# UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

**SECURITIES AND EXCHANGE** **)**

**COMMISSION,** **)**

**)**

**Plaintiff,** **)**

**)**

**v.** **)** **Civil Action No. 1:23-01599**

**)**

**BINANCE HOLDINGS LIMITED,** **)**

**BAM TRADING SERVICES INC.,** **) BAM MANAGEMENT US HOLDINGS** **) INC., AND CHANGPENG ZHAO,** **)**

**)**

**Defendants.** **)**

**)**

# MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF

**U.S. SECURITIES AND EXCHANGE COMMISSION’S EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER**

**FREEZING ASSETS AND GRANTING OTHER RELIEF AND ORDER TO SHOW CAUSE WHY RELIEF SHOULD NOT CONTINUE**

**PRELIMINARY STATEMENT**

Plaintiff U.S. Securities and Exchange Commission (“SEC”) respectfully requests that the Court enter a temporary restraining order that maintains the status quo, provides assurances regarding the safety of U.S. investor assets, and preserves the availability of funds should the SEC prevail on the merits in this action. Specifically, the SEC asks the Court to exercise its equitable powers to enter a tailored order requiring Defendants Binance Holdings Limited (“Binance”), BAM Trading Services Inc. (“BAM Trading”), BAM Management US Holdings Inc. (“BAM Management”), and Changpeng Zhao (“Zhao”) to, *inter alia*, (i) repatriate and freeze the company assets of BAM Management and BAM Trading; (ii) repatriate BAM Trading customer assets, comply with specified relief concerning the custody and control of customer assets, and refrain from transferring them other than in the ordinary course of business, provided such ordinary course transfers are not made to any entity or person affiliated with Binance or Zhao; (iii) provide an accounting, not destroy or otherwise alter or conceal relevant documents and information, and engage in expedited discovery; and (iv) show cause why certain relief should not continue. The SEC also seeks the Court’s permission to serve Defendants Binance and Zhao via alternative means.

The SEC has just filed a complaint raising serious allegations that Defendants have for years provided illegal platforms to offer and sell crypto asset securities to U.S. investors, and unregistered broker and clearing services. Defendants knew that their conduct with respect to

U.S. investors was illegal and risked U.S. government enforcement actions. Instead of ceasing such illegal activity, Zhao and Binance doubled down. They engaged in a detailed plan to tell the world that U.S. investors were no longer able to trade on the Binance.com Platform (defined below), while creating a new platform in the United States that would (1) feign compliance with

U.S. law in order to distract U.S. regulators and law enforcement and (2) feign independence from Binance and Zhao. But an essential component of this plan was that Zhao and Binance would secretly continue to control the new U.S. platform and the assets of U.S. investors, while remaining outside of the United States. That control continues. As set forth below, the SEC has a reasonable likelihood of success on the merits of its claims based on its detailed allegations that Defendants violated, and continue to violate, numerous securities laws, and has set forth more than sufficient evidence from which an inference can be drawn that a violation has occurred.

When the SEC seeks equitable emergency relief, it understands that such relief must be carefully calibrated to ensure that the remedy protects the interests of investors and maintains the status quo. At present BAM Trading states that it holds $2.2 billion in crypto assets (as well as hundreds of millions more in fiat currency) belonging to investors who have entrusted BAM Trading to custody those assets on the Binance.US platform. Prior to filing this action, the SEC made extensive efforts to try to ensure that during the pendency of this litigation, those investors’ assets would be custodied in the United States and under the exclusive control of BAM Trading, rather than under the control of Binance and Zhao, who have flouted U.S. regulatory oversight.

Because Defendants have repeatedly failed to provide sufficient assurances, the SEC now seeks the Court’s assistance in ensuring the safety and availability of investor assets and that Defendants do not dissipate assets that may become due should the SEC prevail in this action

# STATEMENT OF FACTS

**I.** **Defendants and the Binance Platforms**

Defendant Binance is a Cayman Islands limited liability company founded and owned by Defendant Changpeng Zhao. *See* Exhibit A, Declaration of Colby Steele (“Steele Dec.”), at Ex. A-1. Since at least July 2017, it has operated an internet-based crypto asset platform available at

Binance.com (“Binance.com Platform”). Ex. A-2. The Binance.com Platform markets itself as offering over 350 crypto assets for trading that is available to customers in more than 100 countries, among other crypto asset-related services. Ex. A-3. Neither Binance nor any of its subsidiaries or affiliated entities have ever been registered with the Commission in any capacity. Steele Dec. ¶98.

Defendant BAM Trading is a Delaware corporation that is the legal entity that operates a U.S.-based crypto asset platform available at Binance.US (“Binance.US Platform”).[1](#_bookmark0) Ex. A-4. The Binance.US Platform is available in 46 U.S. states and 8 territories, including in this District. Ex. A-5.

Defendant BAM Management is a Delaware corporation and the parent of BAM Trading and other affiliated entities. Ex. A-6. When the Binance.US Platform launched, BAM Management was wholly owned by BAM Management Company Limited, a Cayman Islands company, which in turn was wholly owned by CPZ Holdings Limited, a British Virgin Islands company that Zhao owns and controls. *Id.* Presently, Zhao continues to own 81 percent of BAM Management. Ex. A-7, at BTS00831968. Neither BAM Management nor any of its subsidiaries or affiliated entities (including BAM Trading) have ever been registered with the SEC in any capacity. Steele Dec. ¶97.

Defendant Changpeng Zhao, widely known as “CZ,” is a Canadian citizen who resides outside of the United States and is Binance’s founder, beneficial owner, and CEO. Ex. A-8.

1 As alleged in the Complaint and discussed herein, Defendant BAM Trading is the public-facing entity for Binance.US Platform operations, but Defendant Binance plays a significant role in Binance.US Platform operations, all under Zhao’s control.

Binance operates through several subordinate or affiliated entities, in multiple jurisdictions, all tied to Zhao as the beneficial owner. Ex. A-9. Zhao has been publicly dismissive of notions of corporate formalities, separation, and associated regulatory requirements, and has refused to identify the headquarters of Binance. He has been quoted as dismissing such “traditional mentalities” by saying “what kind of horse is a car? So you have to have an office. Wherever I sit is going to be the Binance office. Wherever, wherever I meet somebody is going to be the Binance office. ‘You have to have an entity. You have to have a headquarters. You have to have a bank account.’ All those things [don’t] have to exist for blockchain companies.” Steele Dec. ¶15.

Since the Binance.com Platform launched in July 2017, Zhao has deliberately engaged in concerted efforts to provide a crypto asset platform for U.S. investors while shunning the applicability of U.S. law to protect securities investors. As he stated in an interview in December 2017, “The more you deal with fiat, the more [authorities] can control you The

bank will freeze your bank account. They can make the wire transfer slow.” He further explained that crypto asset exchanges are “a way to bypass the tightening regulation.” *Id.* This motivation has permeated Zhao’s and Binance’s activities in operating the Binance.com Platform, and creating and controlling the Binance.US Platform, while keeping the locus of their control outside of the United States. Indeed, Zhao has admitted that his “goal” was “to reduce our own losses, but at the same time to prevent the U.S. regulatory entities from troubling us.” Ex. A-38.