



NEW YORK STATE  
DEPARTMENT OF FINANCIAL SERVICES  
ONE STATE STREET  
NEW YORK, NEW YORK 10004

-----X

In the Matter of :

GEMINI TRUST COMPANY, LLC :

-----X

**CONSENT ORDER**

The New York State Department of Financial Services (the “Department” or “DFS”) and Gemini Trust Company, LLC (“Gemini” or the “Company”) are willing to resolve the matters described herein without further proceedings.

WHEREAS, in 2015 the Department became the first financial regulator to establish a licensing and regulatory regime for virtual currency businesses;

WHEREAS, the Department’s licensing and regulatory regime imposes rigorous standards requiring that entities engaged in virtual currency business activity operate in a manner that promotes the safety and soundness of the financial system and protects the interests of consumers;

WHEREAS, in September 2015 the Department issued a charter to Gemini to operate as a limited liability trust company, also referred to as a limited purpose trust company, pursuant to Article III of the New York Banking Law, and gave Gemini approval to conduct virtual currency business within the State of New York;

WHEREAS, when it received its charter from the Department, Gemini signed a Supervisory Agreement with the Department that imposes additional requirements on Gemini that were tailored to the Company's business model and designed to ensure that it operated safely and soundly;

WHEREAS, during a safety and soundness examination and a subsequent enforcement investigation of Gemini, the Department found compliance, management, and internal audit issues at the Company including, among other weaknesses, with respect to Gemini's involvement and oversight of the Gemini Earn Program, an unsecured lending program ("Earn" or the "Earn Program");

WHEREAS, Gemini customers participating in the Earn Program ("Earn Customers") could loan their virtual currency to a third party and receive interest in return;

WHEREAS, the third party selected by Gemini as the borrower for the Earn Program was Genesis Global Capital, LLC ("GGC"), a Delaware company not licensed by the Department;

WHEREAS, the Department found, notwithstanding Gemini's public statements to the contrary, GGC was not fully vetted nor sufficiently monitored by Gemini; and in November 2022, GGC defaulted on approximately \$940 million worth of loans made by Earn Customers;

WHEREAS, in January 2023, GGC declared bankruptcy, leaving more than 200,000 Earn Customers — including nearly 30,000 New Yorkers — unable to access their virtual currency;

WHEREAS, in connection with the Department’s investigation of this matter, Gemini has committed to ensuring that all Earn Customers’ virtual currency will be restored to the Earn Customers on a coin-for-coin basis (or the cash equivalent based on the value as determined by the Bankruptcy Court, but in no case less than the value on the petition date of the GGC Bankruptcy) through a resolution of the GGC Bankruptcy (as defined below), including through the contribution of Gemini assets and the deployment of collateral secured by Gemini for the benefit of the Earn Customers; and

WHEREAS, the Department and Gemini have now reached an agreement to address the Company’s violations of law and the Department’s findings, to ensure that Gemini completes its remediation efforts as set forth herein, and to ensure that all Earn Customers are made whole.

NOW THEREFORE, in connection with an agreement to resolve this matter without further proceedings, pursuant to the Superintendent’s authority under Sections 39 and 44 of the New York Banking Law, the Department finds as follows:

### **THE DEPARTMENT’S FINDINGS**

#### **I. Parties and Regulatory Framework**

1. Gemini is a New York limited liability trust company and a wholly owned subsidiary of Gemini Spaceship, LLC. The Company operates a mobile- and web-based virtual currency exchange platform, proprietary wallet infrastructure and custody solutions, and a proprietary United States dollar-backed stablecoin.

2. The Department is the primary financial services regulator in the State of New York, and the Superintendent of Financial Services (the “Superintendent”) is responsible for ensuring the safety, soundness, and prudent control of the various financial services businesses under the Department’s supervision. To that end, the Superintendent enforces the laws and

regulations applicable to financial services, insurance, and banking sectors, including the New York Financial Services Law, the New York Banking Law, and the regulations promulgated thereunder.

3. The Department developed and oversees a first-of-its-kind regulatory framework pertaining to virtual currency businesses. Companies that conduct virtual currency business activity<sup>1</sup> in the State of New York must be authorized to do so by the Department — either through the Department’s Limited Purpose Trust Charter or through a BitLicense — and are subject to the Department’s ongoing supervision.

4. As a chartered limited purpose trust company authorized to conduct virtual currency business in New York State, Gemini is obligated to abide by the laws and regulations applicable to banking organizations. Pursuant to its Supervisory Agreement with the Department, Gemini is also obligated to comply with the Department’s virtual currency regulation.

5. The Superintendent has the authority to conduct investigations, bring enforcement proceedings, levy monetary penalties, and order injunctive relief against parties who have violated applicable laws and regulations.

#### *Anti-Money Laundering Regulations*

6. Pursuant to the Superintendent’s virtual currency regulation (23 NYCRR Part 200), regulated entities are required to establish and maintain adequate anti-money laundering (“AML”) programs, including a robust customer due diligence program.

---

<sup>1</sup> Virtual currency business activity means the conduct of any one of the following types of activities involving New York or a New York Resident: (1) receiving Virtual Currency for Transmission or Transmitting Virtual Currency; (2) storing, holding, or maintaining custody or control of Virtual Currency on behalf of others; (3) buying and selling Virtual Currency as a customer business; (4) performing Exchange Services as a customer business; or (5) controlling, administering, or issuing a Virtual Currency. *See* 23 NYCRR 200.02(q).

7. Section 200.15 of Title 23 of the New York, Codes, Rules, and Regulations requires companies engaged in virtual currency business activity, like Gemini, to establish a risk based anti-money laundering program. Such a program must include: a system of internal controls, policies, and procedures designed to ensure ongoing compliance with all applicable anti-money laundering laws, rules, and regulations; a customer identification program that at minimum can verify a customer's identity, maintain records of the information used to verify such identity, and check customers against the Specially Designated Nationals maintained by OFAC; and policies and procedures in place for blocked or rejected transactions that violate federal or state laws, rules, or regulations.

*Consumer Protection Requirements for Virtual Currency Businesses*

8. Additional specific obligations, including consumer protection obligations, for entities engaging in virtual currency business activity are set forth in Part 200 of the Superintendent's Regulations.

9. Section 200.18(d) of Title 23 of the of the New York Codes, Rules, and Regulations, for example, requires that in all advertising and marketing materials, Licensees refrain from, directly or by implication, making any false, misleading, or deceptive representations or omissions.

II. Events at Issue

A. Mismanagement and Misleading Representations Concerning Gemini Earn

10. Launched on February 1, 2021, the Earn Program was an unsecured lending program that enabled Gemini customers to loan their virtual currency to the program's lending partner, GGC, and receive interest in return. Gemini, acting as the Earn Customers' agent, facilitated the transfer of the virtual currency to GGC, and then GGC was to lend those assets to

institutional borrowers, which generated interest for Earn Customers. Gemini collected an agent fee deducted from the interest paid to Earn Customers.

11. Gemini marketed the Earn Program as a safe and secure way for Earn Customers to earn high interest rates — up to 13 percent annually for certain coins — on their virtual currency.

12. Participation in the Earn Program far exceeded the Company’s initial projections. Prior to launch, Gemini predicted that Earn participation would reach \$120 million worth of virtual currency by December 2021. In just the first two months of the Earn Program, however, the balance of assets loaned surpassed \$1 billion, and, by December 2021, assets loaned through Earn exceeded \$2 billion, more than 15 times Gemini’s initial projections. During this period, Gemini was collecting millions in dollars in fees acting as agent for the Earn Customers.

13. Less than two years after launch, the Earn Program failed when entities to whom GGC loaned the Earn Customers’ virtual currency defaulted. On November 16, 2022, GGC announced that it was suspending redemptions, leaving hundreds of thousands of Earn Customers without access to their virtual currency. On January 19, 2023, GGC filed for bankruptcy in the Southern District of New York, docket No. 23-10063 (the “GGC Bankruptcy”).

14. As of the date of this Consent Order, more than 200,000 Earn Customers have not received their loaned virtual currency back from GGC. The value of this unreturned virtual currency is approximately \$1.742 billion as of February 23, 2024.

15. Gemini’s management of the Earn Program failed to prevent the harm suffered by Earn Customers. Among other things, Gemini failed to conduct sufficient and ongoing due diligence on GGC and compounded those errors by making misleading representations to

consumers concerning those issues. Gemini also failed to maintain adequate risk and liquidity reserves despite identifying the need to do so.

*Gemini's Vetting and Oversight of GGC and Misleading Representations Concerning the Same*

16. Leading up to the launch of Earn and continuing through the duration of the Earn Program, Gemini made public statements regarding its vetting of GGC and the trustworthiness and financial condition of GGC.

17. When Earn launched in February 2021, for example, the Earn webpage, hosted on Gemini's main website, stated: "Gemini is partnering with accredited third-party borrowers including [GGC], who are vetted through a risk management framework which reviews our partners' collateralization management process. Additionally, on a periodic basis we will conduct an analysis of our partners' cash flow, balance sheet, and financial statements to ensure the appropriate risk ratios and healthy financial condition of our partners." The webpage went on to say that "Gemini will continue to add high-quality partners in order to ensure competitive rates and allow you to diversify your borrowers."

18. These representations were repeated directly to Earn Customers in response to concerns regarding any safeguards in place in the event that an Earn partner lost assets. For example, on January 19, 2022, Gemini told one concerned customer: "Gemini is partnering with accredited third-party borrowers including [GGC], who are vetted through a risk management framework which reviews our partners collateralization management process. On a periodic basis we will conduct an analysis of our partners' cash flow, balance sheet, and financial statements to ensure that appropriate risk ratios and healthy financial conditions of our partners."

19. When asked directly by Earn Customers about the safety of the Earn Program, Gemini responded, "Your funds are not insured by Gemini but are held with our trusted partners.

Our partners are vetted through our risk management framework and always disclosed to you, so you know which institution has borrowed your funds. Currently, Gemini is partnering with accredited third-party borrower [GGC].” This response was used by Gemini routinely until the program collapsed in November 2022.

20. These statements were misleading in several respects. As an initial matter, despite repeatedly using language that implied that other companies beyond GGC were involved in Earn (*e.g.*, “borrowers,” “partners”), at no time during the Earn Program was any other company onboarded as a lending partner. Yet this language remained on the Earn website until the end of the program in November 2022.

21. More importantly, Gemini’s due diligence and ongoing monitoring of GGC was inadequate, and Gemini’s statements about its vetting of GGC, its “review” of GGC’s “collateralization management process,” and its “analysis of [GGC’s] cash flow, balance sheet, and financial statements to ensure the appropriate risk ratios and healthy financial condition of [GGC]” were misleading.

22. Gemini’s initial vetting and due diligence of GGC was inadequate, and Gemini failed to obtain sufficient information about GGC’s loan portfolio or financial condition to make an informed decision about whether GGC was a safe borrower of Earn Customers’ virtual currencies. Further, the diligence that Gemini did perform identified risks that were not addressed. From the very outset of the Earn Program, Gemini identified significant risks associated with GGC, including that GGC had no guarantee from its parent company, that GGC had no financial market regulator, and that GGC had not provided Gemini with audited financial statements. Despite being made aware of these concerns, Gemini’s senior management unanimously approved the Earn Program in September 2020.



23. Once Earn was launched, Gemini’s risk department was tasked with ongoing monitoring of GGC, including reviewing GGC’s loan book. However, the information provided to Gemini by GGC about its loan portfolio lacked information, including the actual identities of the parties to whom GGC was loaning Earn assets, and the reliability of any collateral pledged to GGC. As a result, Gemini could not make sufficiently informed judgments about fundamental issues impacting whether GGC would be repaid by its counterparties, such as credit or concentration risks and the quality of underlying collateral. During this period, GGC only provided Gemini with broad categories of counterparties, such as “hedge funds” or “individuals,” with the percentage of loans made to each category. In sum, Gemini lacked sufficient visibility into GGC’s risk exposure despite its repeated representations that it was ensuring that GGC had “appropriate risk ratios” and a “healthy financial condition.”

24. In fact, Gemini did not seek more information about GGC’s loan book composition until mid-2022, *i.e.*, more than a year into the Program. Even then, when more information was requested from GGC, it was on an ad hoc and informal basis (*e.g.*, through inter-company instant messaging) and only in response to major and public market events.

25. Gemini’s Senior Associate for Market Risk testified that it was not until GGC’s exposure to hedge fund Three Arrows Capital was first publicized by the Financial Times on June 16, 2022, that Gemini finally took steps to seek additional information about GGC’s loan book, specifically, a “high level breakout of concentration to understand concentration risk.”

26. The Senior Associate for the Market Risk team confirmed that Gemini only became aware that GGC had exposure to Three Arrows Capital in or about June 2022 and that GGC’s exposure to that entity was significant. Soon after, it was revealed publicly that Three

Arrows Capital owed GGC over \$1 billion. (Three Arrows Capital was put into liquidation on June 27, 2022.)

27. Also in June 2022, instant message communications between Gemini's Senior Associate for Market Risk and GGC's Head of Lending revealed that Gemini became aware, for the first time, of additional concentration risk for GGC to another counterparty, Alameda Research, that amounted to a shocking 58% of GGC's loan book. Gemini's Senior Associate for Market Risk remarked that this was a "whale" on the books and that it would most certainly lead to additional questions from Gemini.

28. The concentration risk of GGC's loan portfolio was highlighted during a July 18, 2022, Gemini Risk Management Committee meeting. At this meeting, a slide was presented stating that "[GGC] loan portfolio is highly concentrated in the top counterparty (58% of total external loans, \$1.75bn)."

29. During the July 18, 2022, meeting, Gemini management also learned that a large portion of the collateral for the Alameda Research loans was held in FTT, the FTX token. This created an "uneasiness" from a risk perspective because "if something happened with Alameda it would impact FTX; thus, it would impact the FTT token," according to Gemini's Senior Associate for Market Risk.

30. When Gemini's Senior Associate for Market Risk was asked during testimony if he believed, at the time, that GGC's loan book was sufficiently diversified in July 2022, he stated that, in his professional opinion, "at the time, no, it was not." By July 2022, Gemini had been partnered with GGC for well over a year and had put billions of dollars' worth of its customers virtual currency into GGC loans.

31. At the July 18, 2022, Risk Management meeting, Gemini’s Market Risk Department highlighted the risks to Gemini should GGC default. The Market Risk Department posed the question of whether Gemini should take the risk of stepping in to cover customer losses in the event of a GGC default. The recommendation was: “No, Gemini should not take the default risk, as Gemini is not compensated to do so.”

32. Instead, the Market Risk team made certain recommendations to the Gemini management team as to how Gemini could “[r]educ[e] reputational risk arising from [GGC] default so Gemini is not forced to take default risk for clients:

- Weaken the connection between Earn and Gemini => brand Earn as a platform to invest in yield product
- Provide products with different seniority (and different yields) to fit clients’ risk tolerance => provide protection option to clients with low risk tolerance
- Educate clients on the potential losses => properly set clients’ expectations.”

33. During a July 28, 2022, Board of Managers meeting, the Board was informed for the first time of the credit and liquidity risks associated with GGC and discussed “options for winding down the program if the Company were to decide to discontinue Gemini Earn.” Despite knowing of GGC’s concentration risk, Gemini did not discontinue the Earn Program, or even stop new loans from being made, or stop new customers from enrolling.

34. Instead, in August 2022, Gemini asked for collateral from GGC in response to the concentration risk. On August 15, 2022, GGC entered into a security agreement (the “Security Agreement”) with Gemini, pursuant to which GGC pledged shares of Grayscale Bitcoin Trust Company (“GBTC”) to secure GGC’s obligations to the Earn Customers and Gemini (the “Initial Collateral”).

35. Gemini leadership made the internal decision to end the Earn Program in early September 2022, but Gemini took no formal steps to do so until October 13, 2022, when it sent GGC a notice of Gemini's intention to terminate Earn.

36. And even after sending the notice to discontinue the Earn Program to GGC in mid-October, Gemini took no steps to limit Earn Customers loans to GGC or to prevent new customers from being onboarded into the Earn Program. Between October 13, 2022 (the date of Gemini's notice to GGC), and November 16, 2022 (the date GGC stopped redemptions and ceased taking new loans), a total of \$197,340,867.08 worth of virtual currency was loaned to GGC by Earn Customers; in fact, 2,947 new customers enrolled in the Earn Program and made loans to GGC for the first time.

37. Indeed, as late as November 10, 2022, Gemini employees were still making representations to Earn customers regarding Gemini's perceived worthiness and accreditation of GGC: "Your funds are not insured by Gemini but are held with our trusted partners. Our partners are vetted through our risk management framework and always disclosed to you, so you know which institution has borrowed your funds. Currently, Gemini is partnering with accredited third-party borrower [GGC]."

#### *Failure to Maintain Reserves*

38. Throughout most of the life of Earn, Gemini's leadership made the business decision not to maintain loss or liquidity reserves.

39. The purpose of the loss reserve, created by the holding back of a percentage of virtual currency loaned to GGC, was to ensure that there was some percentage of assets on hand to prevent a complete loss to Earn Customers in case of a GGC default or market collapse.

40. The purpose of the liquidity reserve, which was typically held in cash or other easily converted assets, was to “facilitate the return of customer funds in a timely manner,” according to the former product manager. Having a liquidity reserve, held by Gemini, would allow for a more expeditious return of customer funds.

41. In the initial Earn business plan, Gemini’s Risk Department recommended that Gemini should maintain a 30% loss reserve and a 10% liquidity reserve on behalf of Earn Customers. The business plan stated that the maintenance of a loss reserve was important because GGC was unsecured: “In order to better protect our customers, Gemini would maintain reserve against the risk of losses as the lending to this partner (Genesis) is unsecured.”

42. However, according to Gemini’s record of the reserves maintained throughout the life of the Earn Program, the Risk Department’s recommendation to implement a 30% loss reserve was not followed. Instead, although it maintained a small liquidity reserve for approximately the first six months, Gemini operated the Earn Program without any loss reserves at all until mid-August 2022, *i.e.*, roughly two months after Gemini knew of GGC’s financial difficulties.

43. On August 11, 2022, Gemini called back approximately \$138.5 million in virtual currency from GGC as a risk reserve. Two weeks later, Gemini recalled another \$142 million . Even when Gemini deployed this risk reserve after GGC suspended redemptions, it was insufficient, leaving more than 200,000 Earn customers with loans still outstanding to GGC.

## B. Other Violations and Compliance Weaknesses

### *Liquidity Provider Agreement*

44. On November 7, 2018, Gemini entered into a contract with its unregulated affiliate, Gemini Liquidity, LLC (“Gemini Liquidity”). The purpose of this contract, the

“Liquidity Provider Agreement,” was “to provide customers [a] more streamlined . . . buy-trade function on Gemini,” according to Gemini’s management.

45. Under this agreement, Gemini Liquidity provided a market for Gemini customers to buy or sell a particular virtual currency. Gemini Liquidity was the counterparty on those trades, ostensibly providing the customer with a more stable transaction that was not subject to market volatility.

46. This arrangement also allowed Gemini customers to know the price of a virtual currency upfront, rather than waiting for the transaction to be completed before knowing the actual cost, as happens when purchasing virtual currency on the open market (where a purchase offer matches a buyer with a seller).

47. Gemini Liquidity made money by charging a spread for each transaction. Gemini Liquidity also collected a transaction fee, a small portion of which went to Gemini. Gemini Liquidity used its own inventory to execute trades, delivered the virtual currency to the customer, then debited the fiat balance from the customer’s account. The transaction fees for the customer were the same whether they used Gemini Liquidity or purchased the virtual currency from a third party; however, under the Liquidity Provider Agreement almost all of the transaction fees went directly to Gemini Liquidity, rather than Gemini itself.

48. Gemini Liquidity does not do business with any company other than Gemini, and it appears that Gemini Liquidity consists primarily of the trading software through which the Gemini trades are processed.

49. There is no evidence of any due diligence regarding the Liquidity Provider Agreement conducted at Gemini prior to its execution and no evidence of discussions at Board or Management level regarding any potential conflicts arising from the relationship between the

two entities; whether the Liquidity Provider Agreement was fair to the companies involved; or the potential effect of the agreement on Gemini's compliance with the Department's capital and liquidity requirements, as set forth in Gemini's Supervisory Agreement.

50. Because Gemini Liquidity was serving as an affiliate service provider, Gemini's senior leadership should have made certain that risk management practices, commensurate with the risk and complexity of the service provided by Gemini Liquidity, were in place and reviewed and approved by the Board of Managers to ensure the safety and soundness of the Gemini platform. However, no such written policies, procedures, controls, or mechanisms were ever put in place.

51. Moreover, Gemini customers were not sufficiently apprised of the relationship between Gemini and the affiliate referenced in the Gemini User Agreement, Gemini Liquidity.

52. Furthermore, at no point prior to executing the Liquidity Provider Agreement did Gemini provide notice to or request approval from the Department regarding this material change to Gemini's business, as required by both the Virtual Currency Regulation (23 NYCRR § 200.10) and Gemini's Supervisory Agreement. The Department only learned of the Liquidity Provider Agreement through its review of Gemini's business practices during a supervisory examination of Gemini.

53. The Liquidity Provider Agreement and Gemini Liquidity's involvement in Gemini transactions hurt Gemini's financial condition. Since the Liquidity Provider Agreement was executed and Gemini Liquidity began collecting a spread on Gemini customer trades in late 2018, Gemini's capital adequacy ratings fell to a critically deficient level.

54. This hit to Gemini's financial condition can be attributed, in part, to the Liquidity Provider Agreement. Gemini had no written policies, procedures, controls, or monitoring

mechanisms in place to regulate the amount of spread Gemini Liquidity charged Gemini customers on trades. More specifically, a disproportionate amount of trading fee-related revenues earned on the Gemini Exchange were directed to Gemini Liquidity (rather than Gemini itself), thereby negatively impacting the regulated Gemini's capital base. In fact, through the end of 2022, Gemini Liquidity generated approximately \$446 million in fees (consisting of the spread and transaction fees), but of that, only \$7 million went to Gemini.

*Weaknesses in Customer Due Diligence*

55. As a limited purpose trust company authorized to conduct virtual currency business within the State of New York, Gemini is required to adhere to numerous anti-money laundering laws, rules, and regulations, including those found in 23 NYCRR § 200.15 and 3 NYCRR § 116.2.

56. Among other things, as an entity authorized to conduct virtual currency business in New York State, Gemini is required to have a robust risk-based customer due diligence or know your customer ("CDD/KYC"), program designed to ensure that the individuals and entities conducting business on Gemini's platform are not engaging in money laundering, terrorist financing, or other fraudulent or illicit behavior. This requires a detailed understanding of the nature and purpose of customer relationships to develop customer risk profiles, as well as ongoing monitoring of customer activity.

57. The U.S. Treasury Department's Financial Crimes Enforcement Network's ("FinCEN") rules state that understanding the nature and purpose of customer relationships is part of the key elements of CDD/KYC, regardless of the risk rating of the customer. However, prior to 2022, Gemini's procedures were not sufficiently tailored to address certain high-risk



customer types, particularly those customers that transacted in high volumes with high-risk assets. Gemini also failed to conduct timely due diligence reviews of high-risk accounts.

58. Gemini is also required to have policies and procedures in place designed to ensure compliance with OFAC rules and regulations, including OFAC's Sanctions Compliance Guidance for the Virtual Currency Industry. However, Gemini's BSA/AML and Sanctions Compliance Policy and related procedures did not contain sufficient controls related to IP verification and virtual private networks ("VPNs"). Although Gemini had software to identify VPNs, it did not utilize VPN blocking in certain situations, for example, when IP addresses that were not consistent with the country where the customer is domiciled.

59. Furthermore, although Gemini maintained policies and procedures in place to prevent and monitor customers who may be attempting to access its platform from IP addresses associated with sanctioned and other high-risk jurisdictions, prior to November 2023, Gemini's policies and procedures did not specifically address the situation where a VPN or other anonymizing tools may be masking IP addresses associated with a sanctioned jurisdiction.

#### *Failure to Perform Audit of Part 504 Certification Process*

60. Pursuant to Part 504 of the Superintendent's Regulations, Department licensees are required to have a system in place for monitoring transactions after their execution for potential money laundering and terrorist financing violations and suspicious activity reporting.

61. Gemini's Amended and Restated Supervisory Agreement, dated December 12, 2019, specifically required Gemini to comply with Part 504 of the Superintendent's regulations, beginning with the certification for the 2019 calendar year due on April 15, 2020.

62. Specifically, 23 NYCRR § 504.3 requires that regulated entities maintain a transaction monitoring program that, among numerous other requirements, permits the regulated entities conduct “end-to-end, pre-and post-implementation testing of the transaction monitoring program, including, as relevant, a review of governance, data mapping, transaction coding, detection scenario logic, model validation, data input and program output . . . .” 3 NYCRR § 504.3(5).

63. Gemini’s own internal audit plan requires that “Key Regulations” be included in the internal audit assessment methodology.

64. Notwithstanding the requirements of Part 504 and its own internal audit plan, and though Gemini timely filed its Part 504 certifications for the calendar years 2019, 2020, and 2021, Gemini’s Internal Audit Department did not conduct a review of Gemini’s annual compliance with the certification requirements of Part 504 for the calendar years 2019, 2020, or 2021.

#### *Weaknesses in Management Oversight*

78. Gemini has demonstrated certain weaknesses in its governance functions relating to management, operations, internal controls, and auditing.

79. For example, Gemini’s capital and liquidity policies failed to articulate responsibilities and expectations for the management of capital and liquidity and Gemini’s contingency funding plan also failed to sufficiently detail contingent sources of liquidity that would meet or exceed funding requirements under adverse conditions.

80. Likewise, Gemini’s management failed to compare budgeted performance to actual performance on a periodic basis and failed to modify projections when interim

circumstances changed. In fact, the 2022 Gemini budget was never presented to the Board of Managers for approval.

81. As a result of the lack of oversight of Gemini’s financial condition and ineffective procedures for monitoring fiduciary activity, Gemini’s earnings were critically deficient due to losses that had significant negative impact on the institution.

82. These oversight failures can be tied, in part, to the general lack of appropriate policies and procedures designed to instruct management and the Board of Managers as to their responsibilities to the Company. For example, the Managers’ Examination Committee had no clear, documented, and defined responsibilities and lacked a formal Charter; there was no write-off policy in place at Gemini, and Gemini had no formal new product approval process in place.

83. Furthermore, during the period relevant to the Department’s 2022 examination, Gemini’s Enterprise Risk Management Committee (the “ERM Committee”) did not conduct thorough reviews, modifications, or discussions of the Risk and Control matrix, nor did the ERM Committee perform a post-mortem review of material operational risk events. The ERM Committee failed to develop a formalized risk appetite statement and threshold set up for the operational losses that would trigger the risk team to independently report such incidents to the Board of Managers.

84. Both the ERM Committee and the Finance Team also failed to sufficiently report the operational and financial risks facing Gemini to the Board of Managers Compliance & Risk Management Committee, further diminishing management’s ability to properly and effectively oversee operations at Gemini.

85. Additionally, for a significant portion of 2022, Gemini did not reconcile blockchain balances against ledger balances, as required by Department Guidance and Gemini's Supervisory Agreement.

86. Finally, between 2021 and 2022, Gemini experienced significant staff turnover, including several senior officers. The retention of qualified employees is essential in discharging fiduciary obligations.

### III. Violations of Law and Regulations

87. Gemini conducted its business in an unsafe and unsound manner, in violation of New York Banking Law § 44.

88. Gemini made false or misleading advertising statements, in violation of 23 NYCRR § 200.18.

89. Gemini failed to notify the Department of the Liquidity Provider Agreement with Gemini Liquidity, LLC, in violation of 23 NYCRR § 200.10.

90. Gemini failed to maintain an effective customer due diligence program, in violation of 3 NYCRR § 200.15(c)(1).

NOW THEREFORE, to resolve this matter without further proceedings, the Department and the Company stipulate and agree to the following terms and conditions:

#### **SETTLEMENT PROVISIONS**

##### Monetary Penalty

91. No later than ten (10) days after the Effective Date (as defined below) of this Consent Order, Gemini shall pay a total civil monetary penalty to the Department in the amount of thirty-seven million dollars and 00/100 Cents (\$37,000,000). The payment shall be in the form of a wire transfer in accordance with instructions provided by the Department.

92. The Company shall not claim, assert, or apply for a tax deduction or tax credit with regard to any U.S. federal, state, or local tax, directly or indirectly, for any portion of the civil monetary penalty paid pursuant to this Consent Order.

93. The Company shall neither seek nor accept, directly or indirectly, reimbursement or indemnification with respect to payment of the penalty amount, including but not limited to, payment made pursuant to any insurance policy.

94. In determining the appropriate amount of this penalty, the Department has considered the factors set forth in New York Banking Law § 44(5), among other considerations. The Department acknowledges Gemini's commendable cooperation throughout this investigation. The Department also recognizes and credits Gemini's engagement with the Department, its ongoing efforts to remediate the shortcomings identified in this Consent Order and during the Department's most recent examination, as well as Gemini's express commitment to ensuring that Earn Customers obtain full restoration of the virtual currencies on a coin-for-coin basis (or the cash equivalent).

#### Contribution to Earn Customers

95. Gemini commits to the full restoration of the final amounts and types of virtual currencies owed to Earn Customers, as stipulated and agreed between Gemini and GGC and ordered by the Bankruptcy Court (the "Gemini Earn Virtual Currencies") within one (1) year of the effective date of the GGC Bankruptcy plan, unless otherwise agreed to by the Department and upon a showing by Gemini of inability to comply. Such virtual currency will be restored to the Earn Customers on a coin-for-coin basis (or the cash equivalent based on the value as determined by the Bankruptcy Court, but in no case less than the value on the petition date of the GGC Bankruptcy) through the contribution of Gemini assets and the deployment of collateral

secured by Gemini for the benefit of the Earn Customers, in addition to recoveries from GGC and related parties, in connection with the GGC Bankruptcy “plan of reorganization” or other resolution approved by the Bankruptcy Court.

96. In furtherance of the above, Gemini agrees that it will contribute, within six (6) months of the effective date of the GGC Bankruptcy plan, no less than forty million dollars and 0/100 cents (\$40,000,000.00) to the Earn Customers’ recovery through the GGC Bankruptcy.

97. Additionally, to the extent permitted by the Bankruptcy Court, Gemini commits to using best efforts to maximize the value of the Initial Collateral, the entirety of which Gemini shall use for the full restoration of Gemini Earn Virtual Currencies on a coin-for-coin basis (or the cash equivalent based on the value as determined by the Bankruptcy Court, but in no case less than the value on the petition date of the GGC Bankruptcy).

98. Other than requiring Gemini to make the contributions and commitments set forth in paragraphs 95-97, above, nothing in this Consent Order is intended to affect the GGC Bankruptcy. Gemini agrees to abide by all final orders of the Bankruptcy Court.

99. Gemini will provide monthly written updates to the Department detailing the status of the GGC Bankruptcy, including the status of any claims by Earn Customers.

100. After the GGC Bankruptcy has concluded, and until such time as all the Gemini Earn Virtual Currencies have been delivered to Gemini Earn Customers, Gemini will provide the Department with monthly written updates detailing the status of all Earn Customer claims. Such updates shall include, without limitation, the amount returned to Earn Customer to date.

101. In addition to applicable requirements under the New York Banking Law, Gemini will not issue any dividends or distribute any capital to any entity or individual, including but not limited to, its parent, affiliate, or subsidiary companies or their shareholders, or make any

payments to its parent, affiliate, or subsidiary companies or other companies owned or controlled by their shareholders without the express written approval of the Department, until all Earn Customers obtain a full restoration of the Gemini Earn Virtual Currencies on a coin-for-coin basis (or the cash equivalent based on the value as determined by the Bankruptcy Court, but in no case less than the value on the petition date of the GGC Bankruptcy), unless otherwise agreed to in writing by the Department. Furthermore, in addition to the payment requirement(s) in paragraph 96, until all Earn Customers obtain a full restoration of the Gemini Earn Virtual Currencies on a coin-for-coin basis (or the cash equivalent based on the value as determined by the Bankruptcy Court, but in no case less than the value on the petition date of the GGC Bankruptcy), unless otherwise agreed to in writing by the Department, 100% of the spread income and/or convenience fee from all customer trades executed by Gemini Liquidity will be paid to and retained by Gemini.

#### Management Consultant

102. At the direction of the Department, Gemini engaged a third-party management consultant, that was approved by the Department, to conduct an assessment of and report upon Gemini's governance and management effectiveness (the "Governance and Management Assessment").

103. The Governance and Management Assessment consisted of an evaluation of the Board of Managers and management governance structures, roles, and responsibilities to determine whether they are effectively governing and managing Gemini.

104. Gemini provided a copy of the consultant's final report to the Department.

105. Within thirty (30) days of the Effective Date of this Consent Order, Gemini shall submit to the Department for its approval an action plan detailing how Gemini plans to implement the recommendations contained in the Governance and Management Assessment.

Resolution of Outstanding Examination Issues

106. Gemini shall continue to strengthen its controls, policies, and procedures to ensure robust compliance programs in connection with its virtual currency business activity as required by the New York Banking Law, the New York Financial Services Law, the Virtual Currency Regulation, and all other applicable regulations and Department guidance.

107. Gemini shall continue to cooperate with the Department's Supervisory team to remediate all violations identified in this Consent Order, as well as in the 2022 examination, including but not limited to, taking all actions recommended by the Department regarding how Gemini offers liquidity services to its customers, including but not limited to, the extent to which, and conditions under which, Gemini Liquidity, LLC, may continue to play a role in the delivery of those services.

Full and Complete Cooperation

108. The Company commits and agrees that it will fully cooperate with the Department regarding all terms of this Consent Order.

Further Action by the Department

109. No further action will be taken by the Department against Gemini or its successors for the conduct set forth in this Consent Order, or in connection with the remediation set forth in this Consent Order, provided that the Company fully complies with the terms of the Consent Order.



110. Notwithstanding the foregoing, if Earn Customers have not received all of the Gemini Earn Virtual Currencies on a coin-for-coin basis (or the cash equivalent based on the value as determined by the Bankruptcy Court, but in no case less than the value on the petition date of the GGC Bankruptcy) within one (1) year of the effective date of the GGC Bankruptcy plan of reorganization, unless otherwise agreed to in writing by the Department and upon a showing by Gemini of an inability to comply, the Department may, in its sole regulatory discretion, reopen this matter and require Gemini to make further restitution to ensure that Earn Customers obtain a full restoration of the Gemini Earn Virtual Currencies on a coin-for-coin basis (or the cash equivalent based on the value as determined by the Bankruptcy Court, but in no case less than the value on the petition date of the GGC Bankruptcy), including in the event that the Initial Collateral is not awarded to Gemini on behalf of Earn Customers.

111. Should the Department reopen this matter pursuant to the terms of Paragraph 110, and (a) Gemini can show that fully restoring Gemini Earn Virtual Currencies (or cash equivalent based on the value as determined by the Bankruptcy Court, but in no case less than the value on the petition date of the GGC Bankruptcy) would substantially impact Gemini's safety and soundness, as determined in the Department's sole regulatory discretion, and (b) each Earn Customer has received at least 90% of the Gemini Earn Virtual Currencies (or cash equivalent based on the value as determined by the Bankruptcy Court, but in no case less than the value on the petition date of the GGC Bankruptcy), the Department may give Gemini additional time to provide a full restoration of the Gemini Earn Virtual Currencies on a coin-for-coin basis (or the cash equivalent based on the value as determined by the Bankruptcy Court, but in no case less than the value on the petition date of the GGC Bankruptcy), as determined by the Department in

its sole regulatory discretion. In the event that the Department pursues further relief as provided for in paragraphs 110 and 111, Gemini retains its rights and defenses to oppose such relief.

112. Notwithstanding any other provision in this Consent Order, the Department may undertake additional action against the Company for transactions or conduct that were not disclosed in the written materials submitted to the Department in connection with this matter.

#### Waiver of Rights

113. The Company submits to the authority of the Superintendent to effectuate this Consent Order.

114. The parties understand and agree that no provision of this Consent Order is subject to review in any court, tribunal, or agency outside of the Department.

#### Parties Bound by the Consent Order

115. This Consent Order is binding on the Department and the Company, as well as any successors and assigns. This Consent Order does not bind any federal or other state agency or any law enforcement authority.

#### Breach of Consent Order

116. In the event that the Department believes the Company to be in material breach of the Consent Order, the Department will provide written notice to the Company, and the Company must, within ten (10) days of receiving such notice, or on a later date if so determined in the Department's sole discretion, appear before the Department to demonstrate that no material breach has occurred or, to the extent pertinent, that the breach is not material or has been cured.

117. The Company understands and agrees that its failure to make the required showing within the designated time period shall be presumptive evidence of the Company's

breach. Upon a finding that a breach of this Consent Order has occurred, the Department has all the remedies available to it under the New York Banking Law and New York Financial Services Law, and any other applicable laws, and may use any evidence available to the Department in any ensuing hearings, notices, or orders.

Notices

118. All notices or communications regarding this Consent Order shall be sent to:

For the Department:

Ndidi C. Obicheta  
Senior Assistant Deputy Superintendent  
Consumer Protection and Financial Enforcement  
New York State Department of Financial Services  
One State Street  
New York, New York 10004

Justin D. Parnes  
Assistant Deputy Superintendent  
Consumer Protection and Financial Enforcement  
New York State Department of Financial Services  
One State Street  
New York, New York 10004

For Gemini Trust Company, LLC:

William Costello  
General Counsel  
Gemini Trust Company, LLC  
315 Park Avenue South, 16<sup>th</sup> Floor  
New York, New York 10010

Jack Baughman  
Baughman Kroup Bosse  
One Liberty Plaza, Floor 46  
New York, New York 1006

Miscellaneous

119. This Consent Order and any dispute thereunder shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.

120. This Consent Order may not be altered, modified, or changed unless in writing and signed by the parties hereto.

121. This Consent Order constitutes the entire agreement between the Department and the Company and supersedes any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of this Consent Order.

122. Each provision of this Consent Order shall remain effective and enforceable against the Company, its successors, and assigns, including without limitation any successors or assigns that may be created through reorganization, until stayed, modified, suspended, or terminated by the Department, even in the event that the Company's charter is dissolved or transferred to another jurisdiction.

123. In the event that one or more provisions contained in this Consent Order shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Consent Order.

124. No promise, assurance, representation, or understanding other than those contained in this Consent Order has been made to induce any party to agree to the provisions of this Consent Order.

125. Nothing in this Consent Order shall be construed to prevent any consumer or any other third party from pursuing any right or remedy at law. Nothing in this Consent Order shall prevent Gemini from presenting any legal or factual claim or defense in any proceeding against any third party.

126. This Consent Order may be executed in one or more counterparts and shall become effective when such counterparts have been signed by each of the parties hereto (the "Effective Date").

IN WITNESS WHEREOF, the parties have caused this Consent Order to be signed on the dates set forth below.

**NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES**

By: /s/ Madeline W. Murphy  
MADELINE W. MURPHY  
Assistant Deputy Superintendent  
Consumer Protection and Financial  
Enforcement  
February 25, 2024

By: /s/ John A. Nicosia  
JOHN A. NICOSIA  
Senior Assistant Deputy Superintendent  
Consumer Protection and Financial  
Enforcement  
February 25, 2024

By: /s/ Alison L. Passer  
ALISON L. PASSER  
Deputy Director of Enforcement  
Consumer Protection and Financial  
Enforcement  
February 25, 2024

By: /s/ Christopher B. Mulvihill  
CHRISTOPHER B. MULVIHILL  
Deputy Superintendent  
Consumer Protection and Financial  
Enforcement  
February 25, 2024

By: /s/ Samantha R. Darche  
SAMANTHA R. DARCHE  
Acting Executive Deputy Superintendent for  
Consumer Protection and Financial  
Enforcement  
February 25, 2024

**THE FOREGOING IS HEREBY APPROVED. IT IS SO ORDERED.**

/s/ Adrienne A. Harris  
ADRIENNE A. HARRIS  
Superintendent of Financial Services  
February 28, 2024

**GEMINI TRUST COMPANY, LLC**

By: /s/ William Costello  
WILLIAM COSTELLO  
General Counsel  
February 24, 2024

By: /s/ Eric Dinallo  
ERIC DINALLO  
Counsel for Gemini Trust Company, LLC  
February 24, 2024

By: /s/ Matthew Levine  
MATTHEW LEVINE  
Counsel for Gemini Trust Company, LLC  
February 24, 2024

By: /s/ Jack Baughman  
JACK BAUGHMAN  
Counsel for Gemini Trust Company, LLC  
February 24, 2024