

EXHIBIT A-83A

HO-13865

***Brooks, Brian - Vol.
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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 question before we went off on talking about Boran here,
2 you know, which was the question about, you know, who
3 gives final signoff on certain kinds of business
4 decisions. I'm adjusting the question to ask the
5 question of like if anyone at .com had to give final
6 signoff for these activities? We were just talking
7 about digital asset transfers.

8 Did anyone at .com have to give final signoff
9 on new employee hiring decisions?

10 A Well, when you say anybody at Binance, there
11 were certain executives, you know, for example, Manny
12 Alvarez would be one, I think our chief people officer
13 would be another, whereas at any company, at a certain
14 C-Suite level those candidates will meet with the board
15 in order that the board is comfortable with who the
16 senior executives were.

17 CZ and Wei, and later Gin, were members of the
18 board and so, you know, before those two got hired, they
19 would have met with CZ and -- and I think Wei. But
20 again, those -- they were not sitting in those
21 capacities as Binance.com employees; they were sitting
22 in the capacity as board members of BAM Trading or Bam
23 Holdings or whatever the entity was.

24 Q Aside from CZ, Wei, and Gin, would anybody
25 else at .com have to give final signoff on new employee

1 restate the question asked? I don't have a memory of
2 that prior testimony. I think he made some comments
3 about informal discussions with CZ and maybe someone
4 else, but I want -- feel free to ask any questions, but
5 --

6 THE WITNESS: Yeah, I'm sorry, I don't
7 remember talking about informal reporting of BAM Trading
8 to .com. I mean, the -- you know, there was one board
9 meeting that I participated in in late July or early
10 August of this year. There were weekly videoconferences
11 with CZ, and some out of cycle conversations with me and
12 CZ, and occasionally, you know, Wei or somebody else. I
13 guess I don't regard that as reporting; that's just
14 corporate communication. But beyond that, I'm not sure
15 what you might be looking for.

16 BY MS. HITCHENS:

17 Q Was there ever a time that you learned of some
18 more, sort of, informal reporting or communications
19 occurring between BAM Trading personnel and .com that
20 you hadn't previously been aware of?

21 A Well, I -- so I would make a distinction
22 between reporting and communicate, right. So Binance.US
23 had a series of dependencies on Binance.com, and so
24 there were -- there was really constant communication at
25 the operational level between people on Binance.US and

1 people on Binance.com because, for example, there was
2 going to be a website upgrade and, you know, we copied
3 and then customized a lot of their code pursuant to a
4 services agreement that had been entered into at the
5 time the companies were separated. So there would be a
6 ton of integration communication around that.

7 Or you know, they would be -- I'm trying to
8 think of good examples. There would be like a -- like a
9 hacker or a system's attack of some kind, a DDoS attack
10 or something, which would make the matching engine
11 inaccessible or something else would happen, which would
12 have an effect on us. That kind of operational
13 interface, that happened every day involving large
14 numbers of people, again because as I'm sure you know,
15 under the licensing agreements and the services
16 agreements, a lot of the operating functions had these
17 interdependencies. That's one of the reasons why when I
18 joined the company and saw that level of their
19 connection, I said this is going to be a problem and we
20 need to migrate the technology to full U.S. control for
21 a whole bunch of reasons. Some of them being
22 operational, others being, you know, compliance,
23 privacy, et cetera. But there was plenty of
24 communication.

25 So when you said reporting, I was thinking of

1 something different. But in terms of communication,
2 there was a lot of that.

3 Q Was there any sort of informal communication
4 that you were surprised by during your tenure that you
5 didn't originally know about and then subsequently
6 learned?

7 A I -- I mean, I don't -- I guess I don't know
8 how to answer that. I mean, certainly I was not privy
9 to all of the communication happening and so I'm sure
10 that some of it I learned about I would have been
11 surprised by in the sense that I hadn't previously known
12 about it and now I was learning about it for the first
13 time.

14 You know, the things that rose to the level of
15 surprise were things like when I learned that there were
16 Binance.US technology employees who were getting paid in
17 BNB tokens out of the Binance.com balance sheet. That's
18 what I would consider a surprise.

19 Q Any other surprises like that?

20 A You know, I would say that there were a
21 handful of occasions where I would learn that, you know,
22 somebody at the company, sometimes in the U.S. but more
23 typically in -- in the Boran team, you know, would be
24 unhappy with some decision I had made or some initiative
25 we had launched

1 and -- and those people might go straight to CZ, and you
2 know, that -- that obviously was something which when I
3 learned about it, I would endeavor to shut it down on
4 the theory that CZ's not the CEO of this company, this
5 is a U.S. company, you work for me, not him, this has to
6 stop. That happened occasionally.

7 The BNB token to me is -- rises to a different
8 level of seriousness, but you know, there were things
9 like that.

10 Q Were there any other kinds of surprises,
11 besides these sort of backdoor type communications you
12 were describing?

13 A Yeah. I mean, look I -- I couldn't begin to
14 just pull from my memory random examples of things. I
15 mean, again, it was a -- it was a short tour of duty
16 marked by, you know, certain pinnacle memories, and you
17 know, the -- the random things I don't really remember
18 all that well.

19 Q Who at BAM Trading U.S. did you learn was
20 making communications to CZ without your knowledge?

21 A It was not -- I will say it was not always
22 that they were -- I mean, it's happened in both
23 directions, right, so there would be sometimes that it
24 came in one direction, sometimes in another. But you
25 know, I think Rena Shah had a fairly regular line of

1 communication into him, and to other people at
2 Binance.com. You know, Chris Robins had fairly
3 regularly -- regular communications there.

4 On the inbound side, I think Josh Sroge, our
5 CFO, got inquiries from CZ fairly frequently, which you
6 know, in the early days weren't of great concern to me
7 because I've worked at bigger companies where, you know,
8 the board chair would reach out to some senior executive
9 to say, hey, I need some piece of information for
10 something, so I didn't regard that as particularly
11 surprising. A little bit more surprising in the other
12 direction.

13 And then of course there were the guys who sat
14 in Shanghai, who did more of that.

15 Q What -- who were the guys in Shanghai that
16 were making communications to CZ? Do you remember their
17 names?

18 A Yeah, well, I mean there was Frank a lot, and
19 Gerry somewhat. Frank being the technology person,
20 Gerry being the product person.

21 Q Okay. Do you know who Rena Shah would contact
22 at .com to have these communications that we've been
23 talking about as, sort of the without your knowledge?

24 A Yeah, I mean, Rena was deeply connected with a
25 lot of people over there. I mean, she -- she, I think,

1 had actually been there before the COVID lockdowns and
2 actually had spent time with those people, I think, so
3 she had a lot of people there that she talked to. A
4 lot. But CZ was one of them.

5 Q Okay. And what about Christopher Robins, do
6 you know who he was speaking with at .com?

7 A He -- I think his -- his outreach was more
8 limited, but it did include CZ, and then it also
9 included a guy named Han, who was a former Latham
10 partner who is CZ's general counsel.

11 Q When you say CZ's general counsel, are you
12 saying he had personal counsel?

13 A Well, it's a great question. I think that Han
14 -- my understanding is, is he was formerly the
15 Binance.com general counsel, but I think that their
16 observance of those kinds of distinctions that you're
17 making as between personal and corporate might be less
18 formal than we would make in the United States.

19 Q What's an example of that?

20 A I'm not sure I can think of a particular
21 example, but I have an impressionistic memory that there
22 were times when it was not clear who the client was.

23 Q Is that because you would hear maybe, you
24 know, something said and you didn't know if that was
25 coming from CZ personally or CZ at .com or from .com?

1 Are those sort of the breakdowns of --

2 A No.

3 Q -- what you're thinking

4 A It's when -- no, I mean an example, I think,
5 would be -- and here I'm -- like this is
6 impressionistic, okay, based on memory but when we were
7 doing our venture round, right, there were a number of
8 issues that related to CZ's personal share ownership of
9 Binance.US, which was not Binance -- like remember, the
10 Twitter and Square analogy -- Binance.com did not own a
11 single share of any entity affiliated with Binance.US at
12 all, so in that sense the companies were as different as
13 Twitter and Square are, but there was a person who was
14 the majority shareholder of both companies, and that
15 person was CZ. So at a certain point in the fundraise
16 there was an issue having to do with a note that --

17 MR. HOLSCHER: I'm just going to interrupt, I
18 apologize. If there's any related disclose that was
19 discussed with counsel -- I don't know if that's where
20 your answer is going?

21 THE WITNESS: Yeah, this I don't think was
22 with counsel.

23 MR. HOLSCHER: Okay. I apologize to
24 interrupt. I just wanted to make sure you didn't
25 impinge on a privilege. Go ahead.

1 THE WITNESS: That's a totally great -- that's
2 a great point.

3 So all I would say is there was an issue that
4 was being discussed. This was just a business issue
5 between our venture funds and the company having to do
6 with what's going to happen with this note? CZ was, you
7 know -- the company was the obligor, on the note CZ was
8 the obligee, and the question in the negotiation are we
9 going to buy him out? Is he going to let us buy him
10 out? What's going to happen?

11 And I don't even remember what any lawyer said
12 about that, but I do know that the lawyer who showed up
13 on that was Han. And since that was not a Binance.com
14 issue, that was a CZ issue, we -- we were sort of
15 puzzled as to who the client was. Again, I have no idea
16 what his position was, so I'm not disclosing any
17 communication with counsel, I just know he was the
18 person who was representing.

19 So it's just an example of, you know, there
20 were different layers of -- of that kind of
21 communication.

22 Q Okay. Do you know much about that note in
23 general? Like why it was entered into? Or and what
24 happened to it?

25 A My --

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 reminded him that we had agreed in this document. And
2 the call ended with no good resolution, other than he
3 wanted to have a follow-up call the next day. And I
4 remember this because it was a Saturday was the next
5 day. And so I went to bed thinking, yikes, this is the
6 first time I felt we really had a misalignment here. I
7 thought we agreed on what the direction was.

8 So the next morning, we reconvened on a video
9 again. I was, you know, now worried. I had not been
10 worried the night before until the end of the call, when
11 I realized we were misaligned. Saturday morning, it was
12 all smiles again and it was like, you know what, I -- I
13 trust you. I hired you for a reason. Do what you think
14 you need to do. And I thought okay, whew, great.

15 Then things developed over the coming week,
16 and then we had that board meeting that I described.
17 And on the board meeting -- on the board call with these
18 other people around, including my management team,
19 that's when the decision was articulated that not only
20 were not going to migrate the tech stack, but in fact,
21 we weren't going to do this venture round because he
22 didn't like the investors. And by the way, we wouldn't
23 have any independent board members because he's the
24 majority shareholder he's entitled to hire and fire all
25 the board members.

1 That was when I said this really isn't going
2 to work.

3 Q This is all occurring during the board meeting
4 when these statements were made about the complete
5 change of what you had been expecting from the Saturday
6 conversation; is that correct?

7 A Yes.

8 Q Well, you talked about having reached some
9 kind of agreement before this -- these events that just
10 transpired. What was that agreement?

11 A Well, so before I joined the company, you
12 know, the company has a controversial reputation. It
13 has issues. I mean, we know this, that's why you guys
14 are here, and I knew that, too, and so my willingness to
15 commit my time and reputation to this was really
16 contingent on let's agree that we're going to do a
17 certain set of things that will address some of the most
18 important issues, okay, beginning with the question of
19 who actually controlled this company? Is this actually
20 a U.S. company subject to U.S. supervision, operating
21 within a universe that only allows some products and not
22 others, et cetera, et cetera, that was right, all of
23 that.

24 Then there was the technology issue. Do we
25 have a TikTok problem? Is all of the U.S. data

1 accessible in China? Is it possible that China could
2 take this U.S. company and shut it down by shutting down
3 our servers or whatever? So that's what led to the
4 creation of a document, I forget what the name of it is,
5 but I mean, it's one of the documents you shared a
6 couple of days ago that I assume you're going to show
7 me. That -- that document was my distillation of I will
8 come if we agree that this is the plan. And if it's not
9 the plan, find somebody else. That will be fine.

10 So you know, when I say agreement, that was a
11 document that I said let's agree on this as our
12 framework, and if we agree, great. And if not, you'll
13 do fine. You'll find somebody else.

14 Q So when did that agreement get reached? Was
15 it prior to you starting at the company before you sort
16 of signed your employment agreement?

17 A Yeah. Oh, yeah. Yes.

18 Q Okay.

19 A Yes. I mean, again, you have it. The date is
20 whatever the date is. I don't remember what it is, but
21 it was certainly before I joined the company.

22 Q But in terms of the response that you got to,
23 sort of, your list of priorities that you -- it was your
24 proposal, but then when did you hear yes, we agree with
25 you, we're behind you on that list?

1 A The -- the matching engine sits in Japan,
2 okay. Other -- other code sits in Shanghai was my
3 understanding.

4 Q Okay. So how did you learn the location of
5 these servers?

6 A I refer to my earlier answer; I had these
7 lengthy bootcamp sessions with all kinds of people who
8 were educating me on the business in my first three or
9 four weeks at the company.

10 Q Do you recall any documentation about the
11 servers specifically and their location?

12 A I don't.

13 Q Okay. So do you know who actually owns the
14 servers?

15 A Who owns the physical servers? I have no
16 idea.

17 Q Okay. And then who actually pays for the
18 servers?

19 A Well, I mean look, I'm not 100 percent sure
20 which servers at this point we're even talking about. I
21 mean, the servers on which our user data are housed will
22 be owned by Amazon Web Services and paid for by us under
23 contract. The Matchbox matching engine server would be
24 owned by some affiliate of Binance Holdings for which we
25 have access through a services agreement that we pay

1 for.

2 In terms of the servers where the, for
3 example, you know, blockchain integrations for the next
4 token that we might list might happen, I have no idea
5 who owns that or how that gets paid for.

6 Q In the meetings that you had with potential
7 investors and BAM Trading, did you recall those
8 potential investors ever asking about the location of
9 servers?

10 A Not specifically, no.

11 Q Did the location or servers ever come up
12 during those meetings?

13 A I don't think so. I mean, I -- you know,
14 technology in the meetings I was in wasn't discussed at
15 level of granularity. You know, the way that I always
16 described it to people was, you know, that we had three
17 significant risk factors. We had a strong technology
18 dependance on Binance.com through this set of contracts;
19 that we had, you know, one shareholder, you know; and
20 that we had this board structure, and what I said is the
21 purpose of the round is to facilitate the fixing of
22 those problems. So it was a very common trope in this -
23 - in this message that we need to migrate the tech
24 stack, diversify the cap table, and add independent
25 directors. That was sort of the mantra in these

1 meetings.

2 Q So for -- you were not the only one from BAM
3 Trading who was participating in the investor meetings
4 or even communications. Who at BAM Trading was
5 responsible for providing potential investors with the
6 details about the location of the servers or you know,
7 question -- very technical questions?

8 A Well, again, it's beyond my knowledge that
9 anybody was even asking those questions, so when you ask
10 who was responsible for answering those questions, I'm
11 not sure anyone was because I'm not sure the questions
12 were asked.

13 To the extent that they were, you know, there
14 was a data room that was established that was hosted by
15 our outside law firm, Skatten, and the two people most
16 responsible for managing the diligence process were
17 Chris Robins, our general counsel, and Josh Sroge, our
18 CFO.

19 Q So you were --

20 A So for example, that --

21 Q -- previously --

22 A -- that document you showed me -- just to
23 finish the answer, that document that you showed me a
24 few minutes ago, that would have been prepared likely
25 jointly by Chris and Josh.

1 Q Thank you.

2 MR. HOLSCHER: Kathleen, when you get -- when
3 you get spot, just take another five minute break when
4 you get a moment. Just let us know a good time.

5 MS. HITCHENS: Yeah, we'll try and move
6 through this and then take a break, okay? Thank you,
7 Mark.

8 MR. HOLSCHER: Okay. I was just politely
9 asking if we could take a break in the next minute or
10 two, that's all. Next few minutes would be great.

11 MS. HITCHENS: Sure, I just wanted to ask one
12 follow-up question based on what --

13 MR. HOLSCHER: Great.

14 MS. HITCHENS: -- Brian was saying.

15 BY MS. HITCHENS:

16 Q So which is, you mentioned that .com personnel
17 managed the offshore servers; is that correct?

18 A .com managed the offshore servers? I -- I
19 think what I said is I don't have any firsthand
20 knowledge of exactly what entity managed these servers.

21 I know that it wasn't us. So you know, there was the
22 matching engine in Japan, presumably owned and
23 administered by some .com entity, but I have no idea
24 which one, and then there's other servers doing other
25 functions. But again, I assume you will have a

1 technology deposition but that's not going to be me. I
2 don't know the answer to that.

3 Q Did any of the Shanghai -- BAM Trading
4 Shanghai employees and this Boran entity, did they help
5 manage the offshore servers?

6 A I mean, they were software engineers so
7 managing servers, you know, which is a hardware and IT
8 function, I - I think would have been beyond their
9 remit. These were guys who wrote code.

10 Q Did they have access to those servers, do you
11 know?

12 A You mean like physical access to the rooms
13 where the servers were? I have no idea.

14 Q No, access to be able to load code onto them
15 and their software and manage the server?

16 A Oh, yeah, well I mean, they would have hit
17 like "control s" and that would have saved something to
18 something. As sort of like, you know, right now, I
19 guess we all have access to a server because we're
20 interfacing on computer that runs over a server, but
21 it's beyond my knowledge as to what that was or where
22 that piece of hardware sat.

23 Q But they didn't have, you know, to your
24 knowledge like higher clearance to sort of work with the
25 servers in any way? You know, let's say you and I, you

1 know, we don't have the special permissions to, you
2 know, work with some of our technology but others do?

3 A I --

4 MR. HOLSCHER: Kathleen, I just -- I don't
5 want to make a formal objection, he's indicated it's a
6 no, so I hate to have him just speculate on how the --
7 how the various engineers work with the software and
8 hardware. He just doesn't know. I just worry --

9 MS. HITCHENS: Sure.

10 MR. HOLSCHER: -- it's not right for him to
11 speculate.

12 MS. HITCHENS: Mark, there's no need to go on,
13 understood. I want to get us to the bathroom, so just
14 one more question.

15 BY MS. HITCHENS:

16 Q You know, where did the Boran employees sit in
17 Shanghai? Do you know where their offices were located?

18 A I -- I really have no idea. I'm sure at some
19 point I might have seen a street address, but I couldn't
20 tell you.

21 Q Did BAM Trading pay the lease for their office
22 space?

23 A I -- I don't know. I mean, again, I assume
24 you've seen the services agreement that dictated the
25 various things that were shared and the accounting

1 offsets and the payments and debits and credits that
2 occurred, that feels to me like a CFO question but I --
3 I don't know the answer to that.

4 Q Okay.

5 MS. HITCHENS: So let's go ahead and take a
6 five minute break. We'll go off the record now at 1:50
7 p.m., Eastern, and we'll be back at 1:55 p.m., Eastern,
8 thank you.

9 (Whereupon, a brief recess was taken.)

10 MS. HITCHENS: Well, let's go back on the
11 record, it is 1:56 p.m., Eastern. Thank you very much,
12 took a bathroom break.

13 And I just want to confirm, Mr. Brooks, that
14 we've not have any substantive conversations during the
15 break; is that correct?

16 THE WITNESS: Yeah.

17 MS. HITCHENS: And apart from your attorney,
18 you didn't speak with anyone during the break; correct?

19 THE WITNESS: Did not.

20 MS. HITCHENS: And is anyone --

21 MR. HOLSCHER: It was only --

22 MS. HITCHENS: -- physically with you?

23 MR. HOLSCHER: -- five minutes. It's only
24 five minutes. I think you can ask these each time, but
25 I'll let you know. We're -- there's no one else here,

1 we're not consulting with anybody. But we're also being
2 very quick.

3 MS. HITCHENS: Thanks, Mark. I'm trying to
4 belt and suspenders with this one. Just want to make
5 sure no one's physically in the room with you or can
6 hear you?

7 MR. HOLSCHER: (No response.)

8 MS. HITCHENS: Okay. And Bob, is that true
9 for you, no one is physically with you, or no one can
10 hear you; is that correct?

11 MR. POMMER: That's correct.

12 MS. HITCHENS: Great.

13 BY MS. FILIPP:

14 Q So Mr. Brooks, do you have any understanding
15 as to what the code that runs Binance.US is? Is it what
16 we've previously discussed with regards to the matching
17 engine and other software? Or do you have a different
18 understanding of what, sort of, the Binance.US code is?

19 A I -- I literally don't know how to answer that
20 question. What the Binance.US code is, it's millions of
21 lines of computer code.

22 Q Okay.

23 A I mean, I'm -- I'm not sure what you're
24 looking for on that.

25 Q Okay, that's fine. In your contacts with

1 potential investors, did potential -- did they ever ask
2 you about who maintains the wallets for the Binance.US
3 digital assets?

4 A Don't recall that.

5 Q Okay. Do you recall if potential investors
6 ever asked about the Binance Holdings custodial
7 agreement?

8 A I mean, I have no memory of that. Again, I
9 mean, you showed me a few minutes ago the diligence
10 questions that our lead investor put to us. They were
11 the ones running the diligence process for the group of
12 investors. I mean, those were -- those were the
13 questions that they asked us.

14 Q They asked you questions about the custody
15 agreement; is that what you're saying?

16 A No. I'm saying that there's a document which
17 lists all the questions that they asked us, and you just
18 showed that document to me.

19 Q Okay. Just wanted to clarify, okay. All
20 right, so did you ever hear potential investors
21 explicitly ask about who has access to Binance.US
22 customer data?

23 A I mean, look the only memory I have of that
24 kind of discussion is, you know, in part because many of
25 these investors are people I had known for a long time,

1 as we opened the pitch by saying, "Let me tell you the
2 biggest risk in this company. The biggest risk in this
3 company is we are highly dependent on a bunch of
4 technology that sits in Asia. One of the things we're
5 going to do with the round proceeds is to migrate that
6 tech to the United States. This is a giant risk
7 factor." So to the extent they asked follow-up
8 questions, those would be memorialized in the diligence
9 questionnaire that you've already showed me, and our
10 answers were whatever they were.

11 But to be super clear, it's not like we were
12 running around representing that this technology is here
13 in the U.S. and super safe. What we were saying is this
14 is the biggest honking risk factor in this company, is
15 the dependency on Chinese technology. We will not
16 succeed unless we migrate it, we said to these guys, and
17 what we need is your help doing that. And indeed, one
18 of our two lead investors gave us the outside technology
19 consultant who helped us develop our plan for migrating
20 all of the technology. That was Red Point. So.

21 Q Was Red Point the investor who recommended the
22 consultant? Or was Red Point the consultant?

23 A Red Point had a new partner who was the former
24 CTO of GitHub and is one of the most famous computer
25 scientists in the world, and he worked with us to help

1 can Charles Schwab? I mean, I don't know. The real
2 issue is the sort of clearing price, the -- what's the
3 word that I'm looking for? The -- the marginal cost of
4 an additional trade on an existing piece of software is
5 basically zero, so you know, it's easy to offer low
6 trading fees, it's hard to offer high trading fees in my
7 judgment.

8 Q Did BAM Trading offer lower fees than Coinbase
9 for trading fees?

10 A Yes.

11 Q And how was BAM Trading able to do that at a
12 low cost?

13 A I -- I think I just answered that question,
14 because the marginal costs of a marginal trade on a
15 software platform is zero.

16 Q Was BAM Trading paying less for its, sort of,
17 tech stack than if it had created it in-house by virtue
18 of being able to license it from .com?

19 A Well, it is definitely true that unlike
20 Coinbase, which had to build its own software, starting
21 in 2012 from scratch and invest in hundreds and hundreds
22 of engineers, we were able to basically launch as a
23 going concern, you know, and license a piece of software
24 that existed that somebody had built. And it's almost
25 always true that when you're able to buy an existing

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