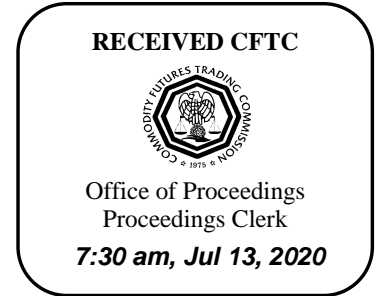


UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION



_____)
In the Matter of:)
)
)
 Plutus Financial, Inc. (d/b/a Abra))
 and Plutus Technologies) **CFTC Docket No. 20-23**
 Philippines Corp. (d/b/a Abra)
 International))
)
)
 Respondents.)
_____)

**ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTION 6(c) AND (d) OF
THE COMMODITY EXCHANGE ACT, MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS**

I. INTRODUCTION

The Commodity Futures Trading Commission (“Commission”) has reason to believe that from in or about December 2017 to October 2019 (the “Relevant Period”), Plutus Financial, Inc. doing business as Abra (“Abra”), and Plutus Technologies Philippines Corporation doing business as Abra International (“Plutus Tech”) (collectively, “Respondents”) violated Sections 2(e) and 4d(a)(1) of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 2(e), 6d(a)(1) (2018). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondents engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

In anticipation of the institution of an administrative proceeding, Respondents have submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondents consent to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions (“Order”), and acknowledge service of this Order.¹

¹ Respondents consent to the use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agree that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondents do not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership; or a proceeding to enforce the terms of this Order. Respondents do not consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

II. FINDINGS

The Commission finds the following:

A. SUMMARY

During the Relevant Period, Respondents violated Section 2(e) of the Act, 7 U.S.C. § 2(e)(2018), by illegally entering into off-exchange swaps with U.S. and overseas customers. Respondents also operated as unregistered futures commission merchants (“FCMs”) in violation of Sections 4d(a)(1) of the Act, 7 U.S.C. § 6d(a)(1) (2018). In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Abra and cooperation afforded to the Commission staff.

B. RESPONDENTS

Plutus Financial, Inc. d/b/a Abra is a Delaware corporation, which was formed in 2014, with its principal place of business in Mountain View, California. Abra has never been registered with the Commission.

Plutus Technologies Philippines Corporation d/b/a Abra International is a private Philippines corporation with its principal place of business in Manilla. Abra is a partial owner of Plutus Tech. Abra and Plutus Tech both use the trade name “Abra” as part of their business. Plutus Tech has never been registered with the Commission.

C. FACTS

During the Relevant Period, Abra developed, owned, and operated a mobile phone application that enabled users to enter into financial transactions, with Abra or Plutus Tech acting as the counterparty, to gain exposure to price movements of over seventy-five virtual and foreign currencies, among other assets. Via this app, Respondents accepted orders for and entered into thousands of virtual currency and foreign currency-based contracts, which constituted swaps under the Act, with U.S. and overseas individuals. At times during the Relevant Period, Respondents and their customers were not eligible contract participants (“ECPs”). The swaps were not entered into on, or subject to the rules of, a designated contract market as required under the Act, and neither Abra nor Plutus Tech has ever been registered with the Commission.

Abra’s product offerings evolved over time, but the basic structure of the financial transactions and contracts remained the same. First, customers would set up an Abra wallet and then fund their wallet via bank transfer, credit card, or virtual currency deposit. Abra would then convert those customer funds to Bitcoin, which were accounted for on the Bitcoin blockchain. When a customer decided to gain price exposure to one of the available assets (referred to as reference assets), the customer selected the reference asset, posted collateral (in Bitcoin) equal to the amount of exposure they wanted, and entered into a Bitcoin blockchain-settled “smart contract” with Abra as the counterparty.² At the end of the contract term, settlement occurred on

² Plutus Tech served as the counterparty for some transactions involving overseas customers.

the Bitcoin blockchain. If the market price for the reference asset had increased, then the customer would receive the collateral plus a payment (in Bitcoin) equivalent to the increase. If the market price had fallen, then the customer's collateral would be reduced by an equivalent amount.³ Because Abra was the counterparty to each contract, the customer was exposed to the risk that Abra would not have sufficient funds to cover any increases in price. To eliminate this exposure, Abra borrowed Bitcoin and then exchanged that bitcoin for whatever asset it needed to hedge against on a one-to-one basis.

Initially, Abra only offered contracts allowing customers to gain exposure to price movements of certain foreign currencies, including the Euro and the Mexican peso. Abra offered those contracts to retail customers beginning in or about December 2017. On or about March 15, 2018, Abra expanded its product offerings and began offering contracts allowing customers to gain exposure to price movements of certain virtual currencies. In February 2019, Abra again expanded its offerings and began offering contracts allowing customers to gain exposure to price movements of certain U.S. stocks and ETF shares.

After being contacted by the Commission and the Securities and Exchange Commission in early 2019 and cooperating with their investigations, Abra voluntarily ceased offering its virtual currency and foreign currency-based swaps to U.S. customers and undertook measures to ensure that these swaps were only offered to non-US customers through Plutus Tech. Although Plutus Tech was the counterparty to these swaps with overseas customers, Abra played a significant role in the swaps. For example, Abra employees in California designed the swap contract, including setting the contract's price and establishing the hedging mechanism. Those same Abra employees also drafted marketing materials relating to the swaps and conducted limited managerial functions, including providing technical support and accounting.

Respondents promoted all of these contracts to U.S. and overseas customers via websites, social media, and various other marketing channels. Respondents did not set any requirements that customers own any specific amount of assets to enter into the swaps and did not require customers to provide any financial information other than their bank account number or credit card number to fund their wallet. That is, Respondents did not take steps to determine whether customers were ECPs as defined by the Act. In July 2019, Abra stopped all offers and sales of swaps in the United States. Plutus Tech has ceased offering swaps to overseas customers.

III. LEGAL DISCUSSION

A. Respondents Engaged in Unlawful Off-Exchange Swaps Trading in Violation of Section 2(e) of the Act

Section 2(e) of the Act, 7 U.S.C. § 2(e) (2018), makes it unlawful for any person, other than an ECP, to enter into a swap unless the swap is entered into on, or subject to the rules of, a board of trade designated as a contract market.

³ The contract operated like a contract for difference ("CFD"), which the Commission has described as "an agreement to exchange the difference in value of an underlying asset between the time at which a CFD position is established and the time at which it is terminated." See Joint SEC-CFTC Final Rule Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 Fed. Reg. 48,208, 48,259 (Aug. 13, 2012) (Joint Statement on Swaps).

The contracts that Respondents entered into were swaps as defined by the Act because the contracts (1) provided on an executory basis for the exchange, on a fixed or contingent basis, of one or more payments based on the value or level of one or more commodities, currencies, economic interests, or property of any kind; and (2) transferred the financial risk associated with the future change in value without also conveying an ownership interest. *See* Section 1a(47)(A)(iii) of the Act, 7 U.S.C. § 1a(47)(A)(iii) (2018).⁴

As described above, Respondents unlawfully entered into swaps with U.S. and overseas customers that were not entered into on or subject to the rules of a board of trade designated as a contract market. Therefore, Respondents violated Section 2(e) of the Act.

B. Respondents Operated as Unregistered Futures Commission Merchants in Violation of Section 4d(a)(1) of the Act

Section 1a(28) of the Act, 7 U.S.C. § 1a(28) (2018), in relevant part, defines an FCM as any individual, association, partnership, corporation or trust that engages in soliciting or in accepting orders for swaps, and accepts money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom. Section 4d(a)(1) of the Act, 7 U.S.C. § 6d(a)(1) (2018), in pertinent part, makes it unlawful for any person to act as an FCM unless registered with the Commission as an FCM.

As described above, Respondents, while not registered as FCMs, acted as FCMs as defined in Section 1a(28) of the Act by accepting orders for and entering into swaps with U.S. and overseas customers, and accepting money or property (or extending credit in lieu thereof) to margin, guarantee or secure the swaps. Therefore, Respondents violated Section 4d(a)(1) of the Act.

IV. FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondents, violated Sections 2(e) and 4d(a)(1) of the Act, 7 U.S.C. §§ 2(e), 6d(a)(1) (2018).

V. OFFER OF SETTLEMENT

Respondents have submitted the Offer in which they, without admitting or denying the findings and conclusions herein:

- A. Acknowledge service of this Order;
- B. Admit the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waive:

⁴ In addition, as CFDs, the contracts constitute swaps under the Act. *See* Joint Statement on Swaps, 77 Fed. Reg. at 48,260 (“CFDs, unless otherwise excluded, fall within the scope of the swap . . . definition[.]”); *supra* note 3.

1. The filing and service of a complaint and notice of hearing;
 2. A hearing;
 3. All post-hearing procedures;
 4. Judicial review by any court;
 5. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 6. Any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2018) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's Regulations, 17 C.F.R. pt. 148 (2019), relating to, or arising from, this proceeding;
 7. Any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201-253, 110 Stat. 847, 857-74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding; and
 8. Any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, including this Order;
- D. Stipulate that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer;
- E. Consent, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. Makes findings by the Commission that Respondents violated Sections 2(e) and 4d(a)(1) of the Act, 7 U.S.C. §§ 2(e), 6d(a)(1) (2018);
 2. Orders Respondents to cease and desist from violating Sections 2(e) and 4d(a)(1) of the Act;
 3. Orders Respondents to pay a civil monetary penalty of \$150,000 (one hundred and fifty thousand dollars) within thirty days of the date of entry of this Order, plus post-judgment interest if applicable;
 4. Orders Respondents and their successors and assigns to comply with the conditions and undertakings consented to in the Offer and set forth below in Part VI of this Order.

Upon consideration, the Commission has determined to accept the Offer.

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondents shall cease and desist from violating Sections 2(e) and 4d(a)(1) of the Act, 7 U.S.C. §§ 2(e), 6d(a)(1) (2018).
- B. Respondents shall pay a civil monetary penalty in the amount of \$150,000 (one hundred and fifty thousand dollars) (the “CMP Obligation”), within thirty days of the date of entry of this Order. If the CMP Obligation is not paid in full within thirty days of the date of entry of this Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2012).

Respondents shall pay the CMP Obligation and any post-judgment interest by electronic funds transfer, U.S. Postal money order, certified check, bank cashier’s check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

MMAC/ESC/AMK326
Commodity Futures Trading Commission
Division of Enforcement
6500 S. MacArthur Blvd.
HQ Room 181
Oklahoma City, OK 73169
(405) 954-6569 office
(405) 954-1620 fax
9-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, Respondents shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondents shall accompany payment of the CMP Obligation with a cover letter that identifies the Respondents and the name and docket number of this proceeding. The Respondents shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

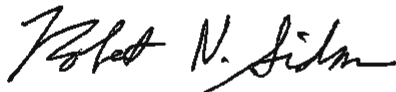
- C. Respondents shall comply with the following conditions and undertakings set forth in the Offer:
 - 1. Public Statements: Respondents agree that neither they nor any of their agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in the Order or creating, or tending to create, the impression that the Order is without a

factual basis; provided, however, that nothing in this provision shall affect Respondents': (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondents and their successors and assigns shall comply with this agreement, and shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement.

2. Cooperation with the Commission: Respondents shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, in this action and in any current or future Commission investigation or action related thereto. Respondents shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, the subject matter of this action.
3. Partial Satisfaction: Respondents understand and agree that any acceptance by the Commission of any partial payment of Respondents' CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.
4. Change of Address/Phone: Until such time as Respondents satisfy in full their CMP Obligation as set forth in this Order, Respondents shall provide written notice to the Commission by certified mail of any change to their telephone number and mailing address within ten calendar days of the change.

The provisions of this Order shall be effective as of this date.

By the Commission.



Robert N. Sidman
Deputy Secretary of the Commission
Commodity Futures Trading Commission

Dated: July 13, 2020