together with its direct and indirect subsidiaries, "Celsius") dated May 13, 2022, May 25, 2022, and June 13, 2022 (the "Preliminary Balance Sheets"). Each of the Preliminary Balance Sheets is qualified as being "preliminary, unaudited and subject to revision upon completion of the Company's closing and audit processes" and does not include deferred taxes. Each of these Preliminary Balance Sheets shows liabilities substantially exceeding assets, whether including or excluding the Celsius' net long position in CEL tokens. The chart below summarizes Celsius' equity value (i.e., the sum

¹ Debtors include Celius Network LLC, Celsius KeyFi LLC, Celsius Lending LLC, Celius Mining LLC, Celsius Network Limited, Celsius Networks Lending LLC, and Celsius U.S. Holding LLC. The Debtor's principal place of business is 121 River Street, PH05, Hoboken, New Jersey 07030

of its assets minus the sum of its liabilities) as presented in the Preliminary Balance sheets:

Date	Equity Value (\$ in millions)	Pro-Forma Equity Value² (\$ in millions)
5/13/2022	-\$820	-\$1,113
5/25/2022	-\$890	-\$1,158
6/13/2022	-\$1,098	-\$1,222

Celsius appears to be insolvent on each of these dates, insofar as they have liabilities exceeding their assets. See Insolvent Definition, *Black's Law Dictionary* (11th ed. 2019), *available at* Westlaw (“having liabilities that exceed the value of assets”).

5. The states also received certain Celsius internal reports known as “Freeze Reports” for several dates between May 24, 2021 and July 6, 2022 (collectively, the “Freeze Reports”). The reports include a view of Celsius’ assets and liabilities at a coin/token level and are displayed both in-kind and in US dollars. The Freeze Reports provide a snapshot as of a particular date and do not typically include details of individual transactions. In providing the Freeze Reports to state securities regulators, counsel to Celsius noted the following limitations:

Given its complexity and number of calculations, the report has certain limitations. Specifically, the data involves 100+ coins tracked in 200+ wallets and accounts. The process to update the Freeze Report for new wallets, coins and strategies is manual and operational intensive. If not timely updated, certain positions will not be captured in the Report. The data sources that feed into the

² According to a footnote to the Preliminary Balance Sheets, Pro Forma Equity is “adjusted to eliminate Net Long CEL tokens, this pro forma non-GAAP presentation is being presented to allow participants to assess a pro forma equity position excluding CEL token accounting which under US GAAP is different.”

report also are updated every hour, and position level data refreshes throughout the day. Users of the report therefore may manually adjust the Freeze Report and provide input if there is missing data or other potential errors identified in the report. For example, up until mid-May, the reserve for EFH receivables was not included in the net asset positions. The report also has not been updated for the launch of Celsius' custody product and CelsiusX.

The Freeze process is limited in that it is not reconciled to an independent source and relies on basic variance analysis by looking at the delta compared to the prior Report. But balances were often moved between wallets where the freeze file would only show one side of the transaction which made the variance analysis exercise challenging.

Many of the Freeze Reports do not appear to include reserves that Celsius included in the Preliminary Balance Sheets, such as loan loss reserves and reserves related to receivables. These reserves reduce Celsius' Equity value by \$538 million in each of the Preliminary Balance Sheets.

6. Based on my review and preliminary analysis of the above-described Preliminary Balance Sheets and Freeze Reports, as well as the Celsius Network Limited Annual Report and Financial Statements for the Periods ended February 29, 2019, February 28, 2020 and December 31, 2020 (collectively, the "Financial Statements," and together with the Preliminary Balance Sheets and the Freeze Reports, the "Celsius Financial Records"), the Celsius Financial Records indicate the following:

- a. Celsius' Net Position in CEL³ tokens is positive in each of the Freeze Reports, meaning that the number of CEL tokens and CEL-denominated assets held by Celsius exceeded its CEL-denominated liabilities (such as CEL tokens owed to depositors and collateral owed to borrowers).

³ Net Position in CEL" refers to the total number of CEL tokens and CEL-denominated assets held by Celsius, minus CEL-denominated liabilities. As a simplified example, if the Company held 200 CEL tokens but owed 50 CEL tokens to Earn account depositors, its Net Position in CEL would be 150 CEL tokens.

- b. If Celsius' Net Position in CEL is excluded, its liabilities exceed its assets in all of the Freeze Reports and Preliminary Balance Sheets provided to state regulators.
- c. The Freeze Reports dated June 3, 2022, June 8, 2022, and June 10, 2022, each indicate that Celsius was deeply insolvent, having liabilities exceeding its assets, such that Celsius lacked sufficient assets to fully repay its obligations to depositors and other creditors.
- d. Celsius' Net Shareholder Equity (i.e., the sum of all of its assets, minus the sum of all of its liabilities) decreased by \$454,074,042 from the Freeze Report dated May 2, 2022 to the Freeze Report dated May 12, 2022. Total liabilities exceeded total assets throughout this period.
- e. The Financial Statements dated December 31, 2020 show Net Shareholder Equity of \$1,446,420,000. The Freeze Reports dated July 16, 2021 and July 23, 2021 show Net Shareholder Equity of \$650,467,362.40 and \$752,876,673.57, respectively. These changes indicate that Celsius experienced unrealized losses in excess of \$690 million in the first seven months of 2021.
- f. From May 24, 2021 to December 14, 2021, Celsius increased its Net Position in CEL by 41,955,119 CEL tokens, when the closing market price of CEL generally ranged between \$3.86 and \$8.00. The May 24, 2021 Freeze Report lists Celsius' Net Position in CEL as 292,074,111.34 tokens. The December 14, 2021 Freeze Report lists Celsius' Net Position in CEL as 334,029,230.10 tokens.
- g. From May 2, 2022 through July 1, 2022, Celsius increased its Net Position in CEL by an additional 40,089,731.33 CEL tokens, with over half of this increase occurring after Celsius froze withdrawals on June 12, 2022. The market price of CEL generally ranged between \$ 0.155 and \$2.077 during this period. The May 2, 2022 Freeze Report lists Celsius' Net Position in CEL as 343,049,163.67 tokens. The June 13, 2022 Freeze Report lists Celsius' Net Position in CEL as 361,312,576.73 tokens. And the July 1, 2022 Freeze Report lists Celsius' Net Position in CEL as 383,138,895 tokens.

7. Celsius has not provided the multistate group with Freeze Reports or similar information detailing whether Celsius purchased CEL tokens or otherwise increased its Net Position in CEL during periods prior to May 24, 2021.
8. Celsius offered users the ability to earn interest paid in CEL tokens. All users could earn interest paid in CEL on deposits of CEL tokens.⁴ And users outside the United States could earn interest on other digital assets at higher rates by electing to receive interest paid in CEL tokens. Celsius claimed to acquire the CEL tokens that it used to pay such interest by buying CEL tokens in the open market. Celsius also claimed to “burn” ten percent (10%) of the CEL tokens that it purchased for the purposes of paying interest.
9. To the extent that Celsius purchased CEL tokens and either burned or paid interest to users using an equal number of tokens, the net effect of such actions would not increase Celsius’ Net Position in CEL tokens.

Signed under penalty of perjury this 7th day of September 2022.

/s/ Ethan McLaughlin

Ethan McLaughlin

⁴ Celsius did not generally deploy CEL tokens in substantial revenue generating activities at levels comparable to other digital assets.