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LEGAL SERVICES

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

----- X
 In re : Chapter 11
 :
 TERRAFORM LABS PTE. LTD., : Case No. 24-10070 (BLS)
 :
 Debtor.¹ : Re: Docket No. 435
 :
 :
 ----- X

Filed: USBC - District of Delaware
 Terraform Labs Pte. Ltd., Et al (CLM)
 24-10070 (BLS)

TEF



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ORDER APPROVING IMPLEMENTATION STEPS IN CONNECTION WITH TFL CONSENT AND FINAL JUDGMENT IN SEC ENFORCEMENT ACTION

Upon the motion (the “**Motion**”)² of Terraform Labs Pte. Ltd., as debtor and debtor in possession in the above-captioned chapter 11 case (the “**Debtor**”), for entry of an order (this “**Order**”) pursuant to sections 105(a) and 363(b)(1) of the Bankruptcy Code and Bankruptcy Rule 9019, authorizing the Debtor to take actions in compliance with the terms of the *Consent of Defendant Terraform Labs Pte. Ltd.*, attached hereto as **Exhibit 1** (the “**TFL Consent**”), and the *Final Judgment Against Defendants Terraform Labs Pte. Ltd. and Do Hyeong Kwon*, attached hereto as **Exhibit 2** (the “**Final Judgment**,” and together with the TFL Consent, the “**TFL Consent and Final Judgment**”), which together memorialize and order the settlement between the Debtor and the Securities and Exchange Commission (the “**SEC**”); and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157(a)–(b) and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and it

¹ The Debtor’s principal office is located at 1 Wallich Street, #37-01, Guoco Tower, Singapore 078881.
² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

appearing that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion; and this Court having held a hearing, if necessary, to consider the relief requested in the Motion; and all objections, if any, to the Motion have been withdrawn, resolved, or overruled; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before this Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted to the extent set forth herein.
2. The Debtor is authorized, but not directed, pursuant to sections 105 and 363 of the Bankruptcy Code, in its reasonable business judgment and where appropriate, to take the actions described more fully in the Motion to effectuate the TFL Consent and Final Judgment and the Wind-Down, in consultation with the Creditors' Committee and the SEC.
3. The Debtor is authorized, but not directed, to liquidate, convert or otherwise sell its digital assets, other than those digital assets the Debtor is required to burn or destroy under the TFL Consent and Final Judgment; *provided that*, the Debtor is not authorized to liquidate any assets that come into the estate from Mr. Kwon or LFG as a result of the Kwon Consent and Final Judgment unless pursuant to a confirmed chapter 11 plan or further Court order. Nothing in this Order shall (i) prejudice any claim that Avalanche (BVI), Inc. may assert stemming from or relating to the transfer of the AVAX tokens from Mr. Kwon or LFG as a result of the Kwon

Consent and Final Judgment or (ii) any rights, defenses or claims the Debtor may assert in connection therewith.

4. The Debtor is authorized to enter into a custodial services agreement with a U.S.-licensed crypto custodian and to take all necessary actions to transfer certain agreed-upon digital assets within its possession or control to such custodian within thirty (30) days after entry of this Order. The Debtor is further authorized to enter into a master purchase agreement for conversion of digital assets to fiat currency on terms not objectionable to the SEC. The Debtor is further authorized to pay all custodial arrangement fees and conversion fees incurred pursuant to the custodial services agreement and the master purchase agreement, respectively. The Debtor shall file a copy of such agreements with the Court within ten (10) days after execution of the same and shall file a statement of fees paid within thirty (30) days after the end of each calendar month until completion of such services.

5. The Debtor shall direct the transfer of assets received from LFG and Mr. Kwon to segregated bank accounts or segregated custodial accounts, in each case for later distribution under the terms of a confirmed chapter 11 plan or pursuant to further Court order and subject to the terms and limitations of this Order, provided that any such bank accounts shall be with a bank that has executed a Uniform Depository Agreement with the U.S. Trustee; provided, further, that in the event no chapter 11 plan is confirmed, the Debtor shall direct the transfer of such assets received to the SEC at the SEC's request. Any sale or other disposition of the Debtor's intellectual property and proprietary software shall be carried out in consultation with the SEC, provided, however, that the sale of such assets shall be subject to further approval of the Court.

6. The Debtor is authorized, but not directed, to market its non-digital assets for sale, including but not limited to, Proximity, Pulsar, the Venture Investments, and the Debtor's intellectual property and proprietary software.

7. The Debtor is authorized, but not directed, to continue operating certain applications and protocols to the extent necessary, in the Debtor's reasonable discretion, to allow third parties to withdraw, unwind, and/or unstake their positions and redeem assets on the Terra Blockchain, and to provide notice of the same, as described in the Motion.

8. The Debtor is authorized, but not directed, to destroy or burn all tokens native to the Terra Blockchain that are within its possession or control, including, but not limited to UST, MIR, LUNA, wLUNA, ANC, KRTC, and LUNA 2.0, or destroy all private keys in the Debtor's possession to wallets or blockchain addresses holding such tokens, and any crypto assets remaining in its Bridge Wallets thirty (30) days after the effective date of the chapter 11 plan, after any non-Terraform Crypto Assets are transferred out and preserved for future liquidation.

9. The Debtor is authorized, but not directed, in respect of the two new independent directors, to: (i) pay each director's fees; (ii) pay the reasonable, documented, out-of-pocket business-related expenses incurred by each director in good faith and in performance of the director's duties to the Debtor; and (iii) procure and maintain director and officer insurance coverage, including paying any premium associated therewith.

10. The requirements set forth in Bankruptcy Rule 6004(a) are satisfied.

11. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

12. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

13. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: July 17th, 2024
Wilmington, Delaware

BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

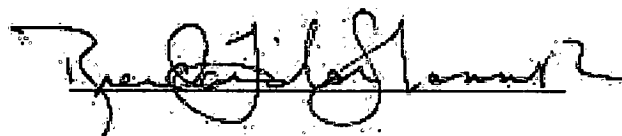
A handwritten signature in black ink, appearing to read "Brendan L. Shannon", written over a horizontal line.

Exhibit 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

- against -

TERRAFORM LABS PTE. LTD.

Defendant.

No. 1: 23-cv-01346 (JSR)

CONSENT OF DEFENDANT TERRAFORM LABS PTE. LTD.

Defendant Terraform Labs Pte. Ltd. ("Terraform") acknowledges having been served with the complaint, entering an appearance, litigating the case up to and through trial, and admits the Court's jurisdiction over Terraform and over the subject matter of this action.

2. Terraform acknowledges that, on December 28, 2023, the Court granted the SEC's Motion for Summary Judgment and found that Terraform engaged in unregistered offers and sales of securities in violation of Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77e(a) and 77e(c)], and granted Defendants' Motion for Summary Judgment as to the SEC's claims alleging that Defendants engaged in transactions in security-based swaps in violation of Securities Act Section 5(e) [15 U.S.C. § 77e(e)] and Exchange Act Section 6(l) [15 U.S.C. § 78f(1)] (the "Security-Based Swap Claims"). Dkt. No. 149.

3. Terraform further acknowledges that, on April 5, 2024, a unanimous jury returned a verdict finding Terraform liable for violating the antifraud provisions of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)], Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] and Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)]. Dkt. No.

229.

4. Terraform hereby consents to the entry of the Final Judgment in the form attached hereto (the "Final Judgment") and incorporated by reference herein, which, among other things:

- (a) permanently restrains and enjoins Terraform from violations of Securities Act Section 5 [15 U.S.C. §§ 77e], Securities Act Section 17(a) [15 U.S.C. § 77q(a)], Exchange Act Section 10(b) [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5];
- (b) permanently restrains and enjoins Terraform from: (i) participating, directly or indirectly, in the purchase, offer, or sale of any crypto asset securities, including but not limited to UST, MIR, LUNA, wLUNA, and LUNA 2.0 or (ii) engaging in activities for purposes of inducing or attempting to induce the purchase, offer, or sale of any crypto asset securities by others.
- (c) orders Terraform to pay disgorgement in the amount of **\$3,586,875,883**, plus prejudgment interest thereon in the amount of **\$466,952,423** under Sections 21(d)(3), 21(d)(5) and 21(d)(7) of the Exchange Act [15 U.S.C. §§ 78u(d)(3), 78u(d)(5), 78u(d)(7)]; and
- (d) orders Terraform to pay a civil penalty in the amount of **\$420,000,000** under Securities Act Section 20(d) [15 U.S.C. § 77t(d)] and Exchange Act Section 21(d)(3) [15 U.S.C. § 78u(d)(3)] (together with the disgorgement outlined in paragraph 2(b), the "SEC Claim"). The SEC Claim shall be payable as provided for in the confirmed liquidating Chapter 11 Plan in the Bankruptcy Case, *In re: Terraform Labs Pte. Ltd.*, No. 24-10070

(BLS) (Bankr. D. Del.) (the “Bankruptcy Case”), as set forth in paragraph

5.

5. Terraform agrees to file a liquidating Chapter 11 Plan that incorporates the terms set forth in Exhibit 1 to this Consent by June 30, 2024, and to seek approval of the plan expeditiously. Nothing in this consent or the liquidating Chapter 11 Plan limits the Commission’s right to seek, in its sole discretion, the conversion of this case to Chapter 7, the dismissal of this case, or the appointment of a trustee or examiner.

Within 30 days, to assist in overseeing the wind-down, Terraform will replace both of its non-independent directors, Chris Amani and Ashwin Mathialagan, with two new independent directors. This will leave Terraform with a majority of independent directors. The appointment of all new independent directors and the wind-down process shall be in consultation with the Committee of Unsecured Creditors appointed by the U.S. Trustee’s Office in the Bankruptcy Case on February 29, 2024 (“Committee”). The appointment of the new independent directors shall also be subject to the approval of the Commission, which approval shall not be unreasonably withheld. Terraform will undertake wind-down activities substantially consistent with the terms set forth in Exhibit 2.

The monetary remedies assessed against Terraform by this Consent will be deemed fully satisfied upon a distribution by the liquidating trustee or estate representative, as applicable, to creditors and investors pursuant to a confirmed liquidating Chapter 11 plan that incorporates terms that are substantially similar to those set forth in Exhibit 1 and is otherwise not objectionable to the Commission. Terraform shall use its best efforts to confirm the plan by September 30, 2024. If no such plan has gone effective by October 31, 2024, the Commission may enforce the Final Judgment against Terraform without further notice to Terraform.

6. Terraform agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil penalty amounts that Terraform pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Terraform further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any penalty amounts that Terraform pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

7. Terraform waives the right, if any, to appeal from the entry of the Final Judgment.

8. Terraform enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Terraform to enter into this Consent.

9. Terraform agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

10. Terraform will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

11. Terraform waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to Terraform

of its terms and conditions. Terraform further agrees to provide counsel for the Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Terraform has received and read a copy of the Final Judgment.

12. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against Terraform in this civil proceeding. Terraform acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Terraform waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Terraform further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Terraform understands that it shall not be permitted to contest the factual allegations of the complaint in this action or the unanimous jury verdict.

13. Terraform understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings." As part of Terraform's agreement to

comply with the terms of Section 202.5(e), except for the Security-Based Swap Claims, Terraform: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Terraform does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations; and (iii) stipulates for purposes of exceptions to discharge set forth in 11 U.S.C. § 1141(d)(6), that the allegations in the complaint are true, and further, that any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Terraform under the Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt of a kind specified in paragraph (2)(A) or (2)(B) of 11 U.S.C. § 523(a) that is owed to the SEC, a domestic governmental unit. If Terraform breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Terraform's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

14. Terraform hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Terraform to defend against this action. For these purposes, Terraform agrees that Terraform is not the prevailing party.

15. In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a


party, Terraform (i) agrees to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appoints Terraform's undersigned attorney (or other representative pursuant to its liquidating Chapter 11 Plan) as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses Terraform's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consents to personal jurisdiction over Terraform in any United States District Court for purposes of enforcing any such subpoena.

16. Terraform agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

17. Terraform agrees that the terms of the settlement reflected in this Consent and in the Judgment are subject to approval by the Bankruptcy Court in the Bankruptcy Case, which approval may be in the form of an order confirming the Chapter 11 plan of liquidation as set forth in paragraph 5, *supra*, and the SEC Claim shall be treated as set forth in paragraph 5, *supra*, under any Plan filed by Terraform in the Bankruptcy Case.

18. Terraform agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

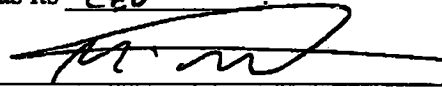
Terraform Labs PTE LTD.

By: 
[Name of person signing for entity]
[Title] CEO

ANUSH CHRISTOPHER AMANU

[Address]

On 6/6/2024, 2004, Arash Chris Amani, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent with full authority to do so on behalf of Terraform Labs as its CEO



Notary Public

Commission expires: 11/19/2025

Approved as to form:

DocuSigned by:



DENTONS US LLP

Douglas W. Henkin

David L. Kornblau

Louis A. Pellegrino

1221 Avenue of the Americas

New York, New York 10020

Tel: (212) 768-6700

douglas.henkin@dentons.com

david.kornblau@dentons.com

louis.pellegrino@dentons.com

See attached notarial certificate.
P 8-A

Mark G. Califano

1900 K Street, NW

Washington, DC 20006-1102

Tel: (202) 496-7500

mark.califano@dentons.com

Counsel for Defendant Terraform Labs Pte Ltd.

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

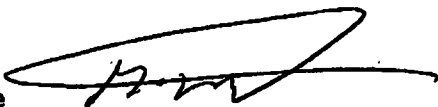
State of California
County of Contra Costa

On 6/6/2024 before me, Mohamad Itani, Notary Public
(insert name and title of the officer)

personally appeared Arash Chris Ameni
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 



(Seal)

Exhibit 1 – Chapter 11 Plan of Liquidation Terms

- 1) The Commission's Allowed Claim shall be treated as a general unsecured claim that recovers only after all other general unsecured creditors and investors recover in full, or is deemed satisfied by such distributions.
- 2) A Liquidating Trust may be established, to which all of Terraform's assets (including any assets transferred from the Luna Foundation Guard to Terraform's estate), including chapter 5 claims and causes of action, shall be transferred and assigned free and clear upon the effective date of the Plan; in the event a Liquidating Trust is not established, all of Terraform's assets (including any assets transferred from the Luna Foundation Guard to Terraform's estate), including chapter 5 claims and causes of action, shall be retained upon the effective date of the Plan and liquidated by an appointed Estate Representative.
 - a) The Liquidating Trustee or Estate Representative, as applicable, shall be selected by the Committee and be subject to the consent of the Commission and Terraform, which shall not be unreasonably withheld.
 - b) For avoidance of doubt, the chapter 5 causes of action shall include, but are not limited to, all avoidance actions relating to private wallet transactions that occurred prior to the petition date other than transactions used to effectuate the payment of fees for legal fees and related vendors related or relating to the Chapter 11 Case, the defense of the SEC Enforcement Action and the investigation that preceded it, the defense of civil claims brought against Terraform that have been dismissed, and the pending criminal proceedings and investigations. Nothing herein shall modify the terms of or the rights reserved under the Dentons retention order approved by the Bankruptcy Court on March 12, 2024.
 - c) Any assets not sold or otherwise liquidated by Terraform prior to the effective date of the Plan shall be sold or liquidated by the Liquidating Trustee or Estate Representative, as applicable, subject to II(3)-(5), above.
- 3) The Debtor intends to seek a legally permissible Plan release limited in both time and scope for Terraform's current directors, officers, employees and professionals, and customary legally permissible exculpations for estate fiduciaries, including the Committee, its members, and its professionals, in each case solely for their work on the Chapter 11 Case, the defense of the SEC Enforcement Action and the investigation that preceded it, the defense of civil claims brought against Terraform that have been dismissed, and the pending criminal proceedings and investigations. The releases/exculpation shall include a carveout for criminal acts, fraud, gross negligence, and willful misconduct, as well as a government carveout. To the extent Terraform agrees to any changes to the releases from what is agreed with the Commission in connection with comments or objections received from third parties, such changes must not be objectionable to the Commission.
- 4) The Plan shall reserve sufficient funds to pay the administrative expenses of liquidation.
- 5) The Plan shall not include a discharge for Terraform.
- 6) The Plan will not impact or limit any criminal action or proceeding.
- 7) Terraform will coordinate with the Commission on treatment of intercompany claims, including but not limited to claims of Terraform Labs Limited, that is not objectionable to the Commission.
- 8) The Plan will allow the Liquidation Trustee or Estate Representative, as applicable, to object to insider claims as may be appropriate, including under 11 USC 510(c).

Exhibit 2--Wind-Down of Terraform

- 1) Terraform to wind-down its business as quickly as reasonably possible, liquidate its assets in a value-maximizing and cost-effective manner, and seek expeditious confirmation of the Plan. Terraform shall consult with and provide reasonable notice to the Commission and Committee as to any steps it takes in connection with the wind down.
- 2) Terraform shall file a motion or other filing describing its wind-down procedures with the Bankruptcy Court.
- 3) Within 30 days, to assist in overseeing the wind-down Terraform shall replace both of its non-independent directors, Chris Amani and Ashwin Mathialagan. This will leave Terraform with a majority of independent directors. The appointment of such independent directors and the wind-down process shall be in consultation with the Committee. The appointment of the new independent directors shall also be subject to the approval of the Commission, which approval shall not be unreasonably withheld.
- 4) Pending approval of the settlement and Plan, Terraform shall be permitted in the interim to wind-down its operations and liquidate its assets, which may include, in addition to the actions set forth in Section IV of the Final Judgment:
 - a) Allowing third parties to withdraw, unwind and/or unstake their positions from Terraform's applications and protocols and any other actions solely for the purpose of aiding such parties to withdraw, unwind and/or unstake such positions that are also approved by the Bankruptcy Court.
 - b) In consultation with the Commission, marketing, pursuing and consummating the sale of Terraform's assets and engaging professionals to assist it in doing so. Such assets to include Terraform's equity interest in Proximity Panorama LDA, Pulsar, and Terraform's venture and fund investments.
- 5) Terraform shall be permitted to pay severance to certain employees assisting Terraform in its wind-down and liquidation. The terms of such severance to be agreed with the Committee, which approval shall not be unreasonably withheld. For avoidance of doubt, no severance payments will be paid to any former or current Terraform officer or director. Nor will any severance payment be made to any Terraform employee who received a retention bonus or any other bonus since January 1, 2023.
- 6) Nothing herein or in the Plan will limit the Commission's right to seek, in its sole discretion, the conversion of Terraform's chapter 11 case to chapter 7, the dismissal of Terraform's chapter 11 case, or the appointment of a trustee or examiner.

Exhibit 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

TERRAFORM LABS PTE LTD. and
DO HYEONG KWON,

Defendants.

No. 1:23-cv-1346 (JSR)

 **[PROPOSED] FINAL JUDGMENT AGAINST DEFENDANTS
TERRAFORM LABS PTE LTD. AND DO HYEONG KWON**

Plaintiff Securities and Exchange Commission (“SEC”) filed a Complaint on February 16, 2023, and an Amended Complaint on March 31, 2023, against Defendants Terraform Labs Pte Ltd. (“Terraform”) and Do Hyeong Kwon (“Kwon”) (collectively “Defendants”). Dkt Nos. 1, 24. The SEC alleged, among other things, that Defendants engaged in unregistered offers and sales of securities in violation of Sections 5(a) and 5(c) of the Securities Act of 1933 (“Securities Act”) [15. U.S.C. §§ 77e(a) and 77e(c)], violations of the anti-fraud provisions of Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5] and Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], and that Kwon was liable, as a control person of Terraform, for Terraform’s violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

On December 28, 2023, the Court granted the SEC’s Motion for Summary Judgment and found that Defendants engaged in unregistered offers and sales of securities in violation of Securities Act Sections 5(a) and 5(c) [15. U.S.C. §§ 77e(a) and 77e(c)], and granted Defendants’ Motion for Summary Judgment as to the SEC’s claims alleging that Defendants engaged in

transactions in security-based swaps in violation of Securities Act Section 5(e) [15 U.S.C. § 77e(e)] and Exchange Act Section 6(l) [15 U.S.C. § 78f(1)]. Dkt. No. 149.

On April 5, 2024, a unanimous jury reached a verdict finding Defendants liable for violating the anti-fraud provisions of Exchange Act Section 10(b) [15 U.S.C. § 78j(b)], Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] and Securities Act Section 17(a) [15 U.S.C. § 77q(a)], and that Kwon was liable, as a control person of Terraform, for Terraform's violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]. Dkt. No. 229.

Defendants having entered a general appearance; consented to the Court's jurisdiction over Defendants and the subject matter of this action; consented to entry of this Final Judgment; waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment.

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendants' officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendants or with anyone described in (a).

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants are permanently restrained and enjoined from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

(a) to employ any device, scheme, or artifice to defraud;

(b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendants' officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or

participation with them or with anyone described in (a).

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants are permanently restrained and enjoined from violating Section 5 of the Securities Act [15 U.S.C. § 77e] by, directly or indirectly, in the absence of any applicable exemption:

(a) Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;

(b) Unless a registration statement is in effect as to a security, carrying or causing 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; or

(c) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed with the Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act [15 U.S.C. § 77h].

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) the above defendants' officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with the above defendants or with anyone described in (a).

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 21(d)(5) of the Exchange Act [15 U.S.C. § 78u(d)(5)], Defendants are permanently restrained and enjoined from: (i) participating, directly or indirectly, in the purchase, offer, or sale of any crypto asset securities, including but not limited to UST, MIR, LUNA, wLUNA, and LUNA 2.0 or (ii) engaging in activities for purposes of inducing or attempting to induce the purchase, offer, or sale of any crypto asset securities by others.

Notwithstanding the foregoing, as part of Terraform's orderly wind-down and liquidation in the case, *In re: Terraform Labs Pte. Ltd.*, No. 24-10070 (BLS) (Bankr. D. Del.) (the "Bankruptcy Case"), Defendants shall be permitted to allow third parties to withdraw, unwind and/or unstake their positions from Terraform's applications and protocols; and the Defendants, or the liquidating trustee or other estate representative in the Bankruptcy Case, shall be permitted to dispose of crypto assets within the bankruptcy estate's possession or control, including the crypto assets transferred to the bankruptcy estate's possession, custody, or control by Defendant Kwon pursuant to the terms of ¶ VII hereto, other than UST, MIR, LUNA, wLUNA, ANC, KRTC, and LUNA 2.0 (the "Terraform Crypto Assets"), in a manner not objectionable to the parties and the court in the Bankruptcy Action. Defendants shall otherwise burn or destroy private keys in Terraform's possession to wallets or blockchain addresses holding Terraform Crypto Assets, including those tokens after they are received from the Luna Foundation Guard pursuant to the transfers contemplated by the terms of ¶ VII hereto, and to burn any vested LUNA 2.0 tokens.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who

receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendants' officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendants or with anyone described in (a).

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 21(d)(2) and Section 21(d)(5) of the Exchange Act [15 U.S.C. § 78u(d)(2) and (d)(5)] and Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)], Kwon is permanently prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Terraform is liable for disgorgement totaling **\$3,586,875,883**, which represents net profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of **\$466,952,423**. Of these amounts, Kwon is jointly and severally liable with Terraform in the amount of **\$110,000,000** of disgorgement, plus prejudgment interest thereon in the amount of **\$14,320,196**.

Pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], the Court further imposes a civil penalty on Terraform of **\$420,000,000**. The **\$4,473,828,306** in total monetary remedies against Terraform shall be payable as provided for in the confirmed Chapter 11 Plan in the Bankruptcy Case, as set forth in the following paragraph.

Terraform agrees to seek approval of the Chapter 11 Plan which provides, in such plan

or the corresponding confirmation order, that such disgorgement and civil penalty shall be treated as an allowed general unsecured claim of the Commission against Terraform in the Bankruptcy Case, in the amount of \$4,473,828,306, which shall be deemed satisfied upon a distribution by the liquidating trustee or other estate representative to creditors and investors pursuant to a confirmed liquidating Chapter 11 plan that incorporates the terms set forth in Exhibit 1 to Terraform's Consent or on substantially similar terms that are not objectionable to the Commission. For the avoidance of doubt, if the allowed claims, including any applicable interest, of creditors (including any harmed investors) are satisfied in full under the Chapter 11 plan, distributions shall be made on account of the Commission's claims until paid in full before any distribution is made to any equity holder of Terraform. Terraform shall use its best efforts to confirm such a plan by September 30, 2024. If no such plan has gone effective by October 30, 2024, the Commission may enforce this Court's judgment against Terraform. Disgorgement and civil penalties owed to the SEC by Kwon will **not** be deemed satisfied by a distribution in the Bankruptcy Case.

Defendants agree that they shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil penalty amounts that Defendants pay pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Defendants further agree that they shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any penalty amounts that Defendants pay pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Kwon is liable for disgorgement totaling **\$110,000,000**, together with prejudgment interest thereon in the amount of **\$14,320,196**. Pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], the Court further imposes a civil penalty on Kwon of **\$80,000,000**. Kwon shall begin to satisfy these obligations by directly transferring to the bankruptcy estate in the Bankruptcy Case, assets and funds as set forth in the next paragraph herein.

Payment of the monetary remedies against Kwon shall be deemed satisfied, provided that all transfers by Kwon to the SEC and the Terraform bankruptcy estate in the Bankruptcy Case total no less than **\$204,320,196**, excluding the value of any Terraform Crypto Assets transferred to the Terraform bankruptcy estate, only if and until Kwon completes: (1) transferring into an escrow account agreed by Kwon and the Commission staff **\$4,700,000** within 30 days of Final Judgment as set for the above; (2) transferring into an escrow account agreed by Kwon and the Commission staff **\$2,300,000** of assets belonging to Kwon in accounts at Sygnum Bank of Zurich, Switzerland, associated with Portfolio Number 84.002.088-00, within 30 days of Final Judgment; (3) transferring to the Terraform bankruptcy estate in the Bankruptcy Case within 30 days all crypto assets of the Luna Foundation Guard, which shall first be applied to satisfy the disgorgement amount and prejudgment interest with any remaining assets applied to the civil penalty amount; and (4) transferring to the Terraform bankruptcy estate in the Bankruptcy Case with 30 days Kwon's ownership interest in all PYTH tokens Kwon obtained pursuant to the May 18, 2021 Token Grant Agreement between Kwon and Tribal Invest Corp, which shall be applied to satisfy the civil penalty amount.

The assets transferred by Kwon to the Liquidating Trust shall be distributed to harmed investors pursuant to the confirmed chapter 11 plan. The **\$7,000,000** transferred by Kwon into escrow shall be transferred to the Liquidating Trust upon the plan effective date. Kwon shall remit any balance outstanding after the effective date of the plan (i) directly to the Liquidating Trust for so long as the Liquidating Trust is in existence; and (ii) directly to the Commission if the Liquidating Trust is no longer in existence.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest against Kwon by using all collection procedures authorized by law, including, but not limited to, moving for civil contempt at any time after 30 days following entry of this Final Judgment if Mr. Kwon has not completed the foregoing transfers to Terraform bankruptcy estate in the Bankruptcy Case by that date.

The Commission may enforce the Court's judgment for penalties against Kwon by the use of all collection procedures authorized by law, including the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001 et seq., and moving for civil contempt for the violation of any Court orders issued in this action. Kwon shall pay post judgment interest on any amounts due after 30 days of the entry of this Final Judgment pursuant to 28 U.S.C. § 1961. The Commission shall hold the funds, together with any interest and income earned thereon (collectively, the "Fund"), pending further order of the Court.

The Commission may propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain jurisdiction over the administration of any distribution of the Fund and the Fund may only be disbursed pursuant to an Order of the Court.

Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Kwon shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Kwon's payments of disgorgement in this action, argue that he is entitled to, nor shall he further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Kwon's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Kwon shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Kwon by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Kwon under this Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Kwon of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, for purposes of purposes of exceptions to discharge set forth in 11 U.S.C. § 1141(d)(6), any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Terraform under the Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt of a kind specified in paragraph (2)(A) or (2)(B) of 11 U.S.C. § 523(a) that is owed to the SEC, a domestic governmental unit.


X.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED all parties have knowingly and voluntarily consented to waive the right, if any, to appeal from the entry of this Final Judgment.

XI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

Dated: 5/12/, 2024



Hon. J. S. Rakoff
UNITED STATES DISTRICT JUDGE