



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF ECONOMIC JUSTICE
INVESTOR PROTECTION BUREAU

October 18, 2021

[REDACTED]

Re: [REDACTED]

Dear [REDACTED]:

The Office of the Attorney General (“OAG”) is in possession of evidence that [REDACTED] (and/or its affiliates, referred to hereinafter as [REDACTED]) is unlawfully selling or offering for sale securities and/or commodities within or from the State of New York without having registered as required by the Gen. Bus. Law § 352 *et seq.* (the “Martin Act”). I write to demand that, within ten days, [REDACTED] cease any and all such activity and confirm to the OAG the activity has ceased, or explain why the OAG should not take further action, including seeking all relief permitted by law.

The OAG has, for several years, expressed its concern that virtual currency businesses – including trading platforms, issuers, and those engaging in purchase or sale of assets on behalf of clients – are exposing New Yorkers to significant undisclosed risks.¹ Recently, the OAG reminded industry players that if they conduct activity within or from the State, they must be properly registered with this office, and/or other applicable governmental authorities.²

The Martin Act imposes registration requirements on those who offer or sell securities or commodities within or from the State. With respect to securities, it provides that “[i]t shall be unlawful for any dealer, broker or salesman to sell or offer for sale to or purchase or offer to purchase from the public within or from this state, any securities issued or to be issued, unless and until such dealer, broker or salesman shall have filed with the department of law a registration statement as provided herein.” Gen. Bus. Law § 359-(e)(3). Those engaged in such

¹ Office of the Attorney General, [Virtual Markets Integrity Initiative Report](#) (2018); Office of the Attorney General, [Investor Alert: Virtual Currency Risks](#) (2021).

² Office of the Attorney General, [Industry Alert: Registration of Commodity Brokers-Dealers, Salespersons, and Investment Advisors Doing Business Relating to Virtual or “Crypto” Currency](#) (2021).

unregistered activity have committed a fraudulent practice under the Act, which may lead to the imposition of civil remedies. Gen. Bus. Law § 352(1).

██████████ is unlawfully selling or offering to sell its ██████████ and ██████████, both a security, within this State without having registered as required. The ██████████ and ██████████ are securities under the Martin Act because they promise a rate of return to investors, and deliver that return by (for instance) ██████████ trading with, or further lending or hypothecating, those virtual assets. Gen. Bus. Law § 352(1) (defining “any stocks, bonds, notes, evidences of interest or indebtedness or other securities . . . or negotiable documents of title, or foreign currency orders, calls or options therefor hereinafter called security or securities.”); *All Seasons Resorts v. Abrams*, 68 N.Y.2d 81, 87 (1986); *People v. Van Zandt*, 43 Misc. 3d 563, 569 (Sup. Ct., Bx. Cnty. 2014). These defined categories of instruments are not exhaustive; other instruments or arrangements can be (and have been) deemed securities under the Act, which is to be read broadly to effectuate its remedial nature.

██████████ is serving as a dealer, broker, or salesperson because its interest-bearing products, securities, are openly available for use by New York users. As noted above, the OAG is in possession of evidence that ██████████ is operating this business within and from the State in that its products are offered to, and utilized by, New York users. A search of the OAG’s registration files has determined that ██████████ is not registered with this Office as a broker, dealer, or salesperson.

Additionally, ██████████ dealing in bitcoin and other virtual currencies within this State without having registered is also unlawful. Certain virtual currencies have been recognized by courts in New York as commodities under the Martin Act. *Matter of James v. iFinex Inc.*, 185 A.D.3d 22, 28 (1st Dep’t 2020). Commodity broker-dealers, salespersons, and others as identified in the Martin Act who deal in those instruments within or from New York without having registered violate the law. Gen. Bus. Law § 359-(e)(14).

██████████ conduct in selling any commodities or securities in the form of virtual currency interest-earning accounts to users in New York violates the Martin Act and must stop. Accordingly, we demand that, within ten (10) days, ██████████ confirm to the OAG that it has ceased all such activity, or explain why the OAG should not take further action, including seeking such relief as permitted under the law.

Finally, you and your employees, and other persons or entities under your control, should take all necessary steps to preserve all physical and electronic records and data pertaining to the matters raised in this letter, including but not limited to the provision of any product or service within or from New York, or known or possible New York users or clients. The information that should be preserved includes active data (readily accessible today), archived data (stored on backup media), and deleted data (still recoverable through the use of computer forensics). You should also take affirmative steps to prevent anyone with access to your data systems and archives from seeking to modify or destroy electronic evidence on network or local hard drives or servers.

Should you have any questions, please contact John D. Castiglione, an attorney in the Investor Protection Bureau, by email at john.castiglione@ag.ny.gov or telephone at 212-416-8413.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Castiglione". The signature is fluid and cursive, with a large initial "J" and "C".

John D. Castiglione
Senior Enforcement Counsel
Office of the New York State Attorney General
Tel: (212) 416-8513

cc: Brian Whitehurst, brian.whitehurst@ag.ny.gov
Amita Singh, amita.singh@ag.ny.gov