

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

Plutus Lending, LLC d/b/a Abra,

Defendant.

CASE NO. 24-cv-2457

COMPLAINT

Plaintiff Securities and Exchange Commission (“SEC”) files this complaint against Plutus Lending, LLC d/b/a Abra (“Defendant” or “Abra”).

SUMMARY

1. Abra violated the federal securities laws for years by (1) illegally offering and selling securities without registering those offerings with the SEC, and (2) underwriting its securities sales while operating as an unregistered investment company.

2. Starting around July 2020 and continuing through approximately June 2023, Abra offered and sold securities to U.S. retail investors through an investment called “Abra Earn.” Investors in Abra Earn tendered various crypto assets into Abra Earn accounts, and in exchange, Abra promised to pay interest on those assets. Abra Earn was offered and sold as a security and Abra’s offer and sale of those securities, without registering the offerings with the SEC, violated Sections 5(a) and 5(c) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77e(a) and 77e(c)].

3. In addition, from at least December 2020 to December 2022, Abra operated as an investment company as defined by the Investment Company Act of 1940 (“Investment Company Act”). When a company (1) is organized or otherwise created under the laws of the United States or of a State, (2) meets the definition of an investment company under the Investment Company Act, and (3) cannot rely on an exception or an exemption from registration, then generally that company must register with the SEC under the Investment Company Act and must register any public offering of its securities under the Securities Act. Abra, which was not exempt from registration, never registered with the SEC as an investment company and never registered the offering of any of its securities with the SEC.

4. Moreover, when an unregistered investment company does not have a board of directors, the Investment Company Act prohibits underwriters from offering or selling securities issued by that investment company. Abra, which lacked a board of directors, acted as an underwriter by offering and selling its own securities, Abra Earn, to the general public. In so doing, Abra violated Section 7(b) of the Investment Company Act [15 U.S.C. § 80a–7(b)] by acting as an underwriter selling securities of an unregistered investment company.

JURISDICTION AND VENUE

5. The SEC brings this action pursuant to the authority established in Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and Section 42(d) of the Investment Company Act [15 U.S.C. § 80a–41(d)].

6. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 44 of the Investment Company Act [15 U.S.C. § 80a-43].

7. Defendant, directly or indirectly, has made use of the means or instruments of transportation or communication in interstate commerce or of the mails in connection with the transactions, acts, practices, and courses of business alleged herein.

8. Venue is proper in this district pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], because Abra Earn was offered within this District, and Abra's failures to register with the SEC occurred within this District.

DEFENDANT

9. **Plutus Lending, LLC ("Abra")**, is a Delaware limited liability company formed in 2020 with its principal place of business in Atlanta, GA. Defendant and its related entities provide various crypto asset-related financial products and services while doing business under the name "Abra." The name Abra is used in this complaint to refer to Defendant Plutus Lending, LLC, unless otherwise specified.

10. Two related entities operating under the Abra tradename, Plutus Financial, Inc. and Plutus Technologies Philippines Corp., were subject to a prior SEC order for unrelated violations of Section 5(e) of the Securities Act and Section 6(l) of the Securities Exchange Act of 1934 for unregistered offers and sales of security-based swaps.

11. Plutus Lending, LLC was the entity which offered and sold investments in the Abra Earn program, which qualify as securities under the laws described in this complaint. Neither Plutus Lending, LLC nor its offerings of securities were ever registered with the SEC in any capacity.

STATUTORY AND REGULATORY FRAMEWORK

12. The Securities Act requires that, unless certain exemptions not at issue in this case apply, anyone who offers or sells securities to the investing public in interstate commerce must register those offers and sales with the SEC. This is required, in part, to ensure investors have sufficient, accurate information to make informed decisions before they invest.

13. The definition of a “security” under Section 2(a)(1) of the Securities Act includes a wide range of investment vehicles, including “investment contracts.” 15 U.S.C. §77b(a)(1). An investment contract exists when there is the investment of money in a common enterprise with a reasonable expectation of profits to be derived from the efforts of others.

14. Sections 5(a) and 5(c) of the Securities Act, codified at 15 U.S.C. §§ 77e(a) and 77e(c), require that an issuer of securities register the offer or sale of securities with the SEC. Registration statements provide investors with important information about the securities, including the terms of the offering, and the registrant’s business operations, financial condition, results of operations, risk factors, and management. The Securities Act prohibits persons from engaging in the unregistered offer and sale of securities in interstate commerce, unless an exemption from registration applies.

15. The Investment Company Act regulates the structure and operations of investment companies. The Investment Company Act and accompanying regulations are designed to minimize conflicts of interest that arise in these complex operations. It also requires these companies to provide various disclosures which provide information to the investing public about the company and its investment objectives, as well as on investment company structure and operations.

16. As relevant here, Section 3(a)(1)(C) of the Investment Company Act defines “investment company” to include any issuer of securities that “is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer’s total assets (exclusive of Government securities and cash items) on an unconsolidated basis.” 15 U.S.C. § 80a–3(a)(1)(C). Section 3(a)(2) of the Investment Company Act defines “investment securities” to include all securities except Government securities, securities issued by employees’ securities companies, and securities issued by majority-owned subsidiaries of the owner which are not investment companies and not relying on exceptions set forth in Sections 3(c)(1) or 3(c)(7) of the Investment Company Act. *Id.*

17. The Investment Company Act defines “underwriter” as “any person who . . . sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking”

15 U.S.C. § 80a–2(a)(40). A company who offers and sells its own securities can be both an issuer and its own underwriter.

18. Section 7(b) of the Investment Company Act makes it unlawful for an underwriter to, among other things, directly or indirectly “offer for sale, sell, or deliver after sale, by the use of the mails or any means or instrumentality of interstate commerce, any security or any interest in a security” of an unregistered investment company that lacks a board of directors, if the underwriter has reason to believe such securities will be the subject of a public offering.

FACTS

19. Starting around July 2020, Abra began offering an interest-bearing investment, Abra Earn (sometimes also referred to as Abra Interest), to United States-based investors, through its public website, <https://www.abra.com/>, and through its mobile application, both of which were accessible at all relevant times from within the United States.

20. To participate in Abra Earn accounts, investors used Abra’s mobile application to open an account with a third-party custodian and then tendered certain crypto assets¹ into the account in exchange for Abra’s promise to provide periodic interest payments.

¹ The term “crypto asset” as used in this complaint refers to an asset that is issued and transferred using distributed ledger or blockchain technology, including, but not limited to, so-called “cryptocurrencies,” “coins,” and “tokens.”

21. Abra engaged in interstate commerce and used the means and instrumentalities of interstate commerce to offer and sell Abra Earn to U.S. investors by, among other things, engaging in a public offering through its mobile app, its website, and through social media.

22. Abra created a reasonable expectation that investors would earn profits passively through Abra Earn, including through the conduct described below.

23. On its website, Abra Earn was listed under the heading “INVEST.”

24. Abra’s social media accounts also touted Abra Earn as an investment and a way to make money. For example, during the time period when Abra sought investors for Abra Earn accounts, Abra’s Twitter account posted: “Don’t rely on one source for your retirement. Have a variety of investments like stocks, bonds and real estate. You should also consider using Abra’s earn program to earn interest on your crypto.” Abra’s Twitter account encouraged customers to buy crypto assets “on Abra” and keep “them in our wallet for 8% ROI [return on investment]!” Abra’s LinkedIn profile contained the tagline: “Cryptocurrency Investing. Simplified.” Abra’s Facebook account highlighted “Abra Earn” as a way to grow crypto “auto-magically” by “[e]arn[ing] some of the best rates around for your crypto” and highlighting that “interest is compounded daily.”

25. Abra routinely tweeted the current interest rates available on various crypto assets from its official Twitter account and posted similar content on other social media sites.

26. The screenshot below is one example of a tweet posted by Abra on July 28, 2021, showing interest rates of between 4% and 8% that were the then-available rates to investors who participated in the Abra Earn accounts.



27. In Abra’s Terms of Use, marketing materials, and explanations of Abra Earn on Abra’s website, Abra informed investors how it used those assets to generate returns and pay investors interest. The “Terms of Use – US Persons,” which all U.S.-based Abra Earn users agreed to when opening an account, contained the following: “We will lend, sell, pledge, rehypothecate,²

² Rehypothecation is the re-use of collateral. In this case, Abra used borrowed crypto assets to serve as collateral in other transactions.

assign, invest, use, commingle, or otherwise dispose of funds and cryptocurrency assets to counterparties, and we will use our commercial best efforts to prevent losses.”

28. Abra Earn investors’ crypto assets were pooled into one central reserve account that Abra controlled. Abra used investor assets tendered as part of Abra Earn for Abra’s general use in its business, including for lending to third-parties and other revenue-generating strategies. This activity generated revenue for Abra, and Abra shared its revenues with its investors. Abra earned revenue for itself through the pooled funds, so the investors’ and Abra’s fortunes were linked.

29. Abra’s lending and investment activities were at its own discretion, and Abra managed the risks involved with its deployment of the pooled funds. Abra Earn investors were strictly passive and had no ability to manage how their tendered assets were used.

30. The interest rates offered to investors were generally subject to change on a daily basis, at Abra’s total discretion, and were often set based on the supply and demand of crypto assets and Abra’s performance in various revenue-generating strategies.

31. Historically, Abra offered interest rates on crypto assets ranging between 2% and 14%. Investors began earning interest after holding funds in an Abra Earn account for at least two full days. Interest accrued daily and was paid out weekly.

32. Investors were able to withdraw all or part of the crypto assets they lent to Abra, including the interest earned, by making a withdrawal request on the Abra app. Abra returned investors' crypto assets from Abra Earn into their non-interest-bearing Abra wallet within seven business days.

33. Abra did not guarantee that the assets invested in Abra Earn would not lose value, and Abra disclosed the risk of loss to investors in its terms of service.

34. As of December 2021, Abra Earn globally had at least 27,440 active investors and at least \$607 million in assets. Of these investors and assets, at least 10,567 investors and at least \$495 million in assets were from U.S. users.

35. Although Abra issued securities in the form of investment contracts by publicly offering and selling Abra Earn, Abra has never had a registration statement filed or in effect with the SEC for its offers and sales of Abra Earn. Abra Earn did not qualify for any exemption to the SEC's registration filing requirements.

36. From at least December 2020 to December 2022, Abra was in the business of investing in, owning, and holding investment securities whose value exceeded 40% of the value of Abra's total assets (exclusive of government securities and cash items) on an unconsolidated basis, and thus was an investment company pursuant to the Investment Company Act.

37. From at least July 2020 to October 2022, Abra sold and distributed several thousand Abra Earn accounts to the general public on its own behalf and thus was also an underwriter pursuant to the Investment Company Act.

38. Abra never registered as an investment company, as required by the Investment Company Act, and could not rely on any exception or exemption.

39. Around October 2022, Abra ceased offering Abra Earn to new investors. Existing investors were able to retain their Abra Earn accounts and Abra continued to pay variable interest to those investors through June 2023.

40. In June 2023, Abra began winding down the Abra Earn program and told its U.S.-based Abra Earn customers to withdraw their crypto assets. By July 25, 2023, “Abra Earn . . . [had] been completely wound down in the US.”

41. As of June 2024, nearly all U.S.-based investor assets in Abra Earn had been returned, with assets valued at approximately \$2.9 million remaining on the Abra platform.

FIRST CLAIM FOR RELIEF
Violations of Section 5(a) and 5(c) of the Securities Act
[15 U.S.C. §§ 77e(a) and 77e(c)]

42. The SEC realleges and incorporates by reference all the foregoing paragraphs.

43. Without a registration statement in effect as to Abra Earn, Defendant, directly and indirectly, (a) made use of the means and instruments of transportation or communications in interstate commerce or of the mails to sell securities through the use or medium of any prospectus or otherwise; (b) carried or caused to be carried through the mails or in interstate commerce, by any

means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; and (c) made use of the means and instruments of transportation or communication in interstate commerce or of the mails to offer to sell through the use or medium of a prospectus or otherwise, securities as to which no registration statement had been filed.

44. By engaging in the conduct described above, Defendant violated, and unless restrained and enjoined will continue to violate, Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

SECOND CLAIM FOR RELIEF
Violations of Section 7(b) of the Investment Company Act
[15 U.S.C. § 80a-7(b)]

45. The SEC realleges and incorporates by reference all the foregoing paragraphs.

46. From at least December 2020 to December 2022, Defendant satisfied the statutory definition of an investment company because it was an issuer of securities engaged in the business of investing, reinvesting, owning, holding, or trading in securities, and owned investment securities having a value exceeding 40 per centum of the value of Defendant's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

47. Although it was required to register with the SEC as an investment company, Abra did not and no exception to or exemption from the registration requirement applies.

48. Abra issued securities in the form of its Abra Earn investment.

49. Abra acted as its own underwriter by offering and selling the Abra Earn product in a public distribution.

50. Abra violated Section 7(b) of the Investment Company Act, which makes it unlawful for an underwriter of unregistered investment company that does not have a board of directors to, among other things, directly or indirectly “[o]ffer for sale, sell, or deliver after sale, by the use of the mails or any means or instrumentality of interstate commerce, any security or any interest in a security . . . ,” if the underwriter has reason to believe such securities will be the subject of a public offering.

51. By engaging in the conduct described above, Defendant violated, and unless restrained and enjoined will continue to violate, Section 7(b) of the Investment Company Act.

Prayer for Relief

WHEREFORE, the SEC respectfully requests that the Court issue a Final Judgment:

- A. Finding that Defendant Abra committed the violations alleged above;
- B. In a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently enjoining Abra, and its agents, servants, employees, and attorneys, and those persons in active concert or participation with Abra, who receive actual notice of the judgment by personal service or otherwise, from violating Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)] and Section 7(b) of the Investment Company Act [15 U.S.C. § 80a-7(b)];

- C. Ordering Defendant to pay civil penalties under Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 42(e) of the Investment Company Act [15 U.S.C. § 80a-41(d)];
- D. Retaining jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court; and
- E. Granting such other and further relief as this Court may determine to be just and necessary.

DATED: August 26, 2024

Respectfully submitted,

SECURITIES AND EXCHANGE
COMMISSION

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