

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

WINDY INC.,

Defendant.

Case No. 1:23-cv-1962

Judge Lindsay C. Jenkins

FINAL JUDGMENT AS TO DEFENDANT WINDY INC.

The United States Securities and Exchange Commission (“Commission”) having filed a Complaint and Defendant Windy Inc. (“Defendant”) having entered a general appearance; consented to the Court’s jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); 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 Defendant is permanently restrained and enjoined from violating, directly or indirectly, Section 5 of the Securities and Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78e], by making use of the mails and the means and instrumentalities of interstate commerce for the purpose of using any facility of trading platforms that constitute

exchanges within or subject to the jurisdiction of the United States, in order to effect transactions in a security, or to report any such transaction, without registering as national securities exchange under Exchange Act Section 6 [15 U.S.C. § 78f], and without being exempted from such registration.

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) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating, directly or indirectly, Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a)(1)], by making use of the mails and the means and instrumentalities of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security, without registering as a broker, and without being exempted from such registration.

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) Defendant's officers, agents, servants, employees, and

attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating, directly or indirectly, Section 17A of the Exchange Act [15 U.S.C. § 78q-1], by making use of the mails and the means and instrumentalities of interstate commerce to perform the functions of a clearing agency with respect to securities, without registering in accordance to Section 17A of the Exchange Act and without being exempted from registration.

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) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$10,779, representing net profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$1,177.75. The Court finds that sending the disgorged funds to the United States Treasury, as ordered below, is consistent with equitable principles.

The Court further imposes a civil penalty in the amount of \$66,000 pursuant to Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] and Section 20(d) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77t(d)]. Defendant shall satisfy this/these obligation(s) by paying \$77,956.75 to the Securities and Exchange Commission within 30 days after entry of this Final Judgment.

Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check, bank cashier’s check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Defendant Windy Inc. as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission’s counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant. The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest 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. The Commission may enforce the Court's judgment for penalties 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.

Defendant 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.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein, including, but not limited to, the undertakings to:

- (a) Immediately cease all activities as an exchange, broker, dealer, and clearing agency, and as control persons to the exchange, broker, dealer, and clearing agency, unless properly registered under applicable laws, including, but not limited to, the Exchange Act, or unless otherwise being in compliance with the Exchange Act, with the exception of the agreed-upon deadline in Undertaking (b) below;
- (b) Cease all operations of the platform operating at beaxy.com ("Beaxy Platform") by April 15, 2023 at 4:00 p.m. ET;

- (c) Within 30 days from the entry of the Final Judgment, notify affected customers of the Final Judgment in this case and of the ceasing of Beaxy Platform operations by sending a copy of the Final Judgment in this case to each affected customer via mail, email, or such other method not unacceptable to the staff of the Commission, together with a cover letter in a form not unacceptable to the Commission staff;
- (d) Publish notice of the Final Judgment on Beaxy Platform's website (homepage) and social media channels, in a form not unacceptable to Commission staff, within 10 days of the date of the entry of the Final Judgment;
- (e) Provide to the Commission staff an accounting of all customer funds—including fiat and custodial assets held by it for the benefit of its customers over the 30-day period immediately prior to the transfer to customers referenced in Undertaking (f) below;
- (f) By April 15, 2023 at 4:00 p.m. ET, transfer custody of all customer assets and funds to each respective customer, including all fiat and custodial assets held by Defendant for each of its customers, including, but not limited to, cash and all crypto assets, and provide an accounting to the Commission staff of such transfer;
- (g) If there are any unclaimed customer assets and funds sixty (60) days after notification to the customer, dispose of the customer funds in a way not unacceptable to the Commission staff;

- (h) Within 30 days from the entry of the Final Judgment, issue written requests to remove BXY from any further trading on all crypto asset exchanges and trading platforms where Defendant is aware BXY is trading, including any that Defendant previously contacted to request trading of BXY, and publish notice of such requests on the Beaxy Platform's website (homepage) and social media channels, in a form not unacceptable to Commission staff;
- (i) Destroy or otherwise make unavailable for trading, selling, offering, or purchasing any and all BXY in Defendant's possession or control within 10 days of the date of the Final Judgment;
- (j) Refrain, directly or indirectly, from soliciting any crypto asset trading platform to allow trading in BXY and from offering or selling, directly or indirectly, BXY, unless such offering is properly registered under applicable laws, including, but not limited to, the Securities Act, or unless otherwise being in compliance with federal securities laws;
- (k) In the event that there is a merger, acquisition, disposition of assets (including the sale of any intellectual property and internet domain name associated with the Beaxy Platform), name change, or other change in the corporate structure of Defendant, any such transaction shall be memorialized in a written agreement that shall require the successor-in-interest to abide by the terms of these undertakings; and

- (l) Certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Defendant agrees to provide such evidence. Defendant shall submit the certification and supporting material to David Hirsch, Chief of the Crypto Assets and Cyber Unit, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than thirty (30) days from the date of the completion of the undertakings.

VI.

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.

VII.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Enter: 23-cv-1922

Dated: April 3, 2023



LINDSAY C. JENKINS
UNITED STATES DISTRICT JUDGE