

EXHIBIT A-83

HO-13865

***Brooks, Brian - Vol.
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Full-size Transcript

Prepared by:

HO-13865

Tuesday, June 06, 2023

1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION

2

3 In the Matter of:)

4) File No. HO-13865-A

5 BINANCE.US)

6

7 WITNESS: Brian Brooks

8 PAGES: 1 through 212

9 PLACE: Securities and Exchange Commission

10 100 F Street N.E.

11 Washington, D.C. 20549

12 DATE: Monday, December 13, 2021

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14 The above-entitled matter came on for hearing,

15 via WebEx, pursuant to notice, at 11:21 a.m.

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24 Diversified Reporting Services, Inc.

25 (202)467-9200

1 Trading accounts?

2 A Digital asset transfers to BAM Trading
3 accounts?

4 Q The company's trading accounts.

5 A I -- I can't recall that happening in the time
6 that I was there.

7 Q Okay. And was anyone at .com required to give
8 final signoff for digital asset transfers to third
9 parties?

10 A I -- I'm not even sure I understand the
11 question. I mean, BAM Trading operated a matching
12 engine, right, that has buyers and sellers, so third
13 party buyers and sellers would come and that was the
14 source of liquidity, so we, you know, we were not
15 filling orders for customers, we were matching customer
16 orders, so I don't -- I'm not sure I would even know how
17 to answer the question.

18 Q So were sometimes BAM Trading paid for
19 services through digital assets?

20 A So with only one caveat, I can't -- I can't
21 recall that ever happening during my tenure.

22 The one caveat is there was this group of
23 employees, basically the Shanghai based technology team,
24 who I learned right at the very end of my tenure, had
25 apparently received part of their compensation in BNB

1 tokens, which were provided by Binance.com, which was a
2 source of real concern, you know, for the CFO and me
3 when we learned about that. But -- and so if you
4 consider them to be third parties, that would be the one
5 caveat. Other than that, I'm not aware of that ever
6 happening.

7 Q Do you know who gave signoff to -- giving BNB
8 to these Shanghai based employees?

9 A That long predated my arrival. I have no
10 idea.

11 Q Okay. When did they receive the BNB?

12 A When did who receive the BNB?

13 Q When did the Shanghai based employees receive
14 the BNB?

15 A Oh, I -- I don't know. I mean, it was part of
16 their compensation. I don't know if it was a quarterly
17 payment or an annual bonus payment or what that was. As
18 I say, that came to my attention two or three weeks
19 before I left the company, so I -- I mean, I wasn't even
20 aware of it until the very end.

21 Q Were the Shanghai based employees actual
22 employees of BAM Trading?

23 A Well, they were employees of an entity that
24 had been set up for the purpose, called Boran. My
25 understanding was that at one time they had been

1 Binance.com employees and then when the Binance.US
2 separation happened in 2019, the decision was made to
3 hive off that group of 50 or so people and they would be
4 allocated full-time to Binance.US, so the question was
5 if you had a group of Shanghai based people working for
6 Binance.US, could they actually legally in China work
7 for Binance.US or did we have to set up a subsidiary
8 entity that would be where their employment was tied?
9 And often in multinational corporations that's the way
10 it works, is that there's a local corporate entity to
11 which those employees are assigned, so Boran was an
12 entirely dedicated to Binance.US workforce, paid for by
13 Binance.US, but housed within this entity called Boran.

14 Q Where was Boran incorporated?

15 A I don't know. I don't know. But I mean, my
16 assumption, it was a Chinese legal entity is my
17 assumption, but I -- I don't know.

18 Q Was Boran wholly owned by BAM Trading?

19 A I'm not sure.

20 Q Okay. Do you know who would know?

21 A I don't.

22 Q How did you learn about Boran's structure?

23 A Well, as I think I've just indicated, I don't
24 know very much about Boran's structure, other than to
25 know, you know, sort of like there's Morgan Stanley,

1 Morgan Stanley Asia, Morgan Stanley BD Amsterdam, et
2 cetera, et cetera, only to understand that its role in
3 the family of companies was like that; it was an
4 employee holding company set up for purposes of housing
5 these Chinese employees.

6 My focus, as you know from the document that
7 you have, was to migrate that entire function to an
8 onshore workforce. Obviously, I wasn't there long
9 enough to complete that task, but you know, that's
10 essentially all I know about Boran.

11 Q Did you learn about Boran outside of any
12 attorney/client communications or potential
13 attorney/client communications?

14 A I mean, Boran was a commonly known thing at
15 BAM Trading, so I certainly talked about it with non-
16 lawyers, as well as with lawyers. I mean, certainly the
17 CFO was aware that there was an entity called Boran. He
18 was the person who brought to my attention this BNB
19 arrangement, you know, late in my time there. But in
20 terms of whatever I would know about the corporate
21 structure or its rationale, that would have come from
22 counsel.

23 Q Okay. How many people work for Boran?

24 A Fifty or 60, something like that.

25 Q Okay. We're going to go back to my original

1 MR. HOLSCHER: I'll counsel you, if you
2 learned that from counsel --

3 THE WITNESS: Yeah, I understand.

4 MR. HOLSCHER: -- I don't want you to impinge
5 upon any corporate attorney/client privilege.

6 THE WITNESS: Right. Yeah. My knowledge of
7 it really doesn't have anything to do with that, it just
8 has to do with the way that the company got
9 bootstrapped. So you know, the way companies typically
10 get started is somebody has to pay for it, so you know,
11 Hewlett & Packard used their personal checking account
12 in their mother's garage. What happened with Binance.US
13 is CZ gave the company its first \$10 million to get
14 launched, and that was done in the form of a note.

15 MS. HITCHENS: Okay.

16 BY MS. HITCHENS:

17 Q So I'm going to ask you about sort of making
18 distinctions. Did you ever personally make any
19 distinction when reporting to Changpeng Zhao in their
20 capacity as a board director, as opposed -- his capacity
21 as a board director, as opposed to reporting to him in
22 other roles and capacities? Did you ever personally
23 make a distinction?

24 A I mean, I was 100 percent clear in my own mind
25 that -- I mean, until I quit, obviously, but I was 100

1 percent clear in my own mind that I worked for a board
2 of directors. I personally, you know, very, very, very
3 strongly held the conviction that I did not work for
4 Binance.com, that nobody at Binance.com was my boss, and
5 that my role was to complete and highlight the corporate
6 separateness. So when I talked to CZ, I considered
7 myself to be talking to him in his role as board chair
8 BAM Trading. The same way that when I was, you know,
9 working at Fannie Mae I spoke to our board chair all the
10 time and I considered myself to be talking to the board
11 chair, not to somebody else but the board chair.

12 Q Now, sitting here today and looking back on
13 your time at the company, do you look back and think,
14 oh, maybe there were distinctions when I was talking to
15 him?

16 A Possibly not the distinction that you're
17 thinking about. What -- what became clear to me at a
18 certain point was CZ was the CEO of BAM Trading, not me.

19 That's what became clear at a certain point. That
20 wasn't because Binance.com somehow controlled us, but
21 again, he owns the vast majority of Binance.com so I put
22 that aside.

23 It was more of an issue of if I'm Steve
24 Ballmer and he's Bill Gates, who's really running this
25 company, right? So it was not that oh, gee, CZ's acting

1 in a different capacity, it is more of do I have the
2 delegation and autonomy to carry out the mission of a
3 CEO as outlined in the mission document that you've
4 seen, right? And at a certain point I concluded that I
5 did not.

6 Q Can you just elaborate more why you're saying
7 now sitting here today you look back and think of him as
8 the CEO of BAM Trading?

9 A Yeah. I mean, look, he's obviously not
10 formally the CEO of BAM Trading, but in -- in my
11 judgment, right, there's a distinction between
12 management and governance. The role of the board is
13 governance. The role of the CEO is management, which
14 means day-to-day execution of a board approved strategy.

15
16 The time that the switch flipped in my mind
17 was, right, so I had joined the company with knowledge
18 of issues at the company and a belief that if those
19 issues could be fixed the company could be very
20 successful. And I spent the first, you know, 80 days or
21 so working on those fixes, to the exclusion of almost
22 everything else. The idea was we're going to get these
23 core foundational things realigned.

24 That was all fine. And then at a certain day
25 I was -- a certain day late in that tenure, I was

1 overruled on all of them. All of the things that we had
2 previously agreed and had worked on for 80 days were
3 suddenly repudiated with no further discussion, and on
4 that day, I realized, huh, I'm not actually the one
5 running this company, and the mission that I believe I
6 signed up for isn't the mission. And as soon as I
7 realized that, I left.

8 Q Well, can you tell me a little bit about that
9 day?

10 A Sure. I would say -- you know, when I say it
11 was a day, it was really the space of about eight to 10
12 days. It began with our regular weekly meeting, you
13 know, which I described previously. And you know, we
14 were going through the standard agenda items, how's the
15 fundraise going? Who are the board members going to be?
16 What about the tech migration? And in this particular
17 call, the issue was why are doing a tech migration? And
18 what I remember about that call is that it was late in
19 the evening, and I said -- I said the tech migration is
20 one of the most important risks in this company. It's
21 the reason the people believe that, you know, that in
22 fact the company's not an independent company, that in
23 fact it's controlled by, you know, somebody sitting in
24 China. This is a foundational strategy, and I went
25 through all the reasons why we had agreed, and I

1 thing whose cost has already been fully amortized,
2 that's going to be a lot cheaper than if you have to
3 bear the cost of the initial startup expense yourself.

4 Q So were the ongoing maintenance costs for the
5 Binance.US platform sort of less than Coinbase would
6 pay?

7 A No idea.

8 Q Okay. Who would know?

9 A I don't know.

10 Q Okay. Do you know if the cost would change
11 after the migration occurred?

12 A The cost would likely go up.

13 Q Okay. And why is that?

14 A Well, because the cost of operating one
15 platform is always lower than the cost of operating two
16 platforms, even if the two platforms are identical,
17 right. So we would have to hire a team of people in the
18 United States to be the 50 people operating it. U.S.
19 labor costs are far higher than Chinese costs are, as
20 I'm sure that you know. And you know, from that point
21 on we would be responsible for our own design decisions,
22 and that would cost money.

23 Q Were the service level agreements going to
24 sort of continue to exist after the migration?

25 A Who can say that never happens, so I don't

1 know.

2 Q Do you know whether they were contemplated to
3 exist?

4 A I mean, we never got close to that, so I don't
5 think that discussion was ever had.

6 Q Okay. So basically, under the service level
7 agreements, it sounds like .com was able to sort of run
8 with the same personnel the Binance.US platform and then
9 the .com platform; is that correct?

10 A No. So let me just start over for a second.
11 So first of all, you've now said service level agreement
12 several times; service level agreements just refer to
13 timetables and deliverables. That's not what these
14 were. These were a services agreement and a licensing
15 agreement, not a service level agreement. Just to
16 create common language here.

17 We had 50 employees that were not Binance.com
18 employees, these were the Boran people we previously
19 talked about who were responsible for our technology.
20 One of the things that they would do is when Binance.com
21 had a new release of the code base for this or that or
22 the other, whatever the particular update was that they
23 might be releasing, it was the Boran employees who then
24 spend time, you know, essentially copying that code,
25 making such minor adjustments as were needed for that

1 code to operate on our U.S., you know, front end
2 platform, and then would push it out to our customers.

3 So those were not Binance.com employees doing
4 that, they were Binance.US employees, Boran employees,
5 receiving updates from .com and then making those
6 changes for us.

7 Q But those employees, though, did not work on
8 the matching engine; is that correct?

9 A They didn't work on the matching engine,
10 that's right.

11 Q So was .com using the -- you know, has its
12 matching engine folks, and they were also helping -- not
13 only helping to support the .com platform, ostensibly,
14 but those matching engine folks were also supporting the
15 .US platform?

16 A No. No, they were supporting the matching
17 engine. We had a license --

18 Q Okay.

19 A -- that allowed us to use the matching engine.

20 Q Okay. Thank you for clarifying that.

21 So during your tenure at BAM Trading, did any
22 of the following happen: code changes occurred to the
23 Binance.US platform that were not announced to trading
24 personnel or to users?

25 MR. HOLSCHER: I'm just going to counsel you

1 if you understand the technology of the question,
2 answer. If you don't, just do your best to answer that
3 question.

4 THE WITNESS: I mean, the answer to that I
5 have no idea. I'm not sure I understand the question.
6 But I'm not aware of any code that got pushed that
7 wasn't disclosed to people. I mean, if you're
8 referencing to something in particular, I'm happy to
9 hear that, but I -- I don't know what that refers to.

10 MS. HITCHENS: These are just general
11 questions to understand what your experience was with
12 certain issues that could occur with the platform.

13 BY MS. HITCHENS:

14 Q So would -- did any -- during your tenure, any
15 systemic issue with the code to the Binance.US cause
16 trading glitches or sort of larger scale trading issues
17 for users?

18 A You know, I -- so I have a memory of there
19 being one or two occasions when the platform may have
20 been inaccessible for an hour here or two hours there
21 because of code updates and things like that. I don't
22 remember anything more than that. So when you say
23 systemic, I don't recall anything there.

24 Q Okay. Are you aware from your time there of
25 any sort of latency issues with the servers being used