

Declaration of Matthew Beville Ex. A

EXHIBIT 3

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William R. McLucas

**FOIA CONFIDENTIAL TREATMENT REQUESTED BY
BAM TRADING SERVICES INC. PURSUANT TO
17 C.F.R. § 200.83 AND 5 U.S.C. § 552**

+1 202 663 6622 (t)
+1 202 663 6363 (f)
william.mclucas@wilmerhale.com

June 1, 2023

By Email

Jennifer Farer, Esq.
Senior Trial Counsel
Division of Enforcement
U.S. Securities and Exchange Commission
100 F St NE
Washington, DC 20549

Re: In the Matter of Binance.US (HO-13865)

Dear Ms. Farer:

We write on behalf of BAM Trading Services Inc. (“BAM Trading” or the “Company”) in response to your May 30, 2023 letter request seeking additional information regarding the fiat currency and digital (crypto) assets BAM Trading holds on behalf of its customers. We reiterate, based on our discussions with the Company that, as set forth below, customers’ assets are secure, appropriately segregated, and available for immediate withdrawal, subject to transaction limits imposed by the Company’s banking partners and, for staked assets, any applicable unbonding periods.

We believe that we had addressed any concerns raised by the Staff in a conference call on Wednesday, May 24th, a follow-up writing confirming that conversation on Thursday, May 25th, and an additional submission on Friday, May 26th. Based on these representations and on our cooperation, we were both surprised and disappointed to receive the May 30th letter calling for the production of a witness and responses to 26 separate questions in less than 48 hours. Given that the Staff has already sought and obtained authority for an enforcement action against BAM Trading, such a demand is extraordinary under any circumstances. Nonetheless we have committed to making every effort to respond to the Staff’s concerns as expeditiously as possible. To be clear, it is the Company’s top priority to protect customers and to avoid anything that might cause unwarranted panic in the already volatile crypto market.

Today we are responding to Items 2, 3, 5, 6, 7, 8, 9, 18(i), 23, 25, and 26 of your request. We understand that these responses are a high priority for the Staff and are working expeditiously to respond to the remaining items from your letter as soon as possible. We are making every effort to ensure that our responses are complete and accurate notwithstanding the extremely short

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deadlines allotted to provide this information. We will supplement our responses to the extent that we identify any additional responsive information. The Company remains ready to provide additional information the Staff may need to understand how the Company maintains custody of its clients' assets and to assure you that those assets are safe, secure, and immediately available to satisfy customers' requests to withdraw or transfer assets.

Request Item 2(a), (b) & (c): *List the institutions and account information to which the \$9,830,818.40 of customer funds that are currently held at Prime Trust are to be transferred, as referenced in your Letter [and] [e]xplain why these assets are being transferred; who will have control over those funds and/or authority to transfer or withdraw funds from the account(s) [and] the extent to which Zhao or any individual with any agreement Holdings, Zhao, any Zhao-owned or –controlled entity has or will have authority, formally or informally, directly or indirectly, to control, transfer, or withdraw these funds, or other relationship with Binance; and [c]onfirm those funds will be segregated, unencumbered, and subject to immediate withdrawal by customers.*

Prime Trust is one of the Company's payment processors. One of its banking partners is Cross River Bank, where funds on behalf of BAM Trading's customers were previously maintained. We understand from Prime Trust, that Cross River Bank would no longer hold assets on behalf of BAM Trading and potentially other clients due to the stresses faced by regional banks and the ongoing regulatory environment. As a result, BAM Trading stopped transacting through Prime Trust on April 28, 2023 and has migrated its accounts away from Prime Trust to new payment processors, including Nuvei US LLC ("Nuvei") and Orum Money Movement ("Orum").

As of May 25, 2023, \$9,830,818.40 of the Company's customer fiat was maintained with Prime Trust's banking partner, Cross River Bank in [REDACTED]. On May 31, 2023, the full balance of \$9,830,818.40 was transferred to Wyre Payments Inc. ("Wyre"), a new payment processor through which BAM Trading customers can process wire transfers. The customer funds are unencumbered and available for immediate withdrawal by customers, subject to any periodic withdrawal limits imposed by Wyre's banking partner.

Only BAM Trading personnel¹ and Wyre employees have access to and control of accounts holding customer funds. Neither Mr. Zhao nor anyone at BHL or other entities controlled by Mr. Zhao can withdraw or transfer funds from Wyre or other accounts used to hold fiat currency on behalf of BAM Trading's customers.²

¹ BAM Trading personnel are employed by BAM Management US Holdings Inc. ("BAM Management").

² As you are aware, Mr. Zhao owns, directly or indirectly, a controlling interest in the Company and BAM Management. However, for purposes of this response and other items seeking similar information, we assume that you are asking about Mr. Zhao or other entities that he controls, and not whether BAM Trading personnel have control over the Company's accounts. To the extent than an entity owned or controlled by Mr. Zhao maintains an account on the platform, it of course retains the ability to transfer or withdraw its own funds to the same extent as any other customer.

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Request Item 3(a): *What is the role of the “payment processors” Nuvei, Orum, and BitGo referenced in response to Request 5? Explain all agreements governing the relationships with these entities, including those that explain why they have accounts holding BAM customer fiat and the terms governing their custody or control of BAM customer fiat.*

Payment processors such as Nuvei, Orum Wyre, and BitGo Trust Company (“BitGo”) provide the infrastructure and technology to facilitate financial transactions between BAM Trading and customers across various channels, such as ACH, debit card and wire deposits and withdrawals. Payment processors have relationships with various bank partners. The bank partners maintain bank accounts for the payment processors, and the assets of the payment processor’s customers are maintained in these accounts (*i.e.*, the assets BAM or its customer sends to a payment processor are deposited with a banking partner). These types of arrangements are commonly referred to as “bank-fintech” partnerships.

The BitGo agreement is a Custodial Services Agreement between BAM Trading and BitGo. BitGo is a Trust Company organized and chartered in South Dakota. The agreement enables BAM Trading to create a custody account controlled and secured by BitGo for the purposes of storing digital assets and fiat. As relevant here, BAM Trading uses BitGo to hold certain fiat currency deposited by customers that have not had any account activity over the prior 12 months. BitGo currently holds \$4 million in fiat currency for those inactive customers.

The Orum agreement enables BAM Trading to use Orum’s proprietary platform to enable BAM Trading customers to transfer funds between existing U.S. bank accounts by way of ACH and wire payment methods.

The Nuvei agreements enable BAM Trading to process debit card, ACH, and RTP transactions for the loading and unloading of customer wallets.

The Wyre agreement enables BAM Trading customers to initiate ACH, wire, and debit card payments for the loading and unloading of customer wallets.

Request Item 3(b): *Describe BAM Trading’s, BAM Management’s, Binance Holdings’, and Zhao’s access to and control over these accounts and customer funds held in these accounts, either directly or indirectly.*

Movements between BAM Trading’s BitGo, Nuvei, Orum, and Wyre accounts are directed by BAM Trading customers or by a list of designated BAM Trading personnel. We understand that BitGo, Nuvei, Orum, and Wyre also have designated signatories for the underlying bank accounts used to facilitate their services. We will provide more detail regarding these arrangements in response to Item 1(b).

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Request Item 5 & 5(a): *What is B.US Securities and its role for Binance.US or Binance.com trading or other services provided to customers; [and] [d]oes B.US Securities account hold any BAM customer assets?*

B.US Securities, Inc. (“B.US Securities”) is a subsidiary of BAM Management. It was established with a goal of providing appropriately approved Binance.US customers access to equity securities. The entity currently has a broker-dealer application pending with FINRA. It is not currently operational and does not have any clients or custody of client funds. As reflected in BTS00833830, B.US Securities has established a bank account at Axos Bank. This account is exclusively used to hold B.US Securities’ corporate funds as it works to stand-up its operations.

BHL, Binance.com, and Mr. Zhao (other than his ultimate ownership of BAM Management) do not have any involvement in B.US Securities.

Request Item 5(b) & (c): *Identify the company(ies) with whom Sara Andres and David Martin have any employment or other agreement and their respective roles with those company(ies); and [e]xplain the extent to which Zhao or any individual with any agreement or other relationship with Binance Holdings, Zhao, BAM Trading, BAM Management, or any Zhao-owned or controlled entity has authority to control, transfer, or withdraw assets from B.US Securities accounts.*

David Martin is the Founder and Chief Executive Officer and Sara Andres is a Senior Consultant at Compliers Consulting Services LLC (“Compliers Consulting”), a consulting firm specializing in compliance services for broker-dealer firms. B.US Securities engaged Mr. Martin and Ms. Andres to, respectively, act as B.US Securities’ President and Chief Compliance Officer. As the licensed principals of B.US Securities, only Ms. Andres and Mr. Martin have the ability to conduct the operations of and have control over B.US Securities.

As noted above, neither Mr. Zhao, or any individual with any agreement or other relationship with Binance Holdings, Mr. Zhao, BAM Trading, BAM Management, or any other Mr. Zhao-controlled entity has any authority to control, transfer or withdraw assets from the B.US Securities account. Only Mr. David Martin and Ms. Sara Andres, as FINRA licensed principals, have the ability and authority to control, transfer or withdraw assets from the B.US Securities account, which only holds proprietary funds.

Request Item 6: *Explain why Paxos Trust Company transferred \$183M to BAM Trading in January 2023.*

BAM Management US Holdings, Inc. issued a \$250 million convertible note to Mr. Zhao in December 2022. Mr. Zhao funded the purchase of this note with BUSD, \$183 million of which was sent to Paxos Trust Company, as issuer of BUSD, to convert the BUSD into USD. These funds were then transferred to BAM Trading in January 2023.

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Request Item 7: *Provide account information for all accounts holding any funds identified in the “Restricted Cash” section of the Financial Statements and Independent Auditor’s Report (“FGMK Report”) at BTS00833810.*

A table reflecting the funds identified as “Restricted Cash” in BAM Trading’s 2022 audited financial statements is provided below:

| Institution | Account No. | Account Name | Balance |
|--|-------------|--|--------------|
| Signature Bank | ██████████ | BAM TRADING SERVICES INC ACH COLLATERAL | \$6,004,309 |
| Silvergate Capital Corp. | ██████████ | BAM TRADING SERVICES INC. DBA BINANCE.US | \$6,750,000 |
| Acquiom Clearinghouse LLC (escrow agent)/HSBC Bank | ██████████ | Voyager Digital BAM Escrow ³ | \$10,000,000 |
| Total: | | | \$22,754,309 |

Request Item 8: *Provide documentation as to and otherwise explain the referenced December 2022 termination of the Wallet Custody agreement.*

As we explained on March 6, 2023 and March 9, 2023, we understand that the Wallet Custody Agreement was never operationalized. However, as a formality, the respective parties terminated the agreement on December 30, 2022. A copy of the termination is enclosed at BTS00833831.

Request Item 18(i): *Confirm no individual holds multiple key shards.*

Confirmed, all seven TSS key shards for Binance.US’ TSS enabled cold wallets are held by seven separate individual key shardholders.

³ This was a deposit for the proposed Asset Purchase Agreement of certain Voyager assets. The transaction was terminated and BAM Trading will seek a return of the deposit.

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Request Item 23: *Identify the number of BAM Trading or BAM Management employees located outside of the United States and the city and country where they are located, including those BAM employees located in Singapore.*

The following chart identifies the number of BAM Trading and BAM Management employees and contractors that are located outside of the United States:

| Country | City | Contractors | Employees (FTE, PTE & Interns) | Total |
|----------------|--------------------|-------------|--------------------------------|-------|
| Argentina | Banfield | 1 | 0 | 1 |
| Canada | Brampton | 0 | 1 | 1 |
| | Burnaby | 0 | 16 | 16 |
| | Coquitlam | 0 | 2 | 2 |
| | Delta | 0 | 1 | 1 |
| | Langley | 0 | 3 | 3 |
| | London | 0 | 1 | 1 |
| | Markham | 0 | 3 | 3 |
| | Mississauga | 0 | 1 | 1 |
| | New Westminster | 1 | 0 | 1 |
| | North Vancouver | 0 | 1 | 1 |
| | North York | 0 | 1 | 1 |
| | Port Moody | 0 | 1 | 1 |
| | Richmond | 0 | 11 | 11 |
| | Surrey | 0 | 2 | 2 |
| | Toronto | 0 | 5 | 5 |
| | Vancouver | 0 | 40 | 40 |
| Wasaga Beach | 0 | 1 | 1 | |
| West Vancouver | 0 | 2 | 2 | |
| China | Beijing | 1 | 0 | 1 |
| | Minhang | 1 | 0 | 1 |
| | NanChang | 1 | 0 | 1 |
| | Qingpu | 1 | 0 | 1 |
| | Shanghai | 110 | 0 | 110 |
| | Songjiang | 1 | 0 | 1 |
| | Wuxi | 1 | 0 | 1 |
| | Zhejiang | 1 | 0 | 1 |
| Costa Rica | Alajuela | 4 | 0 | 4 |
| | Heredia | 4 | 0 | 4 |
| | San José | 2 | 0 | 2 |
| | San Pablo de Barva | 1 | 0 | 1 |
| Cyprus | Limassol | 1 | 0 | 1 |

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| Country | City | Contractors | Employees (FTE, PTE & Interns) | Total |
|-------------------------|----------------|-------------|--------------------------------------|-------|
| France | Saint-Etienne | 1 | 0 | 1 |
| Indonesia | Bekasi | 1 | 0 | 1 |
| Mexico | Mexico City | 1 | 0 | 1 |
| Philippines | Antipolo City | 1 | 0 | 1 |
| Singapore | Singapore | 1 | 0 | 1 |
| United Arab Emirates | Al Reem Island | 1 | 0 | 1 |
| | Dubai | 14 | 0 | 14 |
| Total | | 151 | 92 | 243 |

Request Item 25: *The FGMK Report indicates BAM Trading’s lease expires at the end of May 2023. See BTS00833819. Provide information on BAM’s place(s) of business from the date of lease termination.*

BAM Trading recently relocated its headquarters from Palo Alto, California, to Miami, Florida. Its Palo Alto lease expires at the end of May 2023. The Company’s new headquarters is located at 252 NW 29th Street, Suite 904, Miami, FL 33127.

Request Item 26: *Explain why certain fiat and crypto assets are identified as “off-balance” in the FGMK Report. See BTS00833817-18.*

For accounting purposes, BAM Trading treats all fiat and digital assets held on behalf of its customers as off-balance sheet assets. We understand that this has historically been the accepted method of accounting for custodial assets held on behalf of third-party customers. As of December 31, 2022 BAM Trading disclosed customer fiat assets of \$278,790,229 and customer crypto assets of \$1,778,308,784 as off-balance sheet. This treatment is reflected in Notes 1 and 5 of its 2022 audited financial statements.

As reflected in the Company’s 2022 audited financial statements, the Company is aware that Staff Accounting Bulletin No. 121 (“SAB 121”) requires public companies that hold custodial digital assets on behalf of customers to recognize a liability reflecting their obligation to safeguard their customers’ assets and a corresponding safeguarding asset, both of which must be accounted for at fair value. BAM Trading is not a public entity and is not required to adopt the approach suggested by SAB 121. The Company is evaluating whether to adopt this approach going forward.

* * *

BAM Trading requests that this letter and all information contained therein (the “Confidential Material”) be maintained in confidence by the SEC and its staff and be used solely for the purposes of this inquiry. Accordingly, the Confidential Material has been marked

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“Confidential Treatment Requested by BAM Trading Services Inc.” for reasons of personal privacy and business confidentiality.

The Confidential Material concerns or may concern customarily non-public, confidential and privileged business, financial, commercial, and personal information concerning BAM Trading and/or its personnel. The Confidential Material is exempt from mandatory disclosure under various provisions of the Freedom of Information Act (“FOIA”), including 5 U.S.C. § 552(b)(7) (which protects certain “records or information compiled for law enforcement purposes”),⁴ 5 U.S.C. § 552(b)(4) (which protects trade secrets as well as confidential commercial or financial information obtained from a person), 5 U.S.C. § 552(b)(6) (which protects files “the disclosure of which would constitute a clearly unwarranted invasion of personal privacy”),⁵ and 5 U.S.C. § 552(b)(7) (which protects records or information compiled for law enforcement purposes). Because the Confidential Material relates to the activities of BAM Trading and not the activities of any federal agency, we believe it is exempt from disclosure under FOIA.⁶ The Commission treats records falling within the FOIA exemption categories to be “nonpublic” and “will generally not publish or make available to any person” such records. 17 C.F.R. § 200.80(b). Moreover, disclosure of this Confidential Material may be prohibited under 18 U.S.C. § 1905, and further protections may be available under the Privacy Act of 1974, 5 U.S.C. § 552a. Finally, the Confidential Material being produced voluntarily is protected from disclosure because it would not customarily be released to the public by BAM Trading.⁷

In accordance with 17 C.F.R. § 200.83 and other applicable laws and regulations, the Confidential Material is submitted to the SEC with BAM Trading’s request, through the undersigned, that it be kept in a non-public file and that only SEC staff have access to it. If any person not a member of the SEC staff (including without limitation any governmental employee) should request an opportunity to inspect or copy the Confidential Material, pursuant to FOIA or otherwise, or if you or any member of the SEC staff contemplates disclosure of the Confidential Material to any other person, we request that the undersigned immediately be notified of such request, be furnished a copy of all written materials pertaining to such request (including but not limited to the request itself), and be given advance notice of any intended release so that we may, if deemed necessary or appropriate, pursue any remedies available. *See, e.g., Chrysler Corp. v. Brown*, 441 U.S. 281 (1979). We expect to be given the opportunity to object to such disclosure. We request that you telephone the undersigned rather than rely upon the U.S. mail for such notice.

⁴ *See, e.g., NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214 (1978).

⁵ *See, e.g., U.S. Dep’t of Def. v. Federal Labor Relations Authority*, 510 U.S. 487 (1994).

⁶ 5 U.S.C. §§ 552(b)(6) and (b)(7)(C); *U.S. Dep’t of Def., supra*; *see, e.g., U.S. Dep’t of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 449 (1989).

⁷ *See, e.g., Critical Mass Energy Project v. Nuclear Regulatory Comm’n*, 975 F.2d 871 (D.C. Cir. 1992), *cert. denied*, 507 U.S. 984 (1993).

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Should the SEC be inclined to grant any FOIA request for the Confidential Material, BAM Trading expects that the procedures set forth in 17 C.F.R. § 200.83 and Executive Order 12,600, 52 Fed. Reg. 23,781 (June 23, 1987), will be followed. In that case, BAM Trading will further substantiate its request for confidential treatment, and will request a hearing on the claim of exemption.

The requests set forth in the preceding paragraphs also apply to any form of communication of any sort, including, but not limited to any tapes, memoranda, notes, transcripts, electronic documents, or communications containing extracts, summaries, or quotes, or other writings of any sort whatsoever that are made by, or at the request of, any employee of the SEC (or any other governmental agency) and which (1) incorporate, include or relate to any of the Confidential Material; or (2) refer to any conference, meeting, or telephone conversation between BAM Trading, its current or former employees, representatives, agents, auditors, or counsel on the one hand and employees of the SEC (or any other government agency) on the other, relating to the Confidential Material.

The Confidential Material remains the property of BAM Trading. If the SEC staff determines to transfer any of the Confidential Material to another federal agency, we request that you forward a copy of this letter to any such agency with the Confidential Material. We request that you indicate to any such agency that BAM Trading has requested the return of this material to the undersigned at the completion of the agency's efforts in this matter and has requested that this material be accorded confidential treatment.

Provision of the Confidential Material is not intended to, and does not, waive any applicable privilege or other legal basis under which information may not be subject to production. If it were found that production of the Confidential Material constitutes disclosure of otherwise privileged matters, such disclosure would be inadvertent. By the productions of such documents, BAM Trading does not intend to and has not waived the attorney-client privilege or any other protections.

* * *

Please feel free to contact me if you have any questions about these matters.

Sincerely,

/s/ William R. McLucas
William R. McLucas