IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: FTX Trading Ltd., *et al.*,[1] Debtors.	Chapter 11 Case No. 22-11068 (JTD) (Jointly Administered) **Hearing date: January 20, 2023 at 10:00a.m.** **Objection Deadline: January 4, 2023 at 4:00p.m.**

AMENDED OBJECTION TO DEBTORS'APPLICATION FOR AN ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF SULLIVAN & CROMWELL LLP AS COUNSEL TO THE DEBTORS AND DEBTORS-IN-POSSESSION *NUNC PRO TUNC* TO THE PETITION DATE

This proceeding arises from one of the most disastrous corporate frauds in history. Sam Bankman-Fried and his enablers used the FTX Group[2] entities to run a massive, years-long scheme to misappropriate billions of dollars worth of cryptocurrency and cash. Two of the FTX Group's leaders have now pleaded guilty to a litany of federal crimes, and much about the FTX Group's operation has been revealed in pleadings before this Court, in congressional testimony, and in the media.

[1] The last four digits of FTX Trading Ltd.'s and Alameda Research LLC's tax identification numbers are 3288 and 4063 respectively. Due to the large number of debtor entities in these Chapter 11 Cases, a complete list of the debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at https://cases.ra.kroll.com/FTX.

[2] This Objection refers to the more than 130 FTX-related entities that are debtors and debtors-in-possession in this proceeding as the "FTX Group," consistent with John J. Ray III's terminology in his first-day declaration.

Sullivan & Cromwell was one of the FTX Group's "primary external law firms" before the FTX Group collapsed.[3] To date, the FTX Group has paid the firm more than $20.5 million in fees and retainers. Now, in the most flagrant attempt by a fox to guard a henhouse in recent memory, Sullivan & Cromwell has applied to be appointed the FTX Group's bankruptcy counsel with duties that would include "investigating all potential estate causes of action."[4] But it has revealed almost nothing about its prepetition work for Sam Bankman-Fried's fraudulent enterprise—and failed to disclose or elided glaring conflicts of interest.

Sullivan & Cromwell is not only an inappropriate candidate for appointment as the FTX Group's bankruptcy counsel—it is a target for investigation with its own potential liability. Its appointment as counsel would endanger the estate and create a rigged game, undermining creditors' and the public's faith in the bankruptcy process. The Court should therefore reject Sullivan & Cromwell's application and disqualify it from appointment as Debtors' counsel.

I. Background

1. The FTX Group entities were at the center of a massive fraud, the outlines of which are now well documented. Sam Bankman-Fried and his enablers created two cryptocurrency exchanges—FTX and FTX US—and went to great lengths to convince the world they were trustworthy. But all along, Bankman-Fried and his cronies were "misappropriat[ing] customer funds for their own use and

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[3] Ex. 1, Steven Ehrlich, *Exclusive Transcript: The Full Testimony Bankman-Fried Planned To Give To Congress*, Forbes (December 15, 2022) (henceforth "SBF Planned Testimony"), p. 8.

[4] *Debtors' Application for an Order Authorizing the Retention and Employment of Sullivan & Cromwell LLP as Counsel to the Debtors and Debtors-in-Possession Nunc Pro Tunc to the Petition Date* (henceforth, the "Application"), Dkt. 270 (filed Dec. 21, 2022), ¶ 10.

benefit," including for "trad[ing] on other digital asset exchanges and to fund a variety of high-risk digital asset industry investments."[5] It was, as John J. Ray III put it in congressional testimony, just "old fashioned embezzlement … taking money from customers and using it for your own purpose."[6]

2. Contrary to the impression it now seeks to create, Sullivan & Cromwell's prepetition connections to the FTX Group are legion. Sam Bankman-Fried himself revealed that Sullivan & Cromwell was "one of the primary external law firms that represented FTX US as well as FTX International" before the FTX Group's collapse.[7] In addition, two former Sullivan & Cromwell lawyers sat at the top of the FTX Group's internal legal structure. FTX US's General Counsel, Mr. Ryne Miller, is a former Sullivan & Cromwell partner.[8] And FTX Ventures' General Counsel, Mr. Tim Wilson, is a former Sullivan & Cromwell associate.[9]

3. Sullivan & Cromwell was compensated handsomely for its prepetition FTX-related legal work. The FTX Group paid the firm approximately $8.5 million in prepetition legal fees, including approximately $3.4 million in the 90 days before

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[5] Ex. 2, Complaint, *Commodities Futures Trading Commission v. Bankman-Fried*, Case No. 22-cv-10503 (S.D.N.Y. 2022), at ¶¶ 7, 9; *see also United States v. Bankman-Fried*, Case No. 22-cr-00673 (S.D.N.Y. 2022), Dkt. 15, Order ("Defendants Ellison and Wang waived indictment … and pleaded guilty to each of the counts that were charged.").

[6] John J. Ray III, Live Testimony, *Investigating the Collapse of FTX, Part I, Before the U.S. House Committee on Financial Services*, 117th Cong., Dec. 13, 2022, https://www.youtube.com/live/rWAnrigAO3I?feature=share), at 1:36:24.

[7] Ex. 1, SBF Planned Testimony, p. 8.

[8] Ex. 3, Ryne Miller LinkedIn, at https://www.linkedin.com/in/ryne-miller-78a6b84/ (accessed Jan. 4, 2023), pp. 1-2.

[9] Ex. 4, Tim Wilson LinkedIn, at https://www.linkedin.com/in/timwilson-newyork-shanghai/ (accessed Jan. 9, 2023), p. 1.

the Petition Date, and a $12 million prepetition retainer.[10] To date, then, Sullivan & Cromwell has received cash transfers of at least $20.5 million from the FTX Group from July 2021 to the present—with $15.4 million paid during the 90-day prepetition preference period.[11]

4. The FTX Group "went on a spending binge in late 2021 through 2022, during which approximately $5 billion was spent buying a myriad of businesses and investments, many of which may be worth only a fraction of what was paid for them."[12] The Securities and Exchange Commission has alleged that at least $200 million of this $5 billion investment spree was funnelled through "FTX's affiliated investment vehicle, FTX Ventures, Ltd." and funded by "FTX customer funds that had been diverted to Alameda."[13] Publicly available information shows that these

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[10] Application, Ex. C, *Declaration of Andrew Dietderich* (henceforth, "Dietderich Declaration"), ¶¶ 5, 16. November 11, 2022 is the Petition Date for all Debtors except Debtor West Realm Shires, Inc., for which the Petition Date is November 14, 2022.

[11] Sullivan & Cromwell's Application notes that the $12 million prepetition retainer it received was used both to pay prepetition fees incurred and as a security for future bankruptcy-related services, but is unclear as to how much of the retainer was dedicated to each category. Accordingly, this Objection treats the preference payments and retainer outlined in Paragraph 5 of the Dietderich Declaration as separate, cumulative payments. The potential difference in payment figures has no bearing on the substance of this Objection for the reasons set out below.

[12] Ex. 5, John J. Ray III, Prepared Remarks, *Investigating the Collapse of FTX, Part I, Before the U.S. House Committee on Financial Services*, 117th Cong., Dec. 13, 2022, p. 6.

[13] Ex. 6, Complaint, *Securities & Exchange Commission v. Bankman-Fried*, Case No. 22-cv-10501 (S.D.N.Y. 2022), ¶ 74 ("[T]wo $100 million investments made by FTX's affiliated investment vehicle, FTX Ventures Ltd., were funded with FTX customer funds that had been diverted to Alameda.").

depositor-funded investments occurred during the period that Sullivan & Cromwell represented the FTX Group.[14]

5. In its Application, Sullivan & Cromwell set out precisely three sentences describing the $8.5 million of prepetition legal work it did for the FTX Group, as follows:[15]

> A. Prior Work for the Debtors
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> 16. S&C was engaged by the Debtors for a limited number of matters prior to the Petition Date, chiefly with respect to acquisition transactions and specific regulatory inquiries relating to certain U.S. business lines. The total amount of fees and expenses paid to S&C for all of these matters was $8,564,487.50, over the period from July 2021 to the Petition Date. S&C was not primary external counsel to any Debtor prior to the Petition Date.

6. Sullivan & Cromwell's Application did not disclose the firm's connection to FTX US General Counsel Ryne Miller or FTX Ventures General

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[14] *See id.* (describing "two $100 million investments made by FTX's affiliated investment vehicle, FTX Ventures, Ltd."); Ex. 7, Kadhim Shubber & Bryce Elder, *Revealed: the Alameda Venture Capital Portfolio*, Financial Times (December 16, 2022), *passim* (revealing leaked document containing FTX Group venture investment portfolio, showing only two entries in which FTX Ventures, Ltd. made approximately $100 million investments, in companies called "Dave, Inc." and "Mysten Labs"); Ex. 8, Brandy Betz, *FTX Invests $100m in Banking App Dave, Forms Partnership for Crypto Payments*, CoinDesk (March 21, 2022), p. 1 (noting that, in March 2022, "Dave, a publicly traded banking app, has made a strategic partnership with FTX US … [t]he company also received a $100 million investment from FTX Ventures, the exchange's $2 billion venture capital fund"); Ex. 9, Vicky Ge Huang, *Crypto Startup Mysten Labs Raises $300 Million in FTX-Led Round*, Wall Street Journal (Sep. 8, 2022), at pp. 1-2 (noting that Mysten Labs "raised $300 million in a funding round" in September 2022 and "FTX Ventures led the round").

[15] Dietderich Declaration, ¶ 16.

Counsel Tim Wilson. Nor did Sullivan & Cromwell's Application describe the work it did for the "Alameda Silo" entities, which were prepetition Sullivan & Cromwell clients[16] and are known to have been at the heart of the FTX Group fraud.[17]

7. Much of the available information about Sullivan & Cromwell's involvement with the FTX Group comes from Sam Bankman-Fried himself. On December 13, 2022, John J. Ray III testified about the FTX debacle before the House Committee on Financial Services. Sam Bankman-Fried was scheduled to testify that day too—but was taken into custody before he had the chance. The transcript of his planned testimony was leaked to and published by Forbes.

8. In this leaked testimony, Bankman-Fried described Sullivan & Cromwell's role in the days before the FTX Group's bankruptcy filing. "Starting on November 8th," he wrote, "I was put under extreme pressure to file for Chapter 11."[18] "Most of that pressure," according to Bankman-Fried, "came from Ryne Miller, the General Counsel of FTX US and a former partner of Sullivan & Cromwell, and Sullivan [&] Cromwell itself."[19] Bankman-Fried claimed to "have 19 pages of screenshots of Sullivan & Cromwell, Mr. Miller, and others I believe were influenced by them, all sent over a two-day period, pressuring me to file for Chapter

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[16] *See* Dietderich Declaration, ¶ 8, Schedule 3 (noting "transactional work arranged for and paid by Debtor Alameda Research Ltd.," without more).

[17] *See, e.g.*, Ex. 2, Complaint, *Commodities Futures Trading Commission v. Bankman-Fried*, Case No. 22-cv-10503, at ¶ 7 (S.D.N.Y. 2022) ("Throughout the Relevant Period … Alameda used FTX funds, including customer funds, to trade on other digital asset exchanges and to fund a variety of high-risk digital asset industry investments.").

[18] Ex. 1, SBF Planned Testimony, p. 8.

[19] *Id*.

11."[20] He described these messages as "rang[ing] from adamant to mentally unbalanced."[21] He claimed that Sullivan & Cromwell directed similar messages to "many of my friends, coworkers, and family members, pressuring them to pressure me to file, some of whom were emotionally damaged by the pressure" and "came to [him] crying."[22]

9. Next, Bankman-Fried wrote, "Sullivan & Cromwell chose John Ray to run the Chapter 11 team," while at the same time assuring Bankman-Fried that he would "get to choose the board chair."[23] Bankman-Fried finally relented on November 10th, signing documents nominating Ray as the FTX Group's new CEO.[24] Almost immediately, Bankman-Fried claims, he expressed his desire to rescind the document.[25] He was purportedly told it was "too late" and that the bankruptcy filing would go ahead.[26] Roughly six hours later, it did.

10. Bankman-Fried further claims that Mr. Ray and Sullivan & Cromwell unnecessarily included FTX US entities in the bankruptcy when those entities were purportedly "solvent."[27] Bankman-Fried claimed: "I believe that US customers were not directly harmed by the events in early November, and that *all* US customers of

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[20] *Id*.

[21] *Id*.

[22] *Id*.

[23] *Id*.

[24] *Id*.

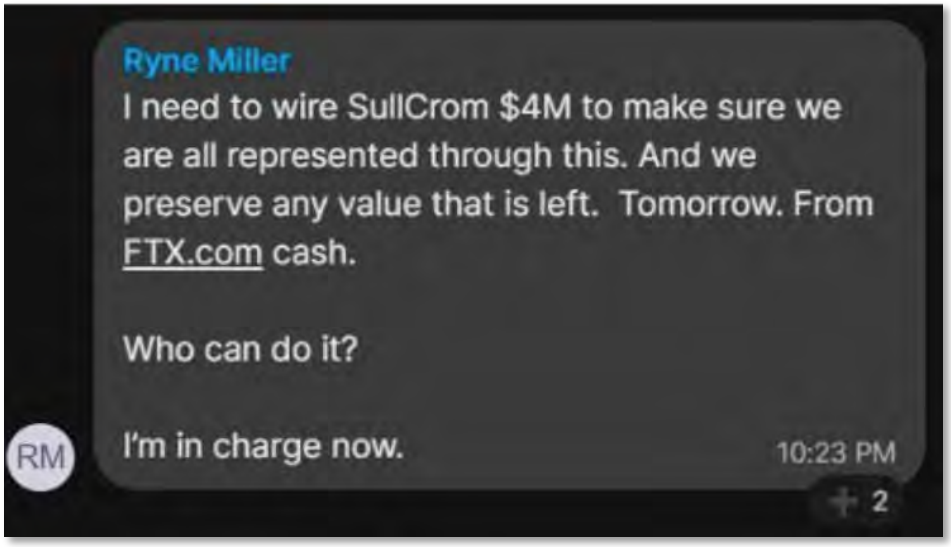
[25] *Id*.

[26] *Id*.

[27] *Id*. at p. 9.

FTX—and in fact *all* customers of FTX US, wherever they reside—could and should be made whole immediately."[28]

11. Bankman-Fried closed his description of Sullivan & Cromwell's role with a screenshot of a message Ryne Miller purportedly sent to "much of FTX's leadership" on November 8, 2022—two days before Bankman-Fried nominated Mr. Ray as replacement CEO.[29] That alleged screenshot is reproduced here:



12. In sum, then, the known facts and public allegations paint the following picture. The FTX Group engaged Sullivan & Cromwell for advice on sundry "acquisition transactions" and "regulatory inquiries" in 2021 and 2022.[30] This generated $8.5 million in prepetition legal fees for the firm.[31] During this period, the FTX Group was engaged in a depositor-funded "spending binge," in which it bought "a myriad of businesses and investments, many of which may be worth only a

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[28] *Id*. at p. 11.

[29] *Id*. at p. 9.

[30] Dietderich Declaration, ¶ 16.

[31] *Id*.

fraction of what was paid for them."[32] At the same time, two former Sullivan & Cromwell lawyers were installed as General Counsel of FTX US and FTX Ventures.[33] Later, as the FTX Group collapsed, Ryne Miller and Sullivan & Cromwell are purported to have applied "extreme pressure" to put all of the FTX Group entities into bankruptcy with Sullivan & Cromwell at the helm.[34] Miller allegedly purported to have usurped control of the FTX Group from Bankman-Fried by November 8th, telling the FTX Group's leadership: "I'm in charge now."[35] Miller then demanded and secured millions of "FTX.com cash," which he appears to have used to pay his former firm's prepetition retainer.[36] Sullivan & Cromwell has been the FTX Group's counsel in this proceeding ever since.

II. Objector's Standing & Counsel Information

13. The objector here is Warren Winter, a United States citizen residing abroad. Mr. Winter is a customer and creditor of the FTX Group. He had several hundred thousand dollars of assets in his FTX account when the exchange collapsed, which he has since been unable to access.

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[32] Ex. 5, John J. Ray III, Prepared Remarks, *Investigating the Collapse of FTX, Part I, Before the U.S. House Committee on Financial Services*, 117th Cong., Dec. 13, 2022, p. 6.

[33] Ex. 3, Ryne Miller LinkedIn, pp. 1-2; Ex. 4, Tim Wilson LinkedIn, p. 1.

[34] Ex. 1, SBF Planned Testimony, p. 8.

[35] *Id.* at p. 10.

[36] *Id.*; *see* Dietderich Declaration, ¶ 5 ("A retainer in the amount of $12,000,000 was funded by Debtor West Realm Shires Inc. on behalf of the Debtors, prior to its Petition Date for S&C to pay for prepetition fees and expenses due in the ordinary course and not previously billed and to hold the remainder as security for payment of its fees and expenses.").

14. As a courtesy, the Court is hereby notified that Mr. Winter's counsel, Marshal Hoda of The Hoda Law Firm, PLLC, also represents a putative class of FTX Group depositors in *Pierce v. Bankman-Fried*, Case No. 22-cv-07444 (N.D. Cal.).

III. Applicable Law

15. Subject to court approval, a debtor may employ one or more attorneys to represent it in fulfilling its duties in the bankruptcy process.[37] The attorneys selected cannot "hold or represent an interest adverse to the estate," and must be "disinterested persons."[38] As relevant here, a "disinterested person" is one who "does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason."[39]

16. In determining whether proposed counsel is disinterested, courts focus on "the concerns of divided loyalties and affected judgments."[40] Both "actual conflicts" and "potential conflicts" can be disqualifying.[41] "Attorneys with actual conflicts face *per se* disqualification," while disqualification for potential conflicts is "at the court's discretion."[42] In either case, the ultimate issue is whether proposed

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[37] 11 U.S.C. § 327(a).

[38] *Id*.

[39] 11 U.S.C. § 101(14)(C).

[40] *In re Granite Partners, L.P*., 219 B.R. 22, 33 (Bankr. S.D.N.Y. 1998).

[41] *In re Boy Scouts of America*, 35 F.4th 149, 157 (3d Cir. 2022). The original version of this Objection suggested that proposed counsel could be disqualified based on the appearance of conflict alone. While that is true in some circuits, it is not the case in the Third Circuit. This Objection has been revised accordingly. The substantive grounds for Sullivan & Cromwell's disqualification are unaffected; each turns on actual conflicts, potential conflicts, or failures to disclose.

[42] *Id*. at 158.

counsel has "a competing economic interest tending to diminish estate values or to create a potential or actual dispute in which the estate is a rival claimant."[43] Put differently, courts ask whether "it is plausible that the representation of another interest may cause the debtor's attorneys to act any differently than they would without that other representation."[44]

17. Counsel for a Chapter 11 debtor owes a fiduciary duty of loyalty and care to its client—*i.e.*, the debtor or debtor-in-possession—and not to the debtor's principals.[45] The disinterestedness requirement "serve[s] the important policy of ensuring that all professionals appointed pursuant to Section 327(a) tender undivided loyalty and provide untainted advice and assistance in furtherance of the[se] fiduciary responsibilities."[46] And because the text of Section 327(a) unambiguously forbids the retention of conflicted counsel, no amount of "practical benefit[]" can justify a hire who does not meet the "disinterestedness" requirement.[47]

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[43] *Id*. at 158-59 (quoting *In re First Jersey Sec., Inc.*, 180 F.3d 504, 509 (3d Cir. 1999)).

[44] *In re John Cunzolo Assoc's, Inc.*, 423 B.R. 735 (Bankr. W.D. Penn. 2010) (quoting *In re Leslie Fay Companies, Inc.*, 175 B.R. 525, 533 (Bankr. S.D.N.Y. 1994)).

[45] *See, e.g.*, *In re Rancort*, 207 B.R. 338, 360 (Bankr. D.N.H. 1997) ("When representing the debtor-in-possession, [an] attorney has a duty to look to the interests of the estate and not to the interests of its principals, shareholders, officers or directors. This purpose can only be realized when all who labor within the confines of the Bankruptcy Code would never countenance fraudulent behavior and greedy gain, all attempts to delay and deny, all motives dictated by hidden agenda.").

[46] *In re Crivello*, 134 F.3d 831, 836 (7th Cir. 1998) (quoting *Rome v. Braunstein*, 19 F.3d 54, 58 (1st Cir. 1994)).

[47] *U.S. Trustee v. Price Waterhouse*, 19 F.3d 138, 141 (3d Cir. 1994) (Alito, J.) (rejecting argument that conflicted professional should be retained under Section

18. In addition to the general conflicts-of-interest inquiry, courts must determine whether proposed counsel may have received preferential transfers for prepetition legal work. "Preferential transfer[s] to debtors' counsel constitute an actual conflict of interest between counsel and the debtor, and [] require the firm's disqualification."[48] It is easy to understand why. As one court put it, a law firm with an avoidable preference will be "unlikely to sue [it]self."[49] A judicial determination whether proposed counsel has received a preference must be made at the time of appointment.[50] "[W]hen there has been a facially plausible claim of a substantial preference, the district court and/or the bankruptcy court cannot avoid the clear mandate of the statute by the mere expedient of approving retention conditional on a later determination."[51]

19. The Bankruptcy Code provides a procedural mechanism to enforce these requirements. Under Federal Rule of Bankruptcy Procedure 2014, any professional applying for appointment under Section 327(a) must set forth "all of [its] connections with the debtor … [and the debtor's] attorneys" in its application and accompanying verified statement. "Boilerplate" disclosures are impermissible, and courts will not "rummage through files or conduct independent factfinding investigations" to determine if the professional is qualified.[52] "The professional must

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327(a) due to purported "practical benefits" arising from previous engagement by debtors and resulting "expertise regarding their financial affairs and needs").

[48] *In re First Jersey Sec., Inc*., 180 F.3d 504, 509 (3d Cir. 1999).

[49] *In re Triple Start Welding, Inc.*, 324 B.R. 778, 794 (9th Cir. 2005) (citing *In re Pillowtex*, 304 F.3d 246, 255 (3d Cir. 2002)).

[50] *In re Pillowtex, Inc*., 304 F.3d at 255.

[51] *Id*.

[52] *Granite Partners*, 219 B.R. at 35.

disclose all contacts, not pick and choose which to disclose and which to ignore or leave the court to search the record for such relationships."[53] Professionals fail to meet these requirements at their own risk, as courts "punish a willful failure to disclose connection under Federal Rule of Bankruptcy Procedure 2014 as severely as an attempt to put forth a fraud on the court."[54]

IV. Argument

20. Sullivan & Cromwell's conflicts are obvious and extensive. Its failures to meet its disclosure requirements are egregious. The Court should reject the firm's Application to serve as the FTX Group's bankruptcy counsel for at least the following reasons.

A. Sullivan & Cromwell has an actual, undisclosed conflict arising from its relationships with FTX Group insiders Ryne Miller and Tim Wilson.

21. Two former Sullivan & Cromwell lawyers are General Counsel to FTX Group entities. Sullivan & Cromwell did not disclose these connections in its Application and therefore violated Federal Rule of Bankruptcy Procedure 2014, which requires a statement "all of [the firm's] connections with the debtor … [and the debtor's] attorneys." What's more, disclosed or not, these connections create a conflict of interest and are disaqualifying.

22. FTX US General Counsel Ryne Miller is a former partner at Sullivan & Cromwell.[55] As described above, Miller is alleged to have played a key role—

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[53] *In re Universal Bldg. Prod.*, 486 B.R. 650, 663 (Bankr. D. Del. 2010) (citing *In re BH&P, Inc.*, 949 F.2d 1300, 1317-18 (3d Cir. 1991)).

[54] *In re ACandS, Inc.*, 297 B.R. 395, 405 (Bankr. D. Del. 2003) (quoting *Crivello*, 134 F.3d at 836-37) (emphasis added).

[55] Ex. 3, Ryne Miller LinkedIn, pp. 1-2.

perhaps *the* key role—in wresting control of the FTX Group from Sam Bankman-Fried and directing this extremely valuable bankruptcy matter to his former firm.[56] According to Bankman-Fried, and supported by what appears to be genuine evidence, Miller proclaimed to have usurped control of the FTX Group by November 8th.[57] He immediately secured a $12 million retainer for his former firm and allegedly mounted an "extreme pressure" campaign to put the FTX Group into bankruptcy with Sullivan & Cromwell and its hand-picked CEO at the helm.[58]

23. FTX Ventures General Counsel Tim Wilson is another former Sullivan & Cromwell lawyer.[59] The Securities and Exchange Commission has alleged that FTX Ventures made at least $200 million in venture-capital investments using customer funds that had been misappropriated through Alameda Research.[60] Financial records published by the Financial Times indicate that these funds were directed to a FinTech company called Dave and a Web3 company called Mysten

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[56] Ex. 1, SBF Planned Testimony, pp. 8-10.

[57] *Id*.

[58] *Id*.

[59] Ex. 4, Tim Wilson LinkedIn, p. 1.

[60] Ex. 6, Complaint, Securities & Exchange Commission v. Bankman-Fried, Case No. 22-cv-10501 (S.D.N.Y. 2022), ¶ 74 ("[T]wo $100 million investments made by FTX's affiliated investment vehicle, FTX Ventures Ltd., were funded with FTX customer funds that had been diverted to Alameda.").

Labs.[61] The latter transaction was completed during Wilson's tenure as FTX Ventures General Counsel.[62]

24. In light of the fraudulent nature of the FTX Group's prepetition enterprise and Miller's and Wilson's participation therein, each of their conduct warrants a full investigation and may give rise to estate claims.[63] The situation is similar to that considered by the Second Circuit in *Matter of Bohack Corp*.[64] There, the question was whether a lawyer who was "close personal friends and business associates" with the Board Chairman of the bankrupt entity could serve as counsel when there were obvious questions about the Chairman's liability for prepetition participation in fraudulent transactions.[65] The court held that he could not, because "[a]n attorney who has been closely related by professional, business and personal ties to those whose conduct may now be suspect is evidently in no position to make any objective appraisal of the nature and extent of their involvement."[66]

25. Here, Sullivan & Cromwell has even deeper professional, business, and personal ties to its former employees Miller and Wilson than those on display in *Bohack*. Thus here, just as in that case, Sullivan & Cromwell cannot impartially

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[61] *See* n.14, *supra* (collecting exhibits showing indicating that misappropriated customer funds were invested in Dave, Inc. and Mysten Labs).

[62] *See* n.14, *supra* (collecting exhibits showing that Mysten Labs transaction occurred in September 2022); Ex. 4, Tim Wilson LinkedIn, p.1 (showing Tim Wilson's employment as General Counsel of FTX Ventures in September 2022).

[63] *See In re Wilson Armetale*, 968 F.4th 149, 278-79 (3d Cir. 2020) (approving estate claims against law firm that advised debtor in prepetition "asset-plundering scheme").

[64] 607 F.2d 258 (2d Cir. 1979).

[65] *Id*. at 262.

[66] *Id*. at 264.

advise the Debtors about potential claims arising from Miller's and Wilson's conduct or the legality of their prepetition activities.

26. Perhaps cognizant of this obvious problem, Sullivan & Cromwell did not disclose its relationships with Miller or Wilson in its Application.[67] This alone is disqualifying and an arguably sanctionable violation of Federal Rule of Bankruptcy Procedure 2014, which requires that the applicant list "all of [its] connections with the debtor" and its "attorneys." "A bankruptcy court should punish a willful failure to disclose a connection under Federal Rule of Bankruptcy Procedure 2014 **as severely as an attempt to put forth a fraud on the court**."[68] Courts routinely order disqualification as a sanction for failure to make adequate disclosures.[69]

B. Sullivan & Cromwell has an actual conflict because it cannot investigate itself.

27. Sullivan & Cromwell's own prepetition activities must be investigated—and it cannot be trusted to investigate itself. This is the very archetype of an actual conflict of interest and requires the firm's disqualification.

28. Sullivan & Cromwell did $8.5 million of prepetition legal work for the FTX Group and was purportedly "one of the primary external law firms that represented FTX US as well as FTX International" before the FTX Group's

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[67] The Application listed Miller as a "party in interest," along with hundreds of other persons and entities. *See* Dietderich Declaration ¶ 8, Schedule 1 (listing "Ryne Miller," without more). Wilson was not mentioned at all. Neither the Application nor accompanying exhibits disclose anything about Sullivan & Cromwell's connections to Miller and Wilson.

[68] *In re ACandS*, 297 B.R. at 405 (emphasis added).

[69] *In re Leslie Fey*, 175 B.R. at 533 ("So important is the duty of disclosure that the failure to disclose relevant connections is an independent basis for the disallowance of fees or even disqualification" (citing *In re Futuronics Corp.*, 655 F.2d 463, 469 (2d Cir. 1981))).

collapse.[70] The precise nature of this work remains somewhat a mystery: Sullivan & Cromwell's disclosures reveal only that it was involved in "acquisition transactions and specific regulatory inquiries relating to certain U.S. business lines."[71] It is clear, however, that this work coincided with the FTX Group's "spending binge" in late 2021 through 2022, in which it spent $5 billion on businesses and investments that "may be worth only a fraction of what was paid for them."[72] This spending binge included $200 million in venture-capital investments that the Securities and Exchange Commission now alleges were made with stolen customer funds—at least $100 million of which were made at a time when Tim Wilson, a former Sullivan & Cromwell lawyer, was General Counsel of the implicated entity.[73]

29. Sullivan & Cromwell's own involvement in the FTX Group's spending binge must be investigated and may result in liability. The situation is similar to that considered in *In re Git-N-Go, Inc*.[74] There, the question was whether a law firm that had advised the debtor in various suspicious prepetition corporate transactions could be appointed as bankruptcy counsel under Section 327(a).[75] The court denied the firm's application, writing that it would be necessary for counsel to "scrutinze … recent transactions," and that "having counseled some of the parties in the very

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[70] Ex. 1, SBF Planned Testimony, p. 9.

[71] Dietderich Declaration, ¶ 16.

[72] Ex. 5, John J. Ray III, Prepared Remarks, Investigating the Collapse of FTX, Part I, Before the U.S. House Committee on Financial Services, 117th Cong., Dec. 13, 2022, p. 6.; Dietderich Declaration, ¶ 16 (disclosing that the FTX Group paid Sullivan & Cromwell $8.5 million "from July 2021 to the Petition Date").

[73] *See* n.14, *supra*; Ex. 4, Tim Wilson LinkedIn, p. 1.

[74] 321 B.R. 54 (Bankr. N.D. Okla. 2004).

[75] *Id*. at 57-58.

transactions that deserve examination," the firm could not "provide the objective and independent advice regarding the validity or propriety of these transactions as is required for the Debtor's performance of its fiduciary obligations."[76] Just so here.

30. Sullivan & Cromwell should be disqualified for the independent reason that it failed to meet its disclosure obligations with regard to its prepetition work for the FTX Group, just as it did with regard to its connection to FTX Group insiders.[77] In fact, it appears that Sullivan & Cromwell is actively covering up its prepetition transactional work for the FTX Group. On October 6, 2022, the firm posted a news update touting its representation of FTX US in its acquisition of Voyager Digital, another bankrupt cryptocurrency-related business.[78] Today, searches of Sullivan & Cromwell's website for the terms "FTX," "FTX US," and "Voyager" do not return a result for this update, which appears to have been deleted.[79]

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[76] *Id*. at 59.

[77] *Granite Partners*, 219 B.R. at 35 (noting that "a professional's duty to disclose is self-policing … [and court] should not have to rummage through files or conduct independent factfinding investigations").

[78] Ex. 10, Matt Stoller (@matthewstoller), Twitter (Nov. 11, 2022), p. 1 (providing screenshot of Sullivan & Cromwell article entitled "S&C Advises FTX US on Chapter 11 Acquisition of Voyager Digital").

[79] Ex. 11, Sullivan & Cromwell Website Search Results, "FTX" (accessed Jan. 6, 2023); Ex. 12, Sullivan & Cromwell Website Search Results, "FTX US" (accessed Jan. 6, 2023); Ex. 13, Sullivan & Cromwell Website Search Results, "Voyager" (accessed Jan. 6, 2023); *see also* Ex. 14, Justin Henry, *Sullivan & Cromwell, Fenwick & West Trim FTX Relationship From Sites*, The American Lawyer (Nov. 14, 2022), *passim* (describing Sullivan & Cromwell's attempt to distance itself from prepetition FTX relationship).

C. Sullivan & Cromwell has an actual conflict because it is subject to preference claims.

31. Sullivan & Cromwell is subject to preference claims arising from the $15.4 million it received from the FTX Group entities for prepetition legal work and retainer payments during the preference period.[80] This is an actual conflict of interest and requires the firm's disqualification independent of the other grounds set out in this Objection.[81]

32. The Bankruptcy Code's avoidable preference provision allows the bankruptcy estate to recover certain transfers made by the debtor prior to filing a bankruptcy petition. The transfer must have been (1) "on account of an antecedent debt," (2) "made while the debtor was insolvent," (3) "within 90 days" before the petition date, and (4) have "enable[d] [the] creditor to receive more than [it] would receive" if the case were a Chapter 7 liquidation.[82] Transfers may not be avoided, however, if they were made "in the ordinary course of business."[83] The preference statute's purpose is to foreclose the possibility that a creditor who "foresees that his debtor is approaching bankruptcy" will "secure preferential treatment for himself by the timing of the bill."[84]

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[80] 11 U.S.C. § 547(b).

[81] *In re Pillowtex, Inc*., 304 F.3d at 254-55 ("Although a bankruptcy court enjoys considerable discretion in evaluating whether professionals suffer from conflict, that discretion is not limitless … a bankruptcy court that approves the retention of a prepetition creditor of the estate necessarily abuses its discretion.").

[82] 11 U.S.C. § 547(b).

[83] 11 U.S.C. § 547(c)(2).

[84] *In re Jersey First Securities, Inc.*, 180 F.3d 463, 511-512 (3d Cir. 1999) (quoting *Matter of Emerald Oil Co.*, 695 F.2d 833, 837 (5th Cir. 1983)).

33. All the hallmarks of an avoidable preference are on display here. Sullivan & Cromwell received $15.4 million in cash transfers from the FTX Group for prepetition legal fees and retainers in the 90-day preference period.[85] John Ray's congressional testimony confirmed that the FTX Group entities were insolvent before the Petition Date and that the estate's remaining assets will not be enough to make creditors whole.[86] This means that Sullivan & Cromwell will likely receive substantially more than it would have if this case were a Chapter 7 liquidation.

34. Further, there are clear indications that the FTX Group's prepetition payments to Sullivan & Cromwell were not made in the ordinary course of business. Courts employ a common-sense approach in determining whether a transaction is "ordinary," considering "[f]actors such as timing [and] the amount and manner in which a transaction was paid."[87] Where the debtor and the recipient had an ongoing relationship, courts also ask whether payments "deviate[d] from the pattern" evinced by the their transaction history.[88]

35. Ryne Miller's purported demand for immediate transfer of "$4m[illion]" in "FTX.com cash," made in the face of evidence that untold customer assets had already been *stolen* from that same asset pool, is far from ordinary.[89] Just

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[85] Dietderich Declaration, ¶ 5 (exact figure $15,418,837.90).

[86] John J. Ray III, Live Testimony, *Investigating the Collapse of FTX, Part I, Before the U.S. House Committee on Financial Services*, 117th Cong., Dec. 13, 2022, https://www.youtube.com/live/rWAnrigAO3I?feature=share), at 2:48:02 (Congressman Gonzalez: "Is it your belief that FTX was solvent?" Mr. Ray: "No."), 2:25:33 (Mr. Ray: "At the end of the day, we're not going to be able to recover all the losses here. Money was spent that we'll never get back.").

[87] *In re Jersey First Securities*, 180 F.3d at 512.

[88] *Id.* at 513.

[89] Ex 1, SBF Planned Testimony, pp. 11.

as damning is the pattern of payments from the FTX Group to Sullivan & Cromwell. To see why, note first that the FTX crisis began on November 2, 2022, with the publication of a CoinDesk article concerning Alameda Research's leaked balance sheet.[90] Now consider the preference-period transfers from the FTX Group to Sullivan & Cromwell[91]:

Received Date	Amount Received
August 26, 2022	$23,882.50
September 6, 2022	$81,665.00
October 5, 2022	$142,611.53
October 19, 2022	$195,484.33
October 20, 2022	$166,493.75
October 20, 2022	$555,030.05
November 3, 2022	$2,253,670.77

This accounting shows that on November 3rd, the day after the FTX crisis began, Sullivan & Cromwell received a $2.2 million dollar cash payment from the FTX Group. The amount of this payment was more than *eleven times* the average of all previous preference-period payments. By this time, Sullivan & Cromwell had good reason to know the ship was sinking. The CoinDesk article was roiling the market, and former Sullivan & Cromwell lawyers Miller and Wilson were inside the FTX Group with access to information about the state of the enterprise.

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[90] Ex. 15, David Z. Morris, *8 Days in November: What Led to FTX's Sudden Collapse*, CoinDesk (Nov. 9, 2022), p. 2 (noting that after CoinDesk's November 2nd article, "worries about Alameda's balance sheet translated into a rapidly accelerating mass exodus from FTX").

[91] Dietderich Declaration, ¶ 5.

36. These facts are strikingly similar to those the Third Circuit confronted in *In re Jersey First Securities*.[92] There, a debtor wanted to retain its former law firm as bankruptcy counsel but already owed the firm a substantial sum for prepetition legal work.[93] So, on the same day of its Chapter 11 filing, the debtor transferred valuable securities to the firm as payment for the outstanding invoices and as a retainer for representation in the bankruptcy proceeding.[94]

37. The court held that all of Section 547's requirements were met, just as they are here, and concluded that this was "an actual conflict of interest" that "require[d] the firm's disqualification."[95] As to whether the payment in question was made in the ordinary course of business, the court observed that this transfer "deviate[d] from the pattern of prior payments," and noted that the panel was "troubled by the absence in the record of any explanation for why the payment was made on the eve of the debtor's filing for bankruptcy."[96] Moreover, just as here, the court noted that the law firm "was in a unique position to secure preferential treatment for itself—as it knew the debtor was going to file for bankruptcy in the imminent future."[97] *First Jersey Securities* is on four corners with this case and dictates the result here.

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[92] 180 F.3d 504 (Alito, J.) (3d Cir. 1999).

[93] *Id*. at 506.

[94] *Id*.

[95] *Id*. at 510, 513.

[96] *Id*. at 513.

[97] *Id*. at 511.

D. Sullivan & Cromwell has actual conflicts with current and former clients.

38. Sullivan & Cromwell's current and former clients include a litany of potential targets of investigation and claims. These clients include (i) PricewaterhouseCoopers, LLP, hired by the FTX Group as a consultant, (ii) Deltec Bank and Silvergate Bank, the FTX Group's bankers, (iii) Sam Bankman-Fried, the founder and CEO of the FTX Group empire, and (iv) Nishad Singh, FTX Group co-founder and Head of Engineering.[98] These persons and entities must be investigated for potential wrongdoing and may be subject to claims. But "a lawyer cannot represent [an estate] for the purpose of investigating the alleged wrongdoing of another, valuable client."[99] "The lawyer owes a duty of loyalty to each client, and concurrent representation, even in unrelated matters, poses the danger of divided loyalties and affected judgments."[100] Sullivan & Cromwell has actual or potential conflicts with regard to each of these persons and entities and therefore cannot effectively and ethically perform its duties as bankruptcy counsel.

V. Relief Sought

39. Mr. Winter requests that the Court reject Sullivan & Cromwell's Application and disqualify it from serving as Debtors' counsel.

40. In the alternative, Mr. Winter requests that the Court require Sullivan & Cromwell to amend its application with robust disclosures and explanations concerning (i) its prepetition work for the Debtors, (ii) the roles of Ryne Miller and Tim Wilson, and (iii) how it will effectively and ethically pursue the estate's claims

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[98] Dietderich Declaration, ¶ 8 (referring to and incorporating Schedules 2 & 3, which set out parties-in-interest and Sullivan & Cromwell clients).

[99] *Granite Partners*, 219 B.R. at 37 (citing *Bohack Corp.*, 607 F.2d at 263).

[100] *Id*.

in light of the conflicts recounted above. Upon submission of any such amended application, Mr. Winter requests additional time for objections.

41. In addition, if Sullivan & Cromwell is not disqualified outright, Mr. Winter requests that the Court hold an evidentiary hearing or hearings concerning Sullivan & Cromwell's prepetition activities and whether it received a preference.

Dated: January 10, 2023

Respectfully submitted,

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Exclusive Transcript: The Full Testimony Bankman-Fried Planned To Give To Congress

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Dec 13, 2022, 01:54am EST

Former FTX CEO Sam Bankman-Fried will no longer be testifying in front of the House Financial Services Committee (Photo By Tom Williams/CQ-Roll Call, Inc via Getty Images) CQ-ROLL CALL, INC VIA GETTY IMAGES

Sam Bankman-Fried, founder of collapsed crypto exchange FTX, was scheduled to testify Tuesday before the U.S. House of Representatives Committee on Financial Services. But late Monday afternoon, he was arrested in the Bahamas at the request of the U.S. government.

Forbes obtained a draft of Bankman-Fried's testimony and is publishing it here, verbatim. You can also read about the top takeaways in his testimony, and everyone he planned to blame in his remarks for the aftermath of FTX's implosion.

Summary

I would like to start by formally stating, under oath:

I fucked up.

I know that it doesn't mean much to say that I'm sorry. And so I'm dedicating as much of myself as I can to doing right by customers. When all is said and done, I'll judge myself primarily by one metric: whether I have eventually been able to make customers whole. If I fail our customers in this regard, I have failed myself.

Last year, my net worth was valued at $20b.

Today, I would be wrong to say that I have nothing: I have a loving family, and food on my plate, and that's more than life has given billions of people.

But last I saw, I believe my bank account had about $100k in it. I don't know for sure, because I have been denied access to many of my own personal passwords, data, documents, and accounts.

As of today, I and many other members of FTX International's former management team are missing access to key data--data that could help inform customers, inform the Chapter 11 team's decisions, and inform foreign regulators looking after FTX International. Nearly all of this data is held by the Chapter 11 team.

In fact, many of us are still missing access to our own personal data, which is being held hostage by the Chapter 11 team's leadership. When we have asked for access to our own personal data and passwords, an example response reads "you should take steps, as we've suggested to others in the same position, to reset 2FA/passwords for any relevant personal accounts".

As such, much of my testimony is less confident and detailed than I would want it to be, and I apologize if I am unable to confidently answer completely reasonable questions. I unfortunately cannot access most of FTX's current or historical data right now in order to explore or confirm my understanding. I also cannot access most of my own notes, writings, spreadsheets, data, or email. Mr. Ray's team has even refused to return to me my credentials for purely personal accounts.

I deeply regret giving in to pressure to sign forms that precipitated the Chapter 11 filing just a few days after FTX International became potentially insolvent. Among other things, the Chapter

11 team was thrust into a very difficult situation, and I worry that they were given very misleading information by a few members of the FTX US team when they joined. They are trying to manage multiple complex global entities and systems without support from many of the teams who used to run them. I believe it will be extremely hard, if not impossible, for the Chapter 11 team to move forward constructively without working cooperatively with the many foreign jurisdictions that have direct regulatory and operational control over FTX International and its subsidiaries.

I have offered, many times, to help the Chapter 11 team. To cite just one example, I would have

subsidiaries.

I have offered, many times, to help the Chapter 11 team. To cite just one example, I would have been able to easily collect some pieces of data they expressed an inability to find in their court filings. I have not received responses to those offers, or to any other messages I have sent them.

I have reached out to Mr. Ray and the Chapter 11 team numerous times. Sometimes I've been requesting access to my own data, but other times I've been attempting to alert them to potentially important information for their jobs and duties to creditors and customers of FTX.

I have sent five emails to Mr. Ray. Mr. Ray has never responded, nor has he reached out to me to communicate in any other ways.

He has not responded, for instance, to an email of mine that stated: "I have potentially pertinent information concerning future opportunities and financing for FTX and its creditors. I also believe that I have relevant financial information about FTX US, and further that I have potentially relevant regulatory information concerning FTX. I would love to talk to you, whether it's via email or phone, and to work constructively with you and the Chapter 11 team to do what's best for customers."

To the best of my knowledge, FTX US has been and remains solvent, and could pay off all of its customers in full tomorrow. Unfortunately, the Chapter 11 team has frozen the FTX US exchange, blocking customers' access to their account information and funds.

The customers who have lost assets are those who traded on the FTX International platforms, *which do not accept US residents*. My primary focus right now is to do right by the customers of FTX International who were hurt. I am fighting to make these customers as whole as I can, and I will keep doing so as long as I see any pathway forward, because that is my duty.

I believe that there is a credible path forward to put together billions of dollars of additional funds for FTX International customers. That would involve significant external financing, which in turn I believe would require the FTX exchange to restart operations. Doing so would be significantly easier if the Chapter 11 team worked cooperatively with the foreign jurisdictions that have regulatory authority over FTX International and its subsidiaries.

I have heard complaints that the Chapter 11 team is refusing to respond to regulatory inquiries from foreign regulators, sometimes at the risk of employees going to jail. I have also heard

complaints of the Chapter 11 team freezing or otherwise interfering with funds duly belonging to various operating entities of FTX International. I hope that this is greatly exaggerated, or at least that it was a product of an initial unfamiliarity with the company and industry that has now passed. It has been a month since the Chapter 11 filing and the password to my LinkedIn account still hasn't been returned, though, so I'm not overly optimistic.

I have a duty towards the colleagues and supporters who fought for FTX day after day, and who were deeply hurt by a collapse they don't bear any responsibility for.

What Happened

This reconstruction of events concerns FTX International, a non-US crypto exchange for non-Americans, run out of The Bahamas and not regulated in the US. To my knowledge, FTX US–a separate, US-based exchange that *does* accept Americans–is fully solvent, and thus *all*

This reconstruction of events concerns FTX International, a non-US crypto exchange for non-Americans, run out of The Bahamas and not regulated in the US. To my knowledge, FTX US–a separate, US-based exchange that *does* accept Americans–is fully solvent, and thus *all* US customers could and should be made whole immediately.

I wish that I could give a fuller account of what happened. Unfortunately I don't have access to much of the relevant data right now. Here is a reconstruction of events to the best of my recollection.

1) I started Alameda Research, a private crypto trading firm, in 2017.
2) I started FTX International, a non-US crypto exchange for non-Americans, in 2019. I began transitioning away from an active role in Alameda Research then.
3) I started FTX US, a US crypto exchange that does accept Americans, in 2020.
4) In reconstructing the events of 2021-2022, I am relying on memory and extrapolations, as I was not fully aware of many of the critical events at the time they happened and don't have access to the relevant data right now that would allow me to confirm or disconfirm my best guess at this point. In particular, I was not running Alameda Research this past year.
    a) FTX is a derivatives exchange. As is true for most financial exchanges, users are permitted to put on margined or leveraged positions. This means that users are allowed to put down less than the full cost of their positions, with their obligation to repay backed by posted collateral. A significant percentage of customers on FTX engaged in margin trading. Alameda Research was one such user.
    b) FTX was licensed and regulated to operate by regulators globally, including in The Bahamas, Switzerland, Japan, Australia, Cyprus, and Dubai.
    c) Over the past year, as markets crashed, Alameda's assets fell substantially
        i) In late 2021, I believe that Alameda Research likely had a Net Asset Value (NAV) of substantially over $50b, marked to market.
            (1) I believe that Alameda was likely leveraged long: perhaps about 1.1x leveraged. That is, it had corresponding assets for roughly

90% percent of its position, borrowing the remaining 10%. That was roughly 1/20 of the maximum leverage FTX allowed, and roughly 1/3 of the leverage assumed by the average FTX margin trader.

ii) In early November, 2022, over a three-day period, the market value of assets that Alameda Research held declined dramatically–I believe by more than 50%.

iii) After that crash, Alameda had, to my knowledge, roughly $11b of assets and roughly $11b of liabilities, marked to market, including its position on FTX. However, many of the assets were not very liquid, and could not be quickly sold. I believe that roughly $3b of the assets were highly liquid, leaving a liquidity shortfall of roughly $8b.

iv) This is a very rough approximation of Alameda Research's net assets and liabilities over time, in billions. I do not have access to all of this data now, and did not know much of this at the time; thus these numbers may well be incorrect or incomplete.

	Assets	Liabilities	NAV	Liquid
Now	11	-11	0	3

be incorrect or incomplete.

	Assets	Liabilities	NAV	Liquid
Now	11	11	0	-8
October	21	-11	10	-5
Pre Luna	66	-15	52	-8
Late 2021	114	-15	99	-8

(1)

d) At the same time, there was a 'run on the bank' on FTX. There were, I believe, roughly $4b of client withdrawals per day, starting shortly after Changpeng Zhao (CZ), Binance's CEO, tweeted on November 6th that he would sell all of his company's holdings in FTT, a token that Alameda Research had substantial holdings in.
e) This put extreme pressure on FTX, and forced the exchange to margin call substantial customer positions. Alameda Research was not able to deliver sufficient liquid assets for its margin call, and defaulted against FTX International. Thus, FTX International was unable to meet customer withdrawal requirements.

What went wrong?

A large number of things had to go wrong for this to happen. Because I was not running Alameda, I was not aware of some of the critical events at the time. But I *was* running FTX, and that means it was ultimately *my* responsibility to do right by FTX's customers.

1) Alameda Research became insolvent when the economic environment changed.
   a) Alameda put on a margin position that was sustainable in the economic environment of late 2021, with roughly 10% leverage. As tightening monetary policy, a war, and supply chain problems hit throughout 2022, asset prices crashed: I believe that Alameda's assets fell by roughly 90% over the course of the year, and so even 10% leverage was too much.

   b) A run on the bank forced immediate liquid delivery from FTX.
      i) This meant that FTX had only a few days to margin call a substantial, fairly illiquid margin position.
   c) A failure of hedges.
      i) As best as I can reconstruct looking back, in late 2021, Alameda Research was not sufficiently hedged; I believe that it had a total margin position, much of which was not on FTX, that was roughly $8b in size, and likely had on roughly $2b of hedges.
      ii) By the fall of 2022, I believe that Alameda Research had a margin position of roughly $8b, and likely had roughly $8b of hedges. However, the crash that occurred in November 2022 was not a broad market crash, or even a broad crypto market crash. From November 7th to November 9th, Bitcoin was down roughly 17% and equities markets were roughly flat, but many of Alameda's assets were down more than 50%. And so Alameda's hedges didn't work.
      iii) This is the classic 'hedge fund risk'–that all of a firm's positions can become highly correlated, even if some are thought to be hedges, as happened with e.g. Long-Term Capital Management and in the 2008 financial crisis.
   d) Uses of capital:
      i) Piecing together what data I can, in retrospect, Alameda Research's roughly $8 billion net short margin position in liquid assets lined up with the following approximate expenditures:
         (1) Interest payments to lenders: ~$1b
         (2) VC investments: ~$4b
         (3) Buying back Binance's stake in FTX: ~$3b
2) Failures of FTX's internal controls

(2) VC investments: ~$4b
(3) Buying back Binance's stake in FTX: ~$3b

2) Failures of FTX's internal controls
   a) FTX's Dashboard:
      i) FTX's dashboard for user positions did not display Alameda's full position size on the platform, because of a historical accounting quirk. I now believe that Alameda's position was over twice as large as what was displayed. My periodic assessments of the riskiness of our positions were often based on the dashboard's numbers.
   b) Financials:
      i) FTX had annual audited GAAP financial statements, which to my knowledge were generally correct
      ii) However, those were merely for FTX's corporate financial state, not an audit of customer risk.
   c) Risk management:
      i) While FTX International had a team dedicated to financials, and to many other areas of the business, it did not have a team dedicated to risk management, or to user position monitoring
      ii) I, as CEO, did not put adequate effort into monitoring risk on FTX
3) Binance's role in FTX' collapse.

a) I won't belabor this point, because at the end of the day I fucked up. I will note, briefly, the following:
b) Alameda's assets fell precipitously in value beginning on Nov. 6th 2022, hours after Binance's CEO (CZ) tweeted his intent to sell his holdings in FTT
c) The 'run on the bank' was triggered by the same tweet by Binance's CEO.
d) That tweet followed what I believe to be a month of sustained negative PR on FTX largely being driven by Binance.
e) Alameda's hedges failed in November 2022 because the crash was specific to its hedges, triggered by the same PR campaign by CZ.
f) Around November 8th, we agreed with CZ on a deal that would have Binance acquire FTX at a small fraction of its value a week earlier.
   i) We signed an LOI that prevented us from talking to other potential investors as long as the negotiations with Binance were ongoing.
   ii) During that time, I received serious expressions of interest from multiple potential investors who represented billions in capital that could have gone to customers. I was inhibited in responding by the LOI.
   iii) A day later, Binance announced they were not going to go through with the deal. We learned about them backing out from their Twitter post.
   iv) As best I can tell, Binance never intended to go through with the deal.
g) Roughly ~$3b of capital was used buying Binance's stake in FTX, because Binance's equity ownership was causing KYC issues for FTX: Binance was not cooperative in supplying information about CZ to regulatory bodies FTX was applying for licensure with.
h) A few months ago, FTX was generally considered to be Binance's most significant competitor globally. After the crash, Binance has averaged roughly 70% of global cryptocurrency volume, up from roughly 50% before.
   i) There are reports that, due to its increase in market share following FTX's collapse, Binance might be able to avoid regulatory enforcement: https://www.reuters.com/article/fintech-crypto-binance-doj-idUSKBN2SW0ZY
i) There is much more to say about Binance, its role in the cryptocurrency ecosystem, and its relationship with FTX, but this is neither the place nor the time for it.

For the above to go wrong, I, as CEO of FTX, had to make a number of significant mistakes.

For the above to go wrong, *I*, as CEO of FTX, had to make a number of significant mistakes.

1) I believe that the thread that most ties them together is that, for much of 2022, I was less grounded in operational details than I had been before.
2) I had prided myself on staying grounded: staying in the weeds, day to day, of the company.
3) But by mid 2022, I believe I was spending, approximately:
    a) 25% of my time talking with regulators and policymakers in DC and beyond

    b) 25% of my time on branding and new pathways for FTX, including remittances, financial settlement, and sports partnerships
    c) 25% of my time managing FTX's growing workforce
4) Together, those were maybe 25% of my time in 2020, but by 2022 they were closer to 75%. That's time that wasn't spent focusing on the actual core product, including risk management.
5) I also prided myself on having a strong work ethic; I began FTX by routinely working 18 hour days. But for much of 2022, I believe that I was working about 30% less than I was used to. And even when I was working, I was less focused and disciplined than I used to be.
6) I thought that I could hold FTX together despite the expansion. I was wrong. I bit off more than I could chew, and ended up failing to focus on risk management.

I deeply regret what happened, and I would give anything to be able to go back and put in place the detailed oversight and risk management that I should have.

Right now I'm focusing on what I can do to make customers whole, and reflecting on what I did wrong. There are a number of things I wish I had done. Among those:

1) I wish that I had operated FTX International with a consistently high degree of transparency–to myself, and our employees, and customers, and regulators.
    a) We were transparent about market data and access and fees and many other things
    b) We were *not* transparent–even internally, even to ourselves–about assets, and margin, and positions, and risk.
    c) I wish that I had ensured we built out public monitors that displayed:
        i) Total client balances
        ii) Total blockchain balances, and the corresponding addresses
        iii) Total bank and fiat balances that were in FTX's name
        iv) Total bank and fiat balances that were in a payment processor's name
        v) Total margin position size, and total futures position size, and the amount and types of collateral that were utilized to support those
        vi) The treatment of margin and risk on all accounts
    d) I wish that we had deployed:
        i) Public API endpoints to pull the above data
        ii) Private API endpoints that served anonymized versions of account balances and risk to regulators for oversight
2) I wish that, when the cracks began to show, I had communicated openly with our employees, users, and community, rather than freezing up and remaining mostly quiet per lawyers' instructions as people wondered what was happening.
3) I wish I had not clicked on a button on Docusign at 4:30 am, leaving some of FTX under destructive leadership. And I deeply regret not taking the advice of employees and supporters who knew what Chapter 11 would mean for customers. I received a call from

destructive leadership. And I deeply regret not taking the advice of employees and supporters who knew what Chapter 11 would mean for customers. I received a call from

a regulatorily experienced advisor who I deeply trust and respect, shortly before 4:30 am, imploring me not to do it. What they said felt correct to me. I talked with my counsel, who strongly pushed back. In retrospect I can confidently say that they were right and my (now ex) counsel was wrong.

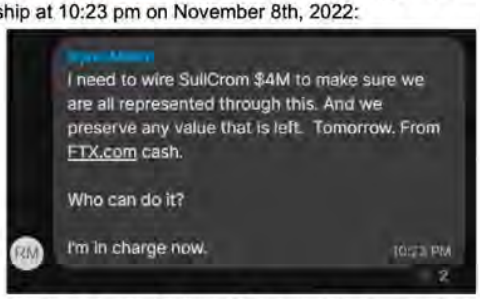
4) And more than anything else: I wish that I had remained grounded, and spent at least as much time focusing on and safeguarding user assets and risk as I did on branding and partnerships.

Chapter 11

Between November 6th and November 10th, I received a large number of calls from prospective investors, many of them potentially interested in contributing more than a billion dollars of financing. Together, there was substantially more strong interest than what it would have taken to make all customers immediately whole.

Starting on November 8th, I was put under extreme pressure to file for Chapter 11.

1) Most of that pressure came from Ryne Miller, the General Counsel of FTX US and a former partner at Sullivan & Cromwell (S&C), and Sullivan and Cromwell itself.
2) Sullivan & Cromwell was one of the primary external law firms that represented FTX US as well as FTX International at the time.
    a) I have 19 pages of screenshots of Sullivan & Cromwell, Mr. Miller, and others I believe were influenced by them, all sent over a two day period, pressuring me to quickly file for Chapter 11. They range from adamant to mentally unbalanced. They also called many of my friends, coworkers, and family members, pressuring them to pressure me to file, some of whom were emotionally damaged by the pressure. Some of them came to me, crying.
    b) It was only later that I was informed that it was very unusual for such a significant filing to be made so quickly.
3) Sullivan & Cromwell chose John Ray to run the Chapter 11 team
4) During the time I was being pressured to file, Sullivan & Cromwell lawyers told my counsel that I would get to choose the board chair. Sullivan & Cromwell silently reneged on that a few days later.
5) At roughly 4:30 am on November 10th, 2022, against my better judgment, I clicked on a Docusign link that would nominate John Ray as the CEO of various entities.
6) Less than 10 minutes later I received a potential funding offer for billions of dollars to help make customers whole.
7) A few minutes thereafter I instructed my counsel to rescind the document; it had become clear to me that it was not the best way forward.
8) My counsel informed me a few minutes later that it was too late to rescind it, and that Sullivan & Cromwell lawyers were submitting it on my behalf despite my instructions not to.

9) Roughly 6 hours later—more than ample time to change course— Sullivan & Cromwell filed the document with the court against my express wishes and stated orders.
10) After that John Ray filed for Chapter 11 for all of the entities–*including a fully solvent US entity, FTX US, in which they shut down customer access and withdrawals*–John Ray and his team appointed, as legal counsel for the Chapter 11 team (debtors), Sullivan & Cromwell.
11) John Ray is famous primarily for his work for the Enron bankruptcy estate.
    a) Sullivan & Cromwell recommended John Ray to manage the FTX bankruptcy; in the Enron bankruptcy, law firms including Sullivan and Cromwell were paid roughly $700m (!!!) in fees from funds that would otherwise have gone to creditors. (https://www.latimes.com/archives/la-xpm-2007-nov-22-fi-enronfees22-story.html; https://www.chron.com/business/energy/article/Energy-company-s-bankruptcy-generating-12789018.php)
12) So, to summarize, to the best of my knowledge: when Enron went through the Chapter 11 process, John Ray and S&C were both lawyers and/or administrators for the estate, which paid out roughly $700m in legal fees. Then, when FTX crashed: an ex-S&C partner chose S&C to represent FTX. S&C pressured me to file Chapter 11 documents, and filed the documents despite my instructions not to. S&C chose John Ray as the new CEO of the Chapter 11 estate; John Ray then chose S&C to represent the Chapter 11 estate. S&C reneged on an agreement to let me choose the board chair, and then John Ray appointed the board.
13) In an official statement, The Bahamas Attorney General, Ryan Pinder, said "it is possible that the prospect of multimillion-dollar legal and consultancy fees is driving both [the Chapter 11 team's] legal strategy and their intemperate statements". https://nypost.com/2022/11/28/bahamas-shreds-ftx-ceo-john-ray-extremely-regrettable-accusations/
14) I will end this section with a screenshot of a message Mr. Miller sent to much of FTX's leadership at 10:23 pm on November 8th, 2022:
    a) 

    b) Needless to say, Sullivan & Cromwell has not made sure that we are all represented through this. They have, however, done a good job of making sure they were wired $4M.

As of today, I am still aware of billions of dollars of serious offers for financing, including signed LOIs: billions of dollars that could potentially make customers substantially whole. However, I believe that all of those are conditional on FTX being restarted as an exchange. I sincerely hope that all of the global teams working on FTX are seriously considering such a possibility, because I believe it would drive a large amount of value to customers and creditors. I hope, at the very least, that all global FTX entities are prioritizing allowing customers to get access to their account data and history.

the very least, that all global FTX entities are prioritizing allowing customers to get access to their account data and history.

However, I admit I am not optimistic about some parts of the process. I have not myself witnessed any progress by Mr. Ray's team towards raising substantial funds or restarting the exchange. In the few days prior to the Chapter 11 filings, Mr. Miller said, referencing my plans, that a capital raise was "a 0% likelihood..." And in response to my desire to keep FTX active, Mr. Miller said "There's nothing to save Sam".

And as of today, FTX US is off and US customers cannot even access their account data, let alone withdraw. To my knowledge, FTX US is solvent, and could make all customers whole. I'm surprised and saddened that it has not.

I understand that the Chapter 11 team has been placed in a very complex and difficult situation. I regret placing them there; I both regret the oversight that allowed for insolvency in the first place, and what I believe to be an overly rushed and improper transfer of control and filing. I have heard very good things about many members of the Chapter 11 team, especially those from Alvarez and Marsal, and believe that they could be extremely valuable members of a more global process forward for FTX.

FTX International's Jurisdictions

To my knowledge, the serious problems that occurred as a result of the crash in early November all happened on FTX International. FTX US was not generally affected, and remains, to my knowledge, fully solvent.

There are currently multiple insolvency proceedings around the world–in Delaware, The Bahamas, Australia, and more. A few relevant facts, to my knowledge:

1. FTX International is a separate entity from FTX US; neither entity is a subsidiary of the other, nor are they subsidiaries of the same holding company.
2. FTX International does *not* accept US customers, is not based in the United States, did not maintain a significant US workforce, was not regulated in the United States, and was not operated out of a US entity.
    a. FTX International's terms of service prohibited customers from the following locations from accessing the platform: **United States of America**, Cuba, Crimea

and Sevastopol, Luhansk People's Republic, Donetsk People's Republic, Iran, Afghanistan, Syria, and North Korea.

3. FTX International's headquarters and primary office are in The Bahamas
4. FTX International had nearly 100 employees in The Bahamas, and did not, to my knowledge, maintain any employees primarily based in the United States outside of US legal counsel
5. FTX International is regulated in a large number of jurisdictions, including The Bahamas, Australia, Cyprus, Switzerland, the UAE, Japan, and others, but not the United States.
6. The primary operating entity of FTX International was FTX Digital Markets LTD (FDM), in The Bahamas.
7. The majority of the mind and management of FTX International worked for FDM in The Bahamas.
8. The primary regulator was the Securities Commission of The Bahamas, overseeing FDM.
9. I believe that the majority of users faced FDM, and the majority of assets were of users who faced FDM.
10. FDM is not part of any Chapter 11 process. FDM was placed under the oversight of Joint Provisional Liquidators (JPLs) by the Securities Commission of The Bahamas roughly a day prior to the initiation of the Chapter 11 process, and was not included in any Chapter 11 filings.
11. The JPLs have filed for recognition in Delaware court as the primary insolvency process.
12. I do not believe that Mr. Ray or any members of his team are the CEO or are on the Board of Directors of the primary operating entity of FTX International, and as such I do not believe that they have lawful jurisdiction over the preponderance of FTX International's insolvency proceedings.

Board of Directors of the primary operating entity of FTX International, and as such I do not believe that they have lawful jurisdiction over the preponderance of FTX International's insolvency proceedings.

FTX US

American customers were protected, at least until Mr. Ray's team took over.

1) FTX US has oversight from a number of regulators, including–for various of its entities–the CFTC, the SEC, FINRA, and many state regulatory agencies, all of which, to my knowledge, are in the US. FTX International has oversight from a completely different set of regulators, none of which are US regulators.
2) FTX US maintained a separate orderbook, matching engine, and userbase from FTX International.
3) I do not believe that there was any large margin position on FTX US that went significantly insolvent during the period in question (or, for that matter, any other time).
4) To my knowledge, FTX US had segregated funds from FTX International, at least as of when John Ray became CEO of FTX US.

5) In fact, to my knowledge, FTX US is, and always has been, solvent. I believe that US customers were not directly harmed by the events in early November, and that *all* US customers of FTX–and in fact *all* customers of FTX US, wherever they reside–could and should be made whole immediately.
6) As of when I last had access to FTX US data–which was on or around November 10th, 2022–to the best of my knowledge FTX US had net assets (assets in excess of customer liabilities) of roughly $350m, with no insolvent customer positions or corporate mismatches between assets and liabilities that could make a substantial impact on the above number.
7) Given the above, I believe that:
    a) US customers's assets were successfully safeguarded
    b) US customers could be made whole immediately
    c) US customers *should* be made whole immediately
8) When John Ray became CEO of FTX US on November 10th, 2022, FTX US was still operational, and still processing customer withdrawals. I intended and expected for withdrawals to remain open, making all customers whole. I am surprised that did not happen.
9) I do not believe that the Chapter 11 process is or ever has been appropriate for FTX US, and believe that US customers are being materially harmed by the process without good reason.

Misstatements

There have been a number of statements made over the course of this process which I believe are inaccurate or substantially misleading. Below is a partial list of them.

1) Numerous assertions, by the Chapter 11 process and team, that John Ray is CEO of FTX International. John Ray is not CEO of the primary operating entity of FTX International.
2) Numerous assertions, by the Chapter 11 process and team, that there was unauthorized access of customer funds by The Bahamas.
    a) In one Chapter 11 filing, John Ray stated that there was "credible evidence that the Bahamian government is responsible for directing unauthorized access to the

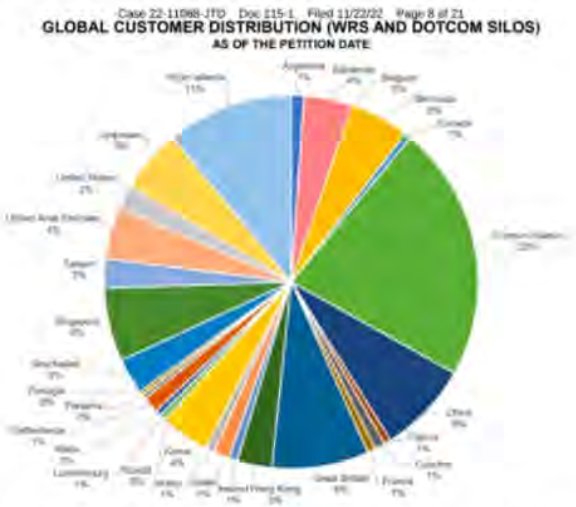
access of customer funds by The Bahamas.

a) In one Chapter 11 filing, John Ray stated that there was "credible evidence that the Bahamian government is responsible for directing unauthorized access to the Debtors' systems for the purpose of obtaining digital assets of the Debtors — that took place after the commencement of these [Chapter 11] cases."
b) The Bahamas is where FTX International is headquartered; the Security Commission of The Bahamas is the primary regulator for FTX International; the mind and management of FTX International has been in The Bahamas. Further, *prior to the Chapter 11 filings*, the Securities Commission of The Bahamas initiated an administrative process over FTX Digital Markets, the Bahamian entity and operating entity of FTX International, an entity which was thus *not* included in the Chapter 11 filings.

c) The Bahamas stepped in to safeguard customer assets, acting in their duty as the primary regulator of FTX International. Meanwhile, John Ray's team–run out of the United States–initiated an asset seizure of FTX International, a company run from The Bahamas, regulated in The Bahamas, and servicing non-US clients.
d) Their assumption, without evidence, of malign intent and incompetence on the part of other races, cultures, and governments would be considered deeply offensive if directed at American minorities. It is no less offensive when directed at the citizens of other countries, let alone their regulators. Meanwhile, seizing assets overseen by other governments is a practice most recently considered appropriate centuries ago.

3) I believe that the current Chapter 11 team has significantly overstepped its mandate.
   a) Numerous entities were improperly placed in Chapter 11 proceedings by the Chapter 11 team, either because:
      i) John Ray was not the CEO of the entities;
      ii) they were not owned by FTX, FTX US, or Alameda Research to begin with;
      iii) they are subject to other global insolvency processes that preceded and thus supersede the Chapter 11 process; or
      iv) they were not filed properly
   b) This includes entities that I believe own the vast majority of customer accounts of FTX International, and oversee the vast majority of customer assets.
   c) I believe that the assets, properties, credentials, passwords, cryptographic keys, domain names, and governance of FTX International should rest with the CEO, Board of Directors, and/or locally regulatorily appointed administrators of the core entity or entities that primarily operated FTX International.
      i) Those are the entities that most of the customers of FTX International faced, that controlled most of the assets of FTX International, that housed the mind and management of FTX International, and that had ultimate governance over most of FTX International, during this global restructuring process.
      ii) I hope that Mr. Ray and the Chapter 11 team can agree with me on that.
   d) I believe that much of the current Chapter 11 team–including Alvarez and Marsal among others–is putting in a heroic effort to manage a difficult global business on very little notice, but that the initial and current leadership and direction they have gotten has been counterproductive. I further think that the leadership does not have legal authority to lead the global restructuring and financing effort, as they are not the current CEO, Board of Directors, or locally regulatorily appointed administrators of the core entity that primarily operated FTX International. As such, I believe they are acting outside of their mandate, defying law in multiple jurisdictions, and misappropriating funds that are the property of the primary entity of FTX International. I think that the Chapter 11 team would be extremely useful and better served working constructively with the legally and regulatorily valid global leadership of the operating entities of FTX International.

4) In one Chapter 11 filing, John Ray stated that "the dilutive 'minting' of approximately $300 million in FTT tokens by an unauthorized source after the Petition Date". There was no such minting, as block explorers would confirm. This statement is bizarre, confrontational, false, and harms the reputation of people including myself.
5) In one Chapter 11 filing, John Ray included a graph regarding FTX customers by jurisdiction, claiming that over 20% of users were from the Cayman Islands. In fact, according to data from October 20th, 2022, less than 1% of trading accounts on FTX were from the Cayman Islands.



a)

6) There have been various statements made by John Ray in filings about his own team's inability to produce data, including "a complete list of who worked for the FTX Group"; "daily reconciliation of positions on the blockchain"; "a list of their top 50 creditors that includes customers".
   a) To my knowledge, each of these existed, and I personally would have been able to produce some of the above. Neither I, nor to my knowledge most of the international leadership team, has been asked to help with queries including the above.
   b) I offered to help John Ray. I also alerted him to potentially significant information about the businesses. He has never responded to any of my messages.
7) John Ray complained about "The failure of the co-founders and potentially others to identify additional wallets believed to contain Debtor assets"
   a) To my knowledge, I have never been asked to identify such wallets. To my knowledge, no such wallets exist.

---

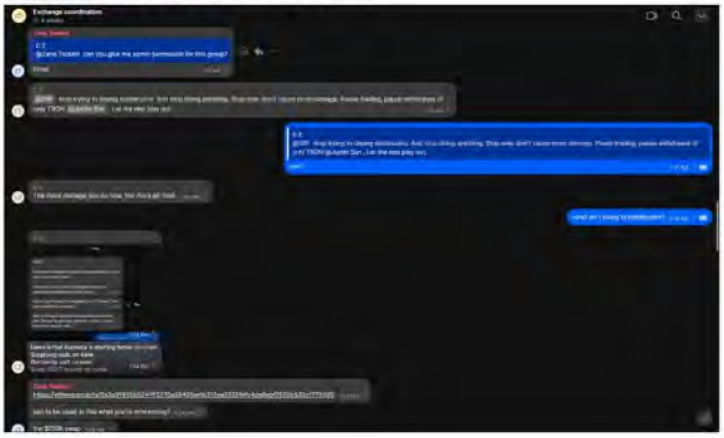
8) I believe that United States regulators may have been told materially misleading information about FTX US, including claims that FTX US is not solvent. I believe that it is solvent.

During this process, many people have made accusations against me. Some of them–including, for instance, that I exhibited poor risk management oversight as CEO of FTX–are true. But many are not.

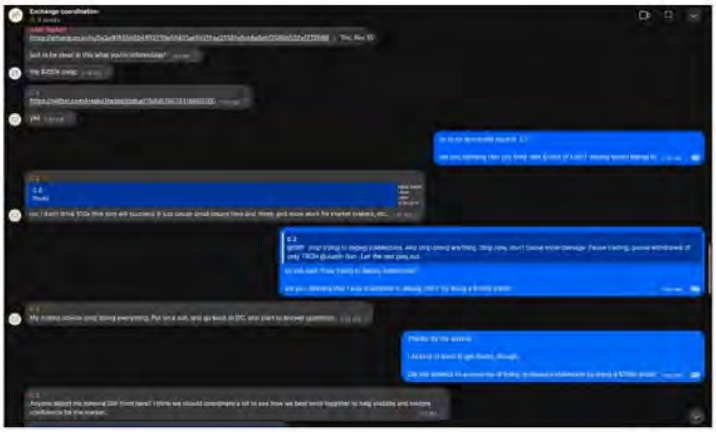
1) Claims have been made that I personally or through an entity attempted to manipulate the stablecoin Tether in the wake of the November 2022 crash. This is categorically false. I have never attempted to manipulate the price of Tether, and I am not aware of

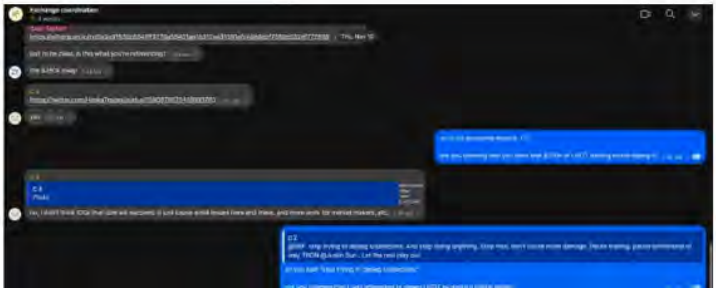
1) Claims have been made that I personally or through an entity attempted to manipulate the stablecoin Tether in the wake of the November 2022 crash. This is categorically false. I have never attempted to manipulate the price of Tether, and I am not aware of any activity by a company I run or own intending to manipulate the price of Tether. One such accusation was made by CZ (the CEO of Binance), in reference to a trade of size $250k. In addition to the accusation being categorically false, it is absurd to think that a trade of size $250k could materially impact the price of Tether. CZ has plenty of context to know that these claims are both absurd and false.

a)



b)





c)

d) In addition to CZ, media has breathlessly reported that "a tether official" also believes that I attempted to manipulate Tether's price (https://www.wsj.com/articles/rivals-worried-sam-bankman-fried-tried-to-destabilize-crypto-on-eve-of-ftx-collapse-11670597311).
   i) Again, I categorically deny this claim. I have had respect for the intelligence and authenticity of Tether's leadership, and would think that they would be aware that such claims of manipulation are obviously false. I also understand that media can invent statements, and as such hope that this was just a case of media making something out of nothing, and

that Tether's executives themselves did not fall into the realm of conspiracy theories.

e) And, again, I would like to put in the official Congressional Record that the claims that I attempted to manipulate the price of Tether are categorically false. I have made large mistakes this year. But it seems to have given license to some parties to propagate claims that are ridiculous, destructive, and false.

2) Claims have been made that I personally or through an entity attempted to cause the implosion of Three Arrows Capital (3AC) this year.
   a) These claims, too, are categorically false. I never took actions with the intention of triggering the implosion of 3AC, nor to my knowledge did any company I run or own.
   b) In addition to being false, the claims do not make sense to me. Alameda Research's own insolvency was triggered by a market crash, which in turn triggered FTX's insolvency; it would have been absurd to create a market crash in order to take out 3AC, and then in turn bankrupt my own businesses.
3) False claims have been made about buying out CZ's equity in FTX. On Twitter, CZ claimed that "we decided to pull out as an investor" in a thread chalk full of lies.
   a) In fact, I reached out to CZ in 2021 to initiate discussions about buying them out of their stake in FTX.
   b) I initiated these discussions because, among other things, it was becoming increasingly difficult for FTX to operate with CZ as a significant equity owner. CZ was not cooperative in sending his KYC information to regulators that we were applying for licenses with.
   c) CZ threatened, at the last minute, to walk away from the negotiated buyout unless we kicked in an extra ~$75m or so. We ultimately agreed to pay the extra ~$75m because we were intent on severing relationships with CZ— something he undoubtedly surmised, and used to his advantage to extort an extra $75 million from us above the agreed-on purchase price.
4) Claims that Alameda Research would look at customer orders on FTX in order to 'front-run customers' or 'hunt stop losses'
   a) To my knowledge, this never happened. To my knowledge Alameda Research didn't have access to customer orders, let alone a desire to take advantage of them.
5) Claims that I have billions of dollars stashed away personally
   a) I'm aware of a bank account which, as best I can remember, has roughly $100k in it. While I have taken loans out of Alameda in my own name, those were not generally used for personal consumption or savings; most were used to invest in the business. I believe that they were taken out of Alameda's trading profits, which I believe were in the billions of dollars prior to 2022. I was not involved in the structuring of any of these loans. They were handled by inside and outside counsel.
   b) As a believer in the Effective Altruism movement, my primary goal has never been personal enrichment; I'm motivated by a commitment to help bring happiness and alleviate suffering for others. My personal charitable donations,

which starting in 2014 when I was working on Wall Street, vastly outstrip what's left in my bank account.

c) I'm not sure that I'm going to be able to pay all of the legal fees I'm likely to rack up. And I'm not sure what to do about that. But for now, I'm mostly trying to divert whatever funds of mine I can find away from paying lawyers, and towards bringing value to FTX's customers.

6) Various conspiracy theories involving myself, Ukraine, and the DNC
   a) Any theory that I conspired with the Government of Ukraine to do anything other than what I stated I was doing–creating pathways for contributions to Ukrainians and to their defense–is not just false, but deeply offensive.
   b) Any theories that a US political party was further involved in such a conspiracy are themselves categorically false and offensive.
7) Various claims that I created a hard-partying culture at FTX
   a) Our 'parties' were mostly dinner and board games
   b) I didn't have my first drink until I was 21, and to my knowledge have never been drunk
8) Various claims that I am Jewish
   a) Ok, technically this claim is correct–my name is Samuel Benjamin Bankman-Fried and my ancestors mostly arrived at Ellis Island in the first half of the 20th century; I'll leave it to the reader to guess why they came.
   b) But I don't think I need to spell out the implications being made.
9) Various theories that I take Emsam for a high, or to treat Parkinson's disease
   a) The Emsam patch is essentially never indicated or prescribed for Parkinson's. That theory is likely the result of lazy internet searches; Selegiline, Emsam's underlying chemical, is sometimes used for Parkinson's in oral form.
   b) I have a prescription for Emsam, and have for roughly a decade. I use it, daily, for its only on-label use as an antidepressant. It is not generally the case that people are expected to talk about their private medical conditions, but enough paparazzi have snapped photos of my belongings and theorized about it online that I guess I have no choice.
   c) The last few months have been difficult enough for everyone that it feels unremarkable to me, in comparison, that I need to put on the official Congressional Record that I am, and for most of my adult life have been, sad.

I have made many mistakes this year, but these are not among them.

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Steven Ehrlich

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I am director of research for digital assets at Forbes. I was recently at Kraken, a cryptocurrency exchange based in the United States. Before joining Kraken I served as Chief Operating... **Read More**

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COMMODITY FUTURES TRADING COMMISSION, Plaintiff, v. SAMUEL BANKMAN-FRIED, FTX TRADING LTD D/B/A FTX.COM, AND ALAMEDA RESEARCH LLC, Defendants.	Case No. _____ **COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF AND FOR CIVIL MONETARY PENALTIES UNDER THE COMMODITY EXCHANGE ACT AND COMMISSION REGULATIONS** **JURY TRIAL DEMANDED**

Plaintiff Commodity Futures Trading Commission ("CFTC" or "Commission"), by and through its undersigned attorneys, hereby alleges as follows:

I. SUMMARY

1. Samuel Bankman-Fried ("Bankman-Fried") co-founded Alameda Research LLC ("Alameda"), a digital asset trading and investment firm, in Berkeley, California in 2017. In May 2019, he and others launched FTX Trading Ltd. b/d/a FTX.com ("FTX Trading") and various subsidiaries, affiliates, and related entities, collectively doing business as "FTX.com" or simply "FTX," a centralized digital asset exchange. (These parties are collectively referred to as "Defendants"). Alameda and FTX were large and well-known players in the digital asset industry, and Bankman-Fried was their young, high-profile leader.

2. At its peak, the daily trading volume on FTX.com was over $20 billion, and it had garnered a $32 billion valuation. FTX had prominent paid sponsorships, including the naming rights to a professional sports arena in Miami, celebrity endorsements, and a 2022 Super Bowl commercial that touted FTX as "the safest and easiest way to buy and sell crypto."

3. On November 11, 2022, Bankman-Fried's empire abruptly collapsed. FTX customers and the world at large discovered that FTX, through its sister-company Alameda, had been surreptitiously siphoning off customer funds for its own use—and over $8 billion in customer deposits were now missing.

4. Beginning no later than May 2019 and continuing through at least November 11, 2022 (the "Relevant Period"), Bankman-Fried owned, operated, and/or controlled FTX Trading, along with its numerous subsidiaries and related entities around the world, all doing business as FTX.com. He also owned, operated, and/or controlled Alameda and its various subsidiaries and related entities, as well as numerous other related entities in the digital asset industry. Throughout the Relevant Period, Alameda operated as a primary "market maker" on FTX.com, providing liquidity to its various digital asset markets, and also performed a number of other key functions for the exchange. Bankman-Fried operated Defendant entities as a common enterprise.

5. Throughout the Relevant Period, and unbeknownst to all but a small circle of insiders, FTX customers deposits, including fiat currency and digital assets such as bitcoin (BTC) and ether (ETH), that were intended to be used for trading or custodies on FTX, were regularly accepted, held by, and/or appropriated by Alameda for its own use.

6. At Bankman-Fried's direction, FTX executives created features in the underlying code for FTX that allowed Alameda to maintain an essentially unlimited line of credit on FTX. FTX Trading executives also created other exceptions to FTX's standard processes that allowed Alameda to have an unfair advantage when transacting on the platform, including quicker execution times and an exemption from the platform's distinctive auto-liquidation risk management process.

7. Throughout the Relevant Period, at the direction of Bankman-Fried and at least one Alameda executive, Alameda used FTX funds, including customer funds, to trade on other digital asset exchanges and to fund a variety of high-risk digital asset industry investments.

8. Bankman-Fried and other FTX executives also took hundreds of millions of dollars in poorly-documented "loans" from Alameda that they used to purchase luxury real estate and property, make political donations, and for other unauthorized uses.

9. Throughout the Relevant Period, Defendants, through a web of subsidiaries, affiliates, and other related entities (collectively the "FTX Enterprise") misappropriated customer funds for their own use and benefit.

10. Despite this, FTX Trading represented, in its Terms of Service and elsewhere, that customers were the "owner[s]" of all assets in their accounts, had "control" over the assets at all times, and that those assets were "appropriately safeguarded and segregated" from FTX's own funds.

11. Through this conduct and the conduct further described herein, Defendants violated Section 6(c)(1) of the Commodity Exchange Act (the "Act" or "CEA"), 7 U.S.C. § 9(1), and Commission Regulation ("Regulation") 180.1(a), 17 C.F.R. §180.1(a) (2021). Unless restrained and enjoined by this Court, Defendants are likely to continue to engage in the acts and practices alleged in this complaint and similar acts and practices, as more fully described below.

12. Accordingly, the CFTC brings this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-l, to enjoin Defendants' unlawful acts and practices and to compel their compliance with the Act. In addition, the CFTC seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, trading and registration bans, disgorgement, restitution, pre- and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

II. JURISDICTION AND VENUE

13. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1345 (district courts have original jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by Act of Congress). Section 6c of the CEA, 7 U.S.C. § 13a-1(a), authorizes the CFTC to seek injunctive relief against any person whenever it shall appear to the CFTC that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the CEA or any rule, regulation, or order thereunder.

14. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because Defendants transacted business in the Southern District of New York and engaged in acts and practices in violation of the Act and Regulations within this District.

III. PARTIES

A. The CFTC

15. Plaintiff **Commodity Futures Trading Commission** is the independent federal regulatory agency charged by Congress with the administration and enforcement of the Commodity Exchange Act ("CEA") and Regulations promulgated thereunder.

B. Defendants

16. **Samuel Bankman-Fried** ("Bankman-Fried") is a United States citizen who has resided in various locations during the Relevant Period, most recently in the Bahamas. Bankman-Fried is the founder and majority owner of FTX Trading, Alameda, and FTX US. Bankman-Fried resided in and performed work for FTX Trading and Alameda in various locations during the Relevant Period, including in the United States. He has never been registered with the Commission in any capacity.

17. **FTX Trading Ltd.** ("FTX Trading") is a corporation registered in Antigua and Barbuda. FTX Trading Ltd. along with its subsidiaries and affiliate entities, including without limitation FTX Digital Markets Ltd. ("FTXDM"), located in the Bahamas, collectively did business as "FTX.com" or "FTX" and operated the digital asset trading exchange during the Relevant Period. FTX Trading had numerous employees, including key personnel, that were based in and perform work from the United States, including in this District. FTX Trading had regularly engaged in advertising and promotional activities in the United States. None of the FTX Trading entities has ever been registered with the Commission in any capacity. FTX Trading is currently in Chapter 11 bankruptcy proceedings in the U.S. Bankruptcy Court for the District of Delaware.

18. **Alameda Research LLC** ("Alameda") is a Delaware limited liability company. Alameda, along with its parent, subsidiary, and affiliate entities collectively operated and did business as the digital asset trading and investment firm "Alameda." Alameda was founded in, maintained offices in, and had numerous employees, including key personnel, that were based in and perform work from the United States during the Relevant Period. None of the Alameda entities has been registered with the Commission in any capacity. Alameda is currently in Chapter 11 bankruptcy proceedings in the U.S. Bankruptcy Court for the District of Delaware.

19. During the Relevant Period, FTX Trading, Alameda Research, together with other entities under the majority ownership and control of Bankman-Fried operated as a single, integrated common enterprise under the sole ultimate authority of Bankman-Fried as their mutual owner. They are referred to collectively in this complaint as the "FTX Enterprise." Bankman-Fried regularly exercised control over each of the component entities of the FTX Enterprise throughout the Relevant Period, including regularly serving as signatory on core corporate agreements, as well as corporate bank accounts and trading accounts, many of which were held in

the U.S. The FTX Enterprise failed to observe corporate formalities, including failure to segregate funds, operations, resources, and personnel, or to properly document intercompany transfers or funds and other resources. The entities regularly shared office space, systems, accounts, and communications channels. On information and belief, assets flowed freely between the FTX Enterprise entities, often without documentation or effective tracking.

IV. STATUTORY BACKGROUND AND LEGAL FRAMEWORK

20. The purpose of the CEA is to "serve the public interests . . . through a system of effective self-regulation of trading facilities, clearing systems, market participants and market professionals under the oversight of the Commission," as well as "to deter and prevent price manipulation or any other disruptions to market integrity; to ensure the financial integrity of all transactions subject to [the] Act and the avoidance of systemic risk; to protect all market participants from fraudulent or other abusive sales practices and misuses of customer assets; and to promote responsible innovation and fair competition among boards of trade, other markets and market participants." Section 3 of the Act, 7 U.S.C. § 5.

21. A digital asset is anything that can be stored and transmitted electronically and has associated ownership or use rights. Digital assets include virtual currencies, such as bitcoin (BTC), ether (ETH), and tether (USDT), which are digital representations of value that function as mediums of exchange, units of account, and/or stores of value. Certain digital assets are "commodities," including bitcoin (BTC), ether (ETH), tether (USDT) and others, as defined under Section 1a(9) of the Act, 7 U.S.C. § 1a(9).

22. In recent years, as digital asset markets have evolved, the CFTC has approved the offer of futures contracts on digital assets, including bitcoin and ether futures and options, by

boards of trade registered with the Commission, including the Chicago Mercantile Exchange ("CME") and Chicago Board Options Exchange ("CBOE").

23. Section 6c(1) of the CEA, 7 U.S.C. § 9(1), in relevant part, makes it unlawful for any person, directly or indirectly, to:

> use or employ, or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate . . .

24. CFTC Regulation 180.1(a), 17 C.F.R. § 180.1(a), promulgated pursuant to the authority in CEA Section 6(c)(1), makes it unlawful for any person, directly or indirectly, in connection with any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, to intentionally or recklessly:

> (1) Use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud;
>
> (2) Make, or attempt to make, any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading; or
>
> (3) Engage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person.

25. Section 13c(b) of the Act, 7 U.S.C. § 13c(b) provides that "any person who, directly or indirectly, controls any person who has violated any provision of this chapter or any of the rules, regulations or orders issued pursuant to this Act may be held liable for such violation in any action brought by the Commission to the same extent as such controlled person. In such action, the Commission has the burden of proving that the controlling person did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violation."

V. FACTS

A. Founding of Alameda and the FTX Trading Exchange

26. Bankman-Fried co-founded Alameda in November 2017 in Berkeley, California. Initially, Alameda primarily engaged in high-frequency digital asset arbitrage trading. This practice consisted of using proprietary algorithmic quantitative computer programs, commonly known as "bots," to identity arbitrage opportunities due to price differentials between various digital asset platforms. Alameda engaged in high-frequency arbitrage trading across a large variety of digital asset exchanges, including certain exchanges operating in the United States.

27. In a June 29, 2019 "white paper" Alameda represented that within a year of its inception, it had "become the largest liquidity provider and market maker in the [digital asset] space," trading "$600 million to 1 billion a day" and accounting for "roughly 5% of global volume in digital asset trading."

28. Throughout the Relevant Period, Bankman-Fried has owned 90% of Alameda. Bankman-Fried was CEO of Alameda until October 2021, at which time he selected and appointed two co-CEOs to replace him.

29. Even after stepping down as CEO of Alameda, Bankman-Fried continued to maintain control over Alameda. For example, Bankman-Fried remained a signatory on Alameda Research's bank accounts and an authorized trader for Alameda's accounts with CFTC registered futures commission merchants. Bankman-Fried also maintained direct decision-making authority over all of Alameda's major trading, investment, and financial decisions. This authority was exercised at least in part through Bankman-Fried's regular, often daily participation in various in-person and mobile chat communications with senior personnel at Alameda.

30. Over time, Alameda expanded its activities into a number of new digital asset business models, including making large equity investments in various companies in the digital

asset industry, including by securing large loans from digital asset lending platforms to enable it to increase the size and variety of its digital asset industry investments.

31. By late 2018, Bankman-Fried and others employed at Alameda's offices in Berkeley, California had begun building the centralized digital asset derivatives exchange, whcih would ultimately become FTX. The platform development was funded, in part, by another digital asset exchange, Binance, which, upon information and belief, had acquired an approximately 20% stake in FTX in or before November 2019.

32. In early 2019, Bankman-Fried and others moved to Hong Kong to finalize and launch the FTX Trading platform to the public. The FTX.com website was launched and made available to the public by no later than May 2019. Bankman-Fried was at all times during the Relevant Period the majority shareholder of FTX trading and related entities.

33. FTX offered trading in a large variety of digital assets, including digital commodities such as bitcoin, ether, tether, and others. FTX operated primarily as a derivatives exchange and offered trading in various types of options, futures, swaps, perpetual swaps, and other digital commodity derivative products. FTX allowed customers to place buy (long) and sell (short) orders in an electronic order book, and matched customer orders via its "trading engine" or "matching engine." FTX also offered a number of additional services related to the trading of digital asset products. For example, FTX operated a peer-to-peer (P2P) margin lending program where customers could offer margined and leveraged offerings to one another.

34. Customers could access the FTX platform through the FTX.com website, through a mobile application, and through an Application Programming Interface (API). FTX also offered an off-exchange "over the counter" (OTC) portal that enabled customers to connect and request

quotes for spot digital assets and trade directly, rather than placing resting orders on a central limit order book.

35. In marketing materials and in communications with federal regulators and others, FTX touted its auto-liquidation risk management engine, cross-margin functionality, and backstop liquidity provider ("BLP") programs as unique features that limited risk. Alameda was a leading participant in the BLP program.

36. FTX relied on Alameda resources, funds, and personnel to carry out a number of core functions for the FTX.com platform, including creating liquid submarkets for all of the products offered on FTX Trading, maintaining an appropriate balance of various digital assets on the exchange, and supporting the "peer to peer" margin lending program.

37. FTX grew quickly. By June 2019, for example, just months after its launch, according to FTX, the daily volume of futures trading on FTX often exceeded $100 million. Beginning no later than 2020, FTX Trading was consistently ranked as one of largest digital asset exchanges in the world by trading volume. In 2021, according to FTX, FTX entities held approximately $15 billion in assets on their platforms, FTX entities accounted for approximately 10% of global digital asset volumes, and they transacted $16 billion of volume per day.

38. Because of the perception of potential conflicts of interest between FTX and Alameda, Defendants and their employees understood that it was important to present a public perception that there was strong separation between Alameda and FTX. On information and belief, this was one key motivation for Bankman-Fried's resignation as CEO of Alameda. Bankman-Fried and others also reinforced a separate spheres narrative in their public statements. For example, in August 2022, during a media appearance, Alameda's CEO said the following with respect to the nature of the relationship between FTX and Alameda:

> They're both owned by Sam [Bankman-Fried], obviously. So ultimately, sort of aligned incentives in that way. We keep them quite separate in terms of day-to-day operations. We definitely have a Chinese wall in terms of information sharing to ensure that no one in Alameda would get customer information from FTX or anything like that, or any sort of special treatment from FTX. They really take that pretty seriously.

39. Such public representations by and on behalf of Defendants did not reflect reality. Throughout the Relevant Period, Alameda and FTX continued to share office space, first in Berkeley, California and later in Hong Kong and the Bahamas. They also shared key personnel, technology and hardware, intellectual property, and other resources. Bankman-Fried and other senior management at Alameda and FTX also had widespread access to each other's systems and accounts.

40. In January 2020, Bankman-Fried and others established a separate group of operating entities operating a digital asset exchange specifically for U.S. persons. These entities collectively did business as "FTX US" and were incorporated primarily in the State of Delaware. The FTX US entities also held various registrations, including as a licensed Money Transmitter under the laws of the State of South Dakota. FTX US offered trading to U.S. persons in a large number of digital assets, including but not limited to spot digital commodities.

41. In October 2021, FTX US acquired a commodity derivatives company called LedgerX LLC, which then began doing business as "FTX US Derivatives." FTX US Derivatives operated as a CFTC-registered Designated Contract Market ("DCM"), Derivatives Clearing Organization ("DCO"), and Swap Execution Facility ("SEF"). FTX US Derivatives maintained separate bank accounts and, upon information and belief, appropriately segregated and accounted for customer funds at all relevant times.

42. During the Relevant Period, FTX Trading purported to block U.S.-based customers from using its exchange to transact in digital asset products, and to instead direct those U.S.

customers to transact exclusively through the FTX US and FTX US Derivatives entities. On information and belief, some U.S. persons and entities were able to use FTX Trading to transact in digital assets, including digital commodity products, futures, options, swaps, and derivatives.

C. FTX and Alameda Comingled, Mishandled, and Misappropriated FTX Trading Customer Funds From the Moment of FTX's Launch

43. At the time Bankman-Fried and others launched FTX, FTX have the requisite bank accounts to accept and hold customer funds. Instead, customers seeking to deposit "fiat" currency (i.e. traditional government-issued currency) into their FTX accounts were directed to wire their funds to bank accounts that were owned and controlled by Alameda. Some or all of those bank accounts were opened in the name of an entity called North Dimension, a Delaware-registered wholly-owned subsidiary of Alameda that, on information and belief, deliberately did not have a name that was readily-identifiable with Alameda. Certain of these bank accounts were located and based in the U.S.

44. Once received, FTX customer funds were not segregated from Alameda funds or placed into accounts designated as being "for the benefit of" (FBO) FTX customers. When FTX customer funds were deposited into Alameda bank accounts, Alameda personnel manually credited FTX customer accounts with the corresponding amount of fiat currency on FTX internal ledger system. Customers accessing their FTX accounts would be able to observe on the exchange's website (and later mobile application) that their funds had been posted to their FTX accounts, even though the funds actually remained in Alameda-controlled bank accounts.

45. For a small subset of customer deposits, Alameda exchanged customer deposit funds to fiat-backed stablecoins such as USDC and USDT (which are generally understood to be pegged 1:1 and backed 1:1 by U.S. Dollars) and then transferred an equivalent amount of such stablecoins to FTX's digital asset wallets. Alameda treated fiat currency and stablecoins as

fungible and this was the designated method for crediting customer accounts for fiat bank deposits. While this happened occasionally, customer funds typically remained solely in bank accounts in the name of Alameda, where they continued to be comingled with Alameda's own funds.

46. The Alameda-owned bank accounts holding FTX customer fiat funds were collectively reflected on FTX's internal ledger systems as the "fiat@ftx" account. During the Relevant Period, this account held a balance of as much as $8 billion in customer funds.

47. By approximately August 2020, FTX had opened its own FBO fiat bank accounts. However, FTX Trading customer funds that had previously been wired to Alameda and reflected in the "fiat@ftx" group of Alameda bank accounts were not transferred to FTX's bank accounts. Furthermore, even after August 2020, at least some FTX customers continued to send fiat deposits to Alameda-owned accounts.

48. Consistently from the launch of FTX and throughout the Relevant Period, Alameda accessed and used FTX customer funds for Alameda's own operations and activities, including to fund its trading, investment, and borrowing/lending activities. Alameda's use of FTX customer funds included both customer fiat deposits that were sent to Alameda-owned bank accounts and customer digital asset deposits and holdings that Alameda accessed via the unbounded withdrawal capabilities of its FTX Trading account.

D. Misrepresentations Related to the Operations of FTX and Alameda

49. The use of customer funds by Alameda was not authorized by FTX customers, and FTX customers were not made aware that their funds were being used by Alameda. To the contrary, FTX's Terms of Service expressly prohibited such use of customer funds. Specifically, Section 8.2.6 of the FTX Trading Terms of Service states:

All Digital Assets are held in your Account on the following basis:

> (A) Title to your Digital Assets shall at all times remain with you and shall not transfer to FTX Trading. As the owner of Digital Assets in your Account, you shall bear all risk of loss of such Digital Assets. FTX Trading shall have no liability for fluctuations in the fiat currency value of Digital Assets held in your Account.
>
> (B) None of the Digital Assets in your Account are the property of, or shall or may be loaned to, FTX Trading; FTX Trading does not represent or treat Digital Assets in User's Accounts as belonging to FTX Trading.
>
> (C) You control the Digital Assets held in your Account. At any time, subject to outages, downtime, and other applicable policies (including the Terms), you may withdraw your Digital Assets by sending them to a different blockchain address controlled by you or a third party.

50. Defendants were aware of the need to segregate and protect customer assets. In fact, FTX developed internal policy documents relating to the protection of customer assets. For example, in an FTXDM policy document entitled "Safeguarding of Assets & Digital Token Management Policy" dated August 2021, this affiliated entity of FTX Trading indicated that:

> FDM has a responsibility to ensure that customer assets are appropriately safeguarded and segregated from its own funds. This includes customer assets that may be held by third party service providers. FDM will ensure that:
>
> ● Customer assets (both fiat and virtual assets) are segregated from its own assets;
>
> ● Customer assets (both fiat and virtual assets) will be clearly designated and easily identifiable;
>
> ● All third-party service providers are aware that customer funds do not represent property of FDM and are therefore protected from third-party creditors; and
>
> ● All third-party providers are aware that customer assets are held in trust.
>
> Regarding customer fiat assets, FDM will maintain customer accounts with a regulated credit, e-money or payment institution that is acceptable to the Securities Commission of The Bahamas (SCB). Customer accounts will be designated as such, and the monies contained therein will be appropriately ring-fenced and protected from claims against FDM.
>
> Customer monies will be appropriately ring-fenced to protect from:

> ● The unlikely event FDM becomes insolvent;
>
> ● The use of customer monies being used to benefit others; and
>
> ● FDM using customer monies to finance its own operations.
>
> Written notice will be provided to the relevant regulated credit, e-money, or payment institution to clarify that the assets contained are held by us on trust for our customers and they are not entitled to combine the account any other account, or to exercise any right of set-off or counterclaim against the money in those accounts, in respect of any debt owed by us.
>
> All customer accounts will be under the dual signatory of two directors or of one director, together with a senior member of the management team.

51. Throughout the Relevant Period, Bankman-Fried and other representatives of FTX consistently and repeatedly reiterated, in a variety of contexts, that customer assets were properly segregated and custodied by FTX at all times, in conformance with both FTX's Terms of Service and generally understood best practices for derivatives exchanges, which presume a requirement for customer disclosure and consent in order to engage in rehypothecation of customer assets (i.e. re-use of deposited assets).

52. Such statements about the treatment and custody of customer assets include misstatements that Bankman-Fried and others made and/or caused to be made to the U.S. Congress, the CFTC, and/or other federal and state government agencies, investors, and in public venues such as Twitter.

53. For example, during February 9, 2022 testimony before the U.S. Senate Committee on Agriculture, Nutrition and Forestry, Bankman-Fried, while advocating for the implementation of legislation regarding digital assets and the extension of certain legal protections to digital asset exchanges, testified as follows with respect to FTX's treatment of customer funds:

> FTX has policies and procedures for its platforms today that reflect this basic principle by maintaining liquid assets for customers withdrawals, including a sufficient balance of digital assets funded by the company for

> its non-U.S. platform. The resources are funded to provide sufficient cover against user losses under certain events and extreme scenarios in order to, among other purposes, ensure a customer without losses can redeem its assets from the platform on demand.
> […]
> In keeping with this principle, FTX provides a user experience that enables any user to easily view account balances for all assets, for all of its platforms, in real time. By logging in to the customer's account at FTX, the customer can immediately view the types of assets they own held in custody by FTX. The assets are ledgered and easily identifiable to the user (but held in an omnibus wallet in the case of the customer's tokens in order to better promote liquidity on the platform) pursuant to internal policies and procedures, and FTX regularly reconciles customers' trading balances against cash and digital assets held by FTX. Additionally, as a general principle FTX segregates customer assets from its own assets across our platforms.

54. Contrary to such representations and without disclosure to FTX customers, Alameda and FTX comingled funds and freely used FTX customer funds as if they were their own, including as capital to deploy in their own trading and investment activities. On information and belief, Bankman-Fried, his parents, and other FTX and Alameda employees used FTX customer funds for a variety of personal expenditures, including luxury real estate purchases, private jets, documented and undocumented personal loans, and personal political donations.

55. On information and belief, comingled funds, including FTX customer funds, were also furtively used by Bankman-Fried and FTX for extensive marketing and promotional expenses in the U.S., including a Super Bowl commercial and the sponsorship of a sports stadium in Miami, Florida. Many of these advertisements, including the Super Bowl commercial, touted FTX as "the safest and easiest way to buy and sell crypto." These promotional activities were carried out in the U.S. to generally promote "FTX" rather than specifically "FTX US." On information and belief, some of these promotional activities were paid for or guaranteed by FTX Trading entities.

E. Alameda's Relationship with and Special Privileges on FTX

56. From the launch of FTX, Alameda operated as a primary market maker on FTX Trading. In that capacity, Alameda acted as an always-available buyer and seller of digital assets in order to provide sufficient liquidity and an available trading counterparty to FTX customers. Over time, FTX acquired additional institutional market makers, but Alameda remained a high-volume market maker throughout the Relevant Period.

57. Alameda also performed a number of other functions for FTX. For example, Alameda helped FTX maintain an acceptable balance of various digital assets, and particularly stablecoins, in its wallets. To do so, Alameda was authorized to make large exchanges of various stablecoins on behalf of FTX Trading, using FTX Trading's assets rather than its own.

58. Alameda enjoyed certain essential and undisclosed benefits and privileges on FTX. These advantages were programmed into the code for FTX Trading at the direction of Bankman-Fried. For one, Alameda was exempt from FTX's "auto-liquidation" risk engine functions, which would automatically liquidate (sell) a customer's open position when their "Maintenance Margin Fraction" fell below a certain determined level. All customers who took on too much leverage or risk on FTX would thus be auto-liquidated by the exchange. Alameda was exempt from this—it could not be liquidated on FTX Trading under any conditions. This exception was hard coded into FTX's system. This advantage was not publicly disclosed during the Relevant Period. The existence of this and other advantages directly contradicted public statements made by and on behalf of Defendants.

59. Alameda's account on FTX also had a special designation in the FTX Trading code, labeled as an "allow negative flag," which allowed Alameda to execute a transaction even if it did not have the funds available in its account to do so. Alameda also had an essentially unbounded

credit limit in the FTX database. On at least one occasion during the Relevant Period, Alameda had reached a previously-set borrowing limit for its FTX account. In response, Bankman-Fried directed FTX personnel to raise the borrowing limit to a level that would be unlikely to ever be exceeded. On information and belief, FTX personnel ultimately raised Alameda's borrowing limit to be many tens of billions of dollars. Alameda's borrowed funds could also be withdrawn from FTX. These features, in combination, allowed Alameda unlimited ability to borrow and withdraw and digital assets directly from FTX Trading to put towards its off-platform activities. This functionality existed separate and apart from Alameda's more limited participation in FTX Trading's P2P margin lending program.

60. Alameda's ability to withdraw unlimited funds from FTX Trading was not publicly disclosed during the Relevant Period. On information and belief, Defendants were aware of and responsible for these functionalities throughout the Relevant Period.

61. Alameda also enjoyed order execution timing privileges for its transactions on FTX Trading. Alameda, like many other institutional customers, transacted on FTX through the API rather than the standard front-end website or mobile application. However, while most or all other customers of API had their transaction orders routed through the FTX system, Alameda was able to bypass certain portions of the system and gain faster access to the API. As a result, Alameda's transaction orders were received several milliseconds faster than those of other API users. In the high-frequency trading sector, this is a significant time advantage. This was not publicly disclosed during the Relevant Period. On information and belief, Defendants were aware of and responsible for these functionalities throughout the Relevant Period.

62. Alameda also enjoyed an additional execution time privilege as a result of not being subject to certain automated verification processes, because the above features of its account made

it unnecessary to carry out certain automated steps like verifying available funds before executing a transaction. Other FTX Trading customers, in contrast, were subject to an automated review process when placing orders to ensure that they had sufficient funds in their accounts to execute the requested transaction. By avoiding this "account API lock" process, Alameda gained another significant speed advantage. Similarly, if other customer placed several orders at once, these checks occurred in sequential order, so that each transaction could be confirmed as viable. This did not apply to the Alameda account. These advantages were not publicly disclosed during the Relevant Period. On information and belief, Defendants were aware of and responsible for these functionalities throughout the Relevant Period.

63. Defendants were aware of and participated in facilitating the foregoing privileges afforded to Alameda, both with respect to Alameda's advantages on FTX and with respect to Alameda's ability to misappropriate FTX customer funds.

64. At the direction and under the control of Bankman-Fried, Alameda used large amounts of capital, including capital derived from FTX customer funds, to undertake significant illiquid investments and transactions, including long-term equity holdings in a variety of digital asset companies and large acquisitions of relatively illiquid digital assets.

65. One of Alameda's most significant holdings was the FTT digital asset. FTT was the FTX "exchange token" and could be used to obtain discounted trading fees for transactions on FTX Trading. On information and belief, Alameda did not pay to acquire its FTT holdings.

66. FTX consistently used one third of the trading revenues it collected to buy FTT tokens in the marketplace and "burn" them—a mechanism to permanently take the tokens out of circulation by sending them to a smart wallet from which they could never be withdrawn. On a weekly basis, FTX Trading announced on Twitter the quantity of FTT it had bought and burned

that week. On information and belief, this was intended to raise the value of the FTT tokens that remained in circulation, and thereby the value of the FTT that Alameda held.

67. Alameda's FTT holdings were a significant portion of its balance sheet and a significant portion of all FTT in circulation. Alameda valued its FTT holdings on its balance sheet at the market price at which FTT was traded, without applying any discount to reflect that it could not have sold its significant FTT holdings into the marketplace without causing a sharp reduction in its trading price.

68. Alameda also held extremely large quantities of several other illiquid digital assets relative to their circulation volumes, and likewise did not apply a discount to the value of those holdings on its balance sheet.

69. Alameda relied on its significant holdings of FTT and similar illiquid tokens, valued at the market value of the asset without discount, as collateral to support a number of large loans from various digital asset lending platforms. During the Relevant Period, Alameda took out a large number loans, at times totaling as much as $10 billion in notional value during the Relevant Period.

F. Misappropriation of Customer Funds

70. By early 2022, Alameda had invested several billion dollars in directional, unhedged, illiquid, and/or long-term investments. To fund these investment activities, Alameda had relied on billions of dollars of loans from digital asset lending platforms, traditional bank lines of credit, and its unlimited borrowing abilities on the FTX, including its access to customer funds.

71. In approximately spring 2022, the digital asset markets as a whole experienced a significant downturn. This downturn came to a head in May 2022 with the crash of two significant and widely-traded digital assets, whose value crashed essentially to zero. There was significant

contagion from this event, including a major decline in the value of bitcoin, ether and other digital assets. The devaluation of such central and high-volume digital assets resulted in major credit defaults throughout the digital asset industry, as the value of collateral guaranteeing various loans declined. As a result, a number of digital asset lenders and market participants made margin calls on borrowers, liquidated open positions, recalled loans, and/or collapsed entirely, including into bankruptcy.

72. In approximately May and/or June 2022, Alameda was subject to a large number of such margin calls and loan recalls. It did not have sufficient liquid assets to service its loans. Instead, at the direction of Bankman-Fried, Alameda greatly increased its usage of FTX customer funds to meet its external debt obligations. Alameda was able to rely on its undisclosed ordinary-course access to FTX credit and customer funds to facilitate these large withdrawals, which were several billion dollars in notional value. Defendants were aware of and responsible for this misappropriation of FTX customer funds.

73. By approximately mid-2022, FTX's internal ledgers reflected that the balance of Alameda's fiat liability to FTX totaled approximately $8 billion, a staggering amount that exceeded FTX total lifetime revenue.

74. Publicly during this time, Defendants portrayed that they remained highly profitable and liquid. Following the market crash of May 2022, Bankman-Fried, through Alameda and other entities, bailed out several digital asset companies with loans or acquisitions. Bankman-Fried portrayed these activities as being benevolent and for the benefit of the digital asset industry. In connection with the acquisition of one such digital asset lending platform from a bankruptcy sale, on October 2, 2022 Bankman-Fried tweeted that "our bids are generally determined by fair

market price, no discounts; goal isn't to make money buying assets at cents on the dollar, it's to pay $1 on the $1 and get the $1 back to customers."

75. On information and belief, Bankman-Fried stated privately that he was pursuing an aggressive acquisition strategy during this time at least in part to gain access to additional sources of capital that could be used to support his existing businesses and fill the hole in customer funds that had been created.

76. Bankman-Fried had acknowledged this large outstanding balance to a small group of key personnel of FTX and Alameda throughout the Relevant Period. In one such conversation, Bankman-Fried indicated to an FTX executive that he was not concerned with Alameda's liability on FTX because it was sufficiently collateralized by Alameda's holdings of FTT tokens—the same tokens whose market price Alameda's trading desk was actively trying to control.

77. At least in part to remediate the risk that Alameda's large liability would be discovered, at Bankman-Fried's direction, FTX executives reallocated Alameda's approximately $8 billion in liabilities to a customer account on FTX's systems that Bankman-Fried would later refer to as "our Korean friend's account" and/or "the weird Korean account." This was technically a sub-account of Alameda, but unlike other Alameda sub-accounts on FTX, it was not opened under an "@alameda-research.com" identifier and was not otherwise readily identifiable as being an Alameda-associated account. The system notes associated with the account described it as "FTX fiat old." As a result, it was no longer apparent on FTX's ledgers that Alameda had an $8 billion negative balance on its FTX account.

78. The same type of "allow negative flag" and exemption from liquidation characteristics were applied to the so-called Korean account as was applicable to the Alameda main account and other sub-accounts.

G. Contemplated Shutdown of Alameda

79. In or around September 2022, Bankman-Fried drafted and shared a document that questioned whether Alameda should be permanently shut down. The document, titled "We came, we saw, we researched" began: "I only started thinking about this today, and so haven't vetted it much yet. But: I think it might be time for Alameda Research to shut down. Honestly, it was probably time to do that a year ago."

80. Bankman-Fried went on to lay out a number of reasons for the suggestion to shut down Alameda, including "[t]he fact that we didn't hedge as much as we should have alone cost more in EV [expected value] than all the money Alameda has ever made or ever will make"; "[i]n the current environment, capital is really expensive, and Alameda doesn't justify it"; and "Alameda is making some money trading, but not enough to justify its existence[.]" These admissions were directly contrary to contemporaneous public statements that Bankman-Fried and Alameda were making regarding Alameda's profitability.

81. Bankman-Fried also laid out a number of "large downsides" to shutting down Alameda, including those that reflected the interconnectedness between Alameda and FTX Trading's operations such as "[l]ess liquidity on FTX" and the observation that "given the amount that Alameda is doing, we *can't* really shut it down." (emphasis in original).

82. Bankman-Fried also drafted a contemplated Twitter thread to announce the shutdown of Alameda, and concluded: "I feel really uncertain what's right! So I guess my plan is that, this coming weekend, we should just make a call, and enact it before next Monday, one way or another. Thoughts?"

83. Alameda was not shut down at this time or at any point during the Relevant Period.

H. November 2022 Collapse of FTX Trading and Alameda

84. On November 2, 2022, the online digital asset news publication Coindesk.com published an article titled "Divisions in Sam Bankman-Fried's Crypto Empire Blur on His Trading Titan Alameda's Balance Sheet," and subtitled: "Alameda had $14.6 billion of assets as of June 30, according to a private document CoinDesk reviewed. Much of it is the FTT token issued by FTX, another Bankman-Fried company." This article reported on a purported leaked Alameda balance sheet that showed that, at least as of June 30, 2022, an extremely high portion of Alameda's $14.6 billion in assets consisted of the FTT token.

85. On November 6, 2022, in response to this article, the CEO of Binance tweeted that, "[d]ue to recent revelations that have came [*sic.*] to light," he would be selling the remainder of his significant FTT holdings, which he acquired during the buyout from FTX seed investment.

86. In consultation with Bankman-Fried and others, the CEO of Alameda responded on Twitter that Alameda would be willing to buy back all of Binance and Zhao's FTT holdings at $22 per token. At the direction of Bankman-Fried and the Alameda CEO, FTX personnel began liquidating Alameda's investments and trade positions to rapidly free up capital for FTT buybacks. Nevertheless, the market value of FTT steadily declined.

87. On the evening of November 6, as they monitored and reacted to the movements in FTT prices and the contagion effects on the digital asset market more broadly, Bankman-Fried, and Alameda executives expressed surprise that these events had not had a larger negative impact on the prices of bitcoin, saying in a chat message:

> [former Alameda executive 1]: "I'm surprised BTC isnt down more"
>
> [former Alameda executive 2]: "me too"
>
> Bankman-Fried: "yea me 3"

88. At this time, bitcoin market prices, including on U.S. exchanges, had indeed begun to decline, likely as a direct or indirect result of the events described herein.

89. At the same time, an increasing number of FTX customers began requesting to withdraw their funds from the exchange. FTX personnel initially managed to keep FTX's systems operating quickly enough to keep up with withdrawals, but soon fell behind.

90. By late in the day on November 7, it was apparent to Defendants that FTX did not have sufficient funds to cover all customer withdrawals, and that there were not sufficient funds held in various FTX accounts to cover all customer deposit obligations.

91. Bankman-Fried and other key personnel of FTX and Alameda acknowledged internally that this shortfall was not merely a matter of having sufficient liquid funds on hand to cover customer withdrawals in the short term; rather, FTX customer funds were irrevocably lost because Alameda had misappropriated them.

92. That same day, the Alameda traders who had been liquidating Alameda's open positions to free up capital for FTT buybacks were directed to instead sell everything that could be sold quickly from Alameda's holdings, to maximize open lines of credit or any other available sources of capital, and generally do anything possible to quickly obtain billions of dollars in capital to send to FTX.

93. Bankman-Fried, reinforcing this instruction, confirmed a trader's summation of the directive as "close everything down to generate capital, maximally aggressive" to "liquidate all positions." Bankman-Fried responded that "there is definitely a fair bit of urgency" and asked for the "ETA on getting at least $2b of USD."

94. On or about November 7, FTX executives were also asked to evaluate the solvency of FTX US. They were readily able to carry out this request because FTX personnel had access to and oversight of the FTX US (but not FTX US Derivatives) code, database, and ledgers in the ordinary course of their duties. The FTX executives ultimately identified a shortfall they did not understand and were unable to quantify on FTX US.

95. Bankman-Fried quickly indicated that he would fill the hole at FTX US from liquidation of Alameda assets. On November 8, Bankman-Fried directed Alameda traders to prioritize meeting FTX US capital requirements and to send excess capital to FTX US. On information and belief, Alameda sent in excess of $185 million to FTX US to fill its shortfall.

96. Later that same day on November 8, an Alameda executive indicated in a chat message that "apparently part of what's going on is that alameda actually has a long USDT/short USD margin position on FTX US that we aren't tracking?" and said "which is why FTX US has less USD than we thought it should."

97. In direct contradiction of this internal series of events, on November 7, in public statements and various Twitter messages, Bankman-Fried and others acting on behalf of FTX continued to portray the shortfall that was causing customers to be unable to withdraw their funds as merely a liquidity problem. They affirmatively (and falsely) stated that FTX continued to be solvent and that all customer deposits were safe. For example, Bankman Fried tweeted:

98. On information and belief, this and other tweets posted by Bankman-Fried on November 7-8, 2022 were intended to dissuade FTX customers from requesting to withdraw their funds from Defendants' exchanges.

99. This and other iterations of proposed tweets by Bankman-Fried were debated and rewritten among a small group of Defendants' key employees and other of Bankman-Fried's confidants. On information and belief, several individuals expressed concerns that Bankman-Fried's tweet was inaccurate and/or misleading.

100. At the same time as Bankman-Fried was making these public assurances, he and numerous others acting on behalf of FTX Trading were also reaching out to as many sources of funding as possible in an attempt to quickly raise several billion dollars to cover the shortfall in customer funds. As their calculation of the amount of the shortfall grew from $1-2 billion, to $2-4 billion, to as much as $8 billion, the number of viable potential rescue options diminished. Numerous parties declined to bail out FTX regardless of the favorable terms being offered.

101. At approximately this same time, Bankman-Fried prepared or caused to be prepared a balance sheet to be shared with prospective investors showing the assets and liabilities of the companies. That balance sheet was unorthodox in a number of respects. Most notably, the balance

sheet included an $8 billion negative balance from a "hidden, poorly internally labeled 'fiat@' account."

102. Upon information and belief, the "fiat@" account was in fact well-known to and understood by Bankman-Fried, who had previously directly managed and directed its use and characterization on the FTX systems.

103. On November 8, Bankman-Fried called the CEO of Binance CEO to offer to sell FTX Trading to him in its entirety. Binance initially accepted the offer and announced the news on Twitter, saying: "[t]his afternoon, FTX asked for our help. There is a significant liquidity crunch. To protect users, we signed a non-binding LOI [Letter of Intent], intending to fully acquire FTX.com and help cover the liquidity crunch. We will be conducting a full DD in the coming days." Defendants thereafter provided Binance with various information in response to their due diligence inquiries in furtherance of the LOI.

104. On the morning of November 9 at approximately 10 AM ET, after the announcement of the Binance acquisition, the CEO of Alameda held and "all-hands" meeting with Alameda's staff. In that meeting, the CEO stated that earlier that year, in response to an accounting or book-keeping problem, Bankman-Fried and other individuals had decided to use FTX customer funds for Alameda. The CEO indicated that FTX had always allowed Alameda to borrow customer funds, and that FTX did not require collateral from Alameda, though in practice the collateral was Alameda's FTT. Shortly after this meeting, most of Alameda's staff resigned.

105. On November 9, just one day after announcing the deal, Binance announced it would not be able to move forward with the deal to acquire FTX, saying: "[a]s a result of corporate due diligence, as well as the latest news reports regarding mishandled customer funds and alleged

US agency investigations, we have decided that we will not pursue the potential acquisition of FTX.com."

106. With the prospects of acquisition or bailout investment being unlikely, executives of Defendant entities and FTX US began advocating strongly for Bankman-Fried to move the companies towards bankruptcy and halt all remaining customer withdrawals from the platforms.

107. On November 10, FTX and FTX US halted all trading and withdrawals, and Bankman-Fried announced that Alameda was being wound down. Bankman-Fried also posted a lengthy Twitter thread purporting to explain how he "f[***]ed up."

108. On November 10, at approximately 4:00 am ET, Bankman-Fried signed a document resigning his position as CEO of FTX Trading and, as majority owner of all the FTX Trading and Alameda companies, authorizing the appointment of an independent CEO and the filing of Chapter 11 bankruptcy proceedings.

109. The next day, on November 11, 134 separate companies simultaneously filed for Bankruptcy as part of those proceedings, which are ongoing and being jointly administered in the U.S. Bankruptcy Court for the District of Delaware.

110. In his initial declaration submitted shortly after the filing of the Bankruptcy petition, the FTX Enterprise's newly-appointed CEO said the following of the situation he encountered at the FTX Enterprise entities:

> I have over 40 years of legal and restructuring experience. I have been the Chief Restructuring Officer or Chief Executive Officer in several of the largest corporate failures in history. I have supervised situations involving allegations of criminal activity and malfeasance (Enron). I have supervised situations involving novel financial structures (Enron and Residential Capital) and cross-border asset recovery and maximization (Nortel and Overseas Shipholding). Nearly every situation in which I have been involved has been characterized by defects of some sort in internal controls, regulatory compliance, human resources and systems integrity.

> Never in my career have I seen such a complete failure of corporate controls and such a complete absence of trustworthy financial information as occurred here. From compromised systems integrity and faulty regulatory oversight abroad, to the concentration of control in the hands of a very small group of inexperienced, unsophisticated and potentially compromised individuals, this situation is unprecedented.

111. In the days and weeks since Bankman-Fried resigned from the companies, he has continued to make widespread public statements, provide explanations, and make admissions, including in live interviews. Several of his statements admit key facts pled herein. For example, in a November 15 chat message interview with a Vox publication reporter, which Bankman-Fried has confirmed he participated in, he characterized the course of relevant events as follows:

> like, 'oh FTX doesn't have a bank account, I guess people can wire to Alameda's to get money on FTX' … 3 years later … 'oh f**** it looks like people wired $8b to Alameda and oh god we basically forgot about the stub account that corresponded to that and so it was never delivered to FTX'

I. Impact of These Events on Digital Commodity Futures Markets

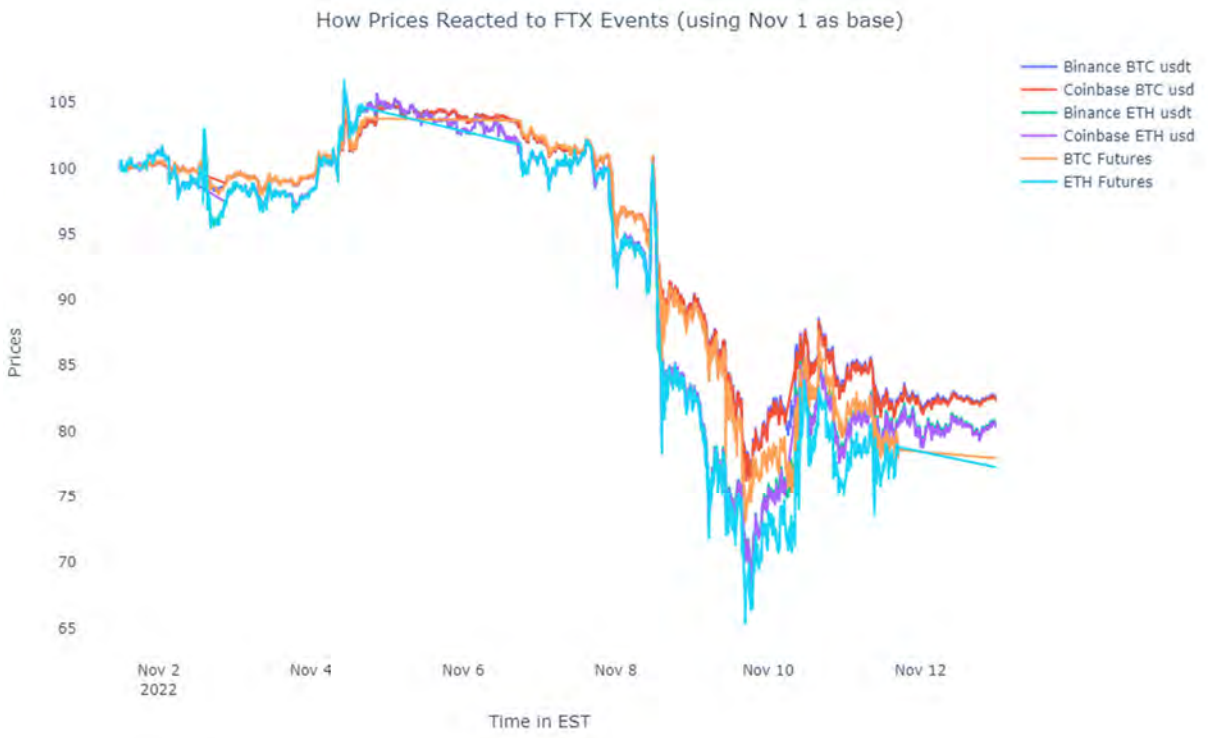
112. The foregoing series of events had a significant, observable negative impact on digital commodity markets. For example, between the release of the November 2 Coindesk article and the November 9 announcement that Binance declined to acquire FTX Trading, the price of bitcoin futures fell more than 23%, to two-year low prices.

113. Various data visualizations demonstrate a clear connection between the foregoing events and the price movement of digital commodities, including bitcoin and ether.

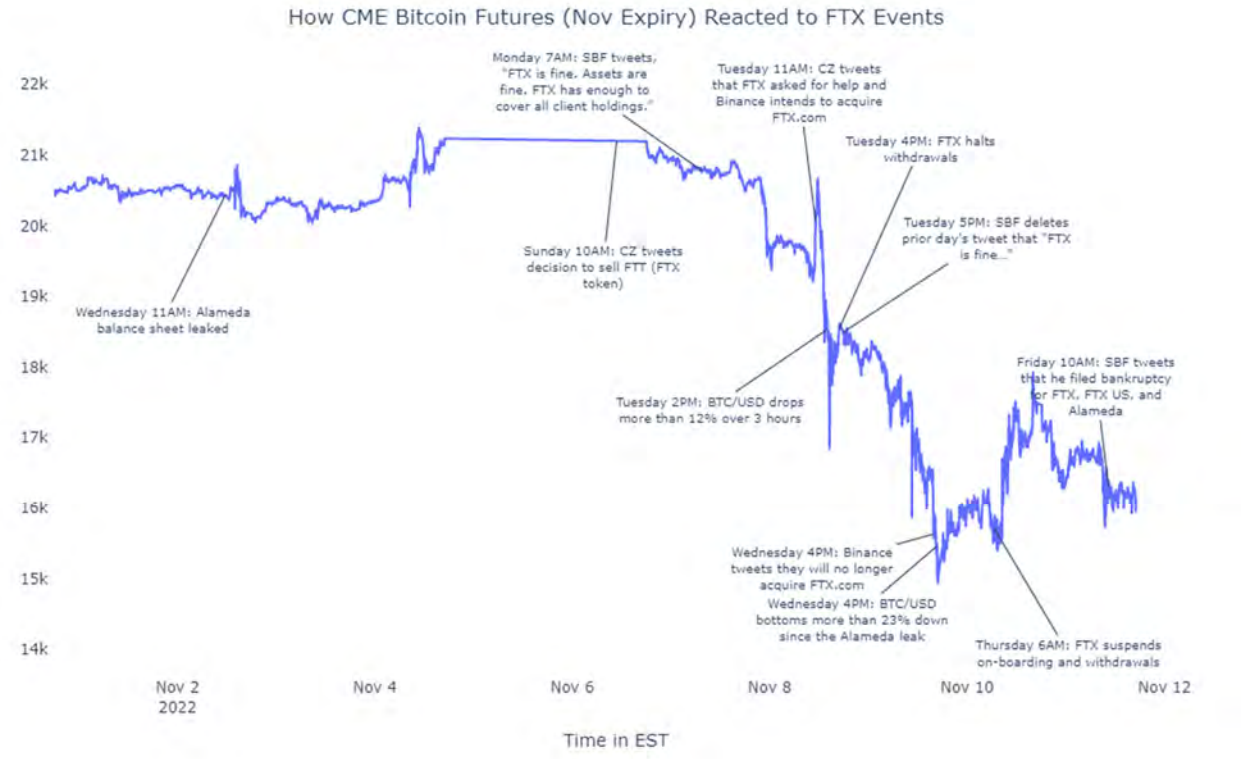
114. The foregoing conduct by Defendants caused, directly or in directly, significant negative price impact on the value of commodities in interstate commerce in the U.S., including bitcoin and ether spot and futures prices, as illustrated in the following three market data charts.

115. The following chart is a visualization of the price movement of bitcoin and ether digital commodity spot and futures prices on various major exchanges at the time of the foregoing

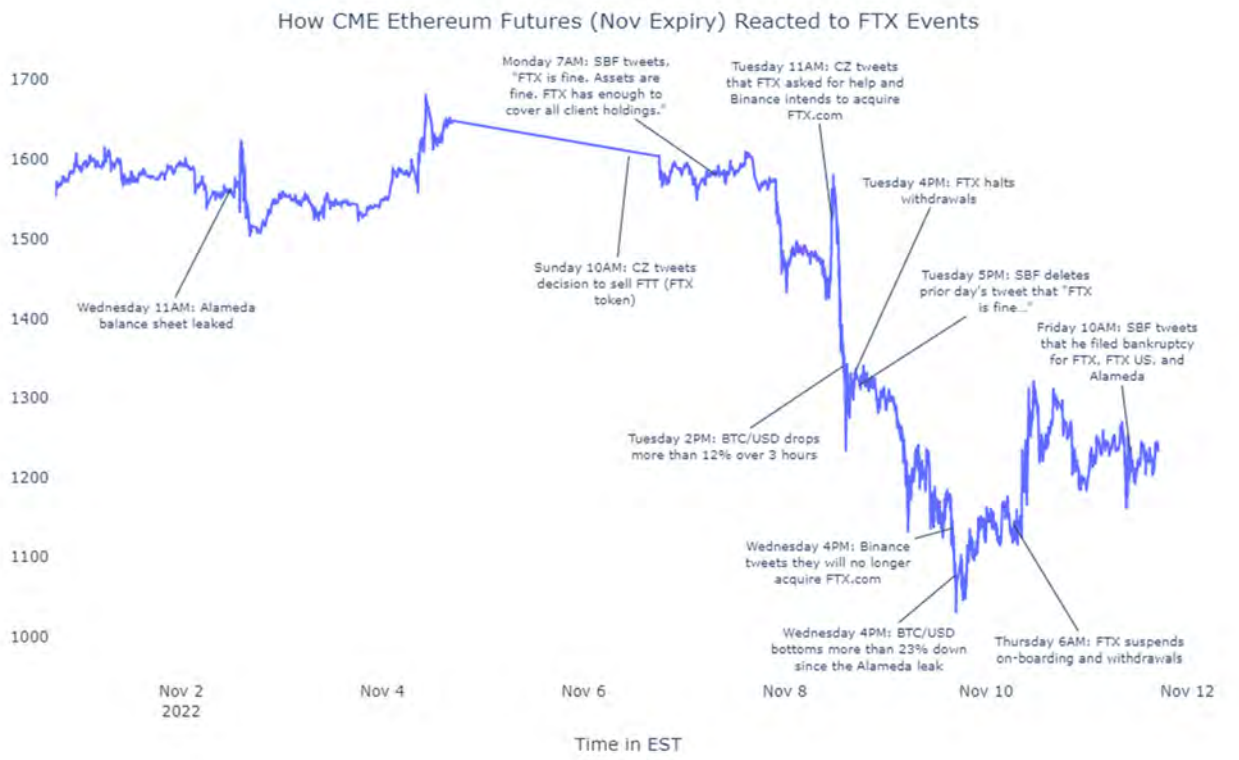
events. On information and belief, the significant price movement demonstrated in this chart is a result of the conduct described herein.



116. The following chart is a visualization of the impact of various of the foregoing market events on bitcoin futures prices on the U.S. CME exchange, with several of the key foregoing events identified on the price and time line. On information and belief, the significant price movement demonstrated in this chart is a result of the conduct described herein:



117. The following chart is a visualization of the impact of various of the foregoing market events on ether futures prices on the U.S. CME exchange, with several of the key foregoing events identified on the price and time line. On information and belief, the significant price movement demonstrated in this chart is a result of the conduct described herein:



VI. VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND REGULATIONS

COUNT I: FRAUD AGAINST ALL DEFENDANTS

Violations of Section 6c(1) of the Act, 7 U.S.C. § 9(1), and Regulation 180.1(a)(1),(3), 17 C.F.R. 180.1(a)(1),(3) (2021)

118. The allegations set forth in paragraphs 1 through 117 are re-alleged and incorporated herein by reference.

119. During the Relevant Period, Defendants intentionally or recklessly, in connection with contracts of sale of commodities in interstate commerce, directly or indirectly: used or employed, or attempted to use or employ, a scheme or artifice to defraud; and/or engaged in, or

attempted to engage in, acts, practices, or a course of business that operated or would operate as a fraud or deceit on customers of FTX Trading.

120. As a result of the foregoing conduct, Defendants' fraudulent conduct violated Section 6(c)(1) of the CEA, 7 U.S.C. § 9(1), and Regulation 180.1(a)(1),(3), 17 C.F.R. § 180.1(a)(1),(3).

121. Defendants are directly liable for their actions in violation of Section 6(c)(1) of the CEA, 7 U.S.C. § 9(1), and Regulation 180.1(a)(1),(3), 17 C.F.R. § 180.1(a)(1)-(3).

122. Defendant Bankman-Fried directly or indirectly controlled the FTX Trading and Alameda entities and did not act in good faith, or knowingly induced, directly or indirectly, the acts constituting the violations of 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a)(1)(3) committed by FTX Trading and Alameda. Therefore, pursuant to 7 U.S.C. § 13c(b), Defendant Bankman-Fried is also liable as control person for each of FTX Trading and Alameda's violations of Section 6(c)(1) of the CEA, 7 U.S.C. § 9(1), and Regulation 180.1(a)(1),(3), 17 C.F.R. § 180.1(a)(1),(3).

123. The acts and omissions of Bankman-Fried and other officers, employees, or agents acting for FTX Trading and/or Alameda described in this Complaint were done within the scope of their office, employment, or agency with FTX Trading and/or Alameda. Therefore, pursuant to 7 U.S.C. § 2(a)(1)(B) and 17 C.F.R. § 1.2 (2021), FTX Trading and/or Alameda are liable as principals for each act, omission, or failure of Bankman-Fried and the other officers, employees, or agents acting for FTX Trading and/or Alameda, constituting violations of 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a)(1),(3).

124. Each and every use or employment or attempted use or employment of any manipulative device, scheme, or artifice to defraud; or act of engaging, or attempting to engage, in acts, practices or courses of business that operated or would have operated as a fraud or deceit on

FTX Trading customers is alleged as a separate and distinct violation of Section 6(c)(1) of the CEA, 7 U.S.C. § 9(1), and Regulation 180.1(a)(1),(3), 17 C.F.R. § 180.1(a)(1)-(3).

COUNT II: FRAUDULENT MISSTATEMENTS OF MATERIAL FACT AND MATERIAL OMISSIONS

AGAINST ALL DEFENDANTS

Violations of Section 6c(1) of the Act, 7 U.S.C. § 9(1), and Regulation 180.1(a)(2), 17 C.F.R. 180.1(a)(2) (2021)

125. The allegations set forth in paragraphs 1 through 129 are re-alleged and incorporated herein by reference.

126. During the Relevant Period, Defendants intentionally or recklessly, directly or indirectly made, or attempted to make, in connection with contracts of sale of commodities in interstate commerce, untrue or misleading statements of material fact, or omitted to state material facts necessary to make the statements made not untrue or misleading.

127. As a result of the foregoing conduct, Defendants' fraudulent conduct violated Section 6(c)(1) of the CEA, 7 U.S.C. § 9(1), and Regulation 180.1(a)(2), 17 C.F.R. § 180.1(a)(2).

128. Defendants are directly liable for their actions in violation of Section 6(c)(1) of the CEA, 7 U.S.C. § 9(1), and Regulation 180.1(a)(2), 17 C.F.R. § 180.1(a)(2).

129. Defendant Bankman-Fried directly or indirectly controlled the FTX Trading and Alameda entities and did not act in good faith, or knowingly induced, directly or indirectly, the acts constituting the violations of 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a)(2) committed by FTX Trading and Alameda. Therefore, pursuant to 7 U.S.C. § 13c(b), Defendant Bankman-Fried is also liable as control person for each of FTX Trading and Alameda's violations of Section 6(c)(1) of the CEA, 7 U.S.C. § 9(1), and Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3).

130. The acts and omissions of Bankman-Fried and other officers, employees, or agents acting for FTX Trading and/or Alameda described in this Complaint were done within the scope of their office, employment, or agency with FTX Trading and/or Alameda. Therefore, pursuant to 7 U.S.C. § 2(a)(1)(B) and 17 C.F.R. § 1.2, FTX Trading and/or Alameda are liable as principals for each act, omission, or failure of the other officers, employees, or agents acting for FTX Trading and/or Alameda, constituting violations of 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a)(1),(3).

131. Each and every untrue or misleading statement of fact, omission of material fact necessary to make statements not untrue or misleading is alleged as a separate and distinct violation of Section 6(c)(1) of the CEA, 7 U.S.C. § 9(1), and Regulation 180.1(a)(2), 17 C.F.R. § 180.1(a)(2).

VII. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-l, and pursuant to the Court's own equitable powers, enter:

A. An order finding that Defendants Samuel Bankman-Fried, FTX Trading Ltd. b/d/a FTX.com, and Alameda Research LLC (collectively, "Defendants"), collectively and through their officers, employees, and agents, violated Section 6c(1) of the CEA, 7 U.S.C. § 9(1), and Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2021).

B. An order of permanent injunction prohibiting Defendants and any other person or entity associated with them, from engaging in conduct described above, in violation of Section 6c(1) of the CEA, 7 U.S.C. § 9(1), and Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2021).

C. An order of permanent injunction prohibiting Defendants and any of their affiliates, agents, servants, employees, successors, assigns, attorneys, and persons in active concert or participation with Defendants, from directly or indirectly:

(i) trading on or subject to the rules of any registered entity (as that term is defined in Section la of the Act, 7 U.S.C. § la(40));

(ii) entering into any transactions involving "commodity interests" (as that term is defined in Commission Regulation 1.3, 17 C.F.R. § 1.3 (2021)), or digital assets that are commodities, as that term is described herein, for Defendants' own accounts or for any account in which they have a direct or indirect interest;

(iii)having any commodity interests or digital assets that are commodities, as that term is described herein, traded on Defendants' behalf;

(iv)controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests or digital assets that are commodities, as that term is described herein;

(v) soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity interests or digital assets that are commodities, as that term is described herein;

(vi)applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2021);

(vii) acting as a principal (as that term is defined in Commission Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2021)), agent or any other officer or employee of any person registered, exempted from registration or required to be registered with the Commission except as provided for in Regulation 4.14(a)(9);

D. An order directing Defendants and any third-party transferee and/or successors thereof, to disgorge to any officer appointed or directed by the Court all benefits received including, but not limited to, trading profits, revenues, salaries, commissions, loans, or fees derived, directly or indirectly, from acts or practices which constitute violations of the Act as described herein, including pre-judgment and post-judgment interest;

E. An order directing Defendants and any successors thereof, to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between, with, or amount Defendants and any customer or investor whose funds were received by Defendants a result of the acts and practices that constituted violations of the Act, as described herein;

F. An order requiring Defendants to make full restitution by making whole each and every customer or investor whose funds were received or utilized by them in violation of the provisions of the Act as described herein, including pre-judgment interest;

G. An order directing Defendants to pay civil monetary penalties, to be assessed by the Court, in an amount not more than the penalty prescribed by Section 6c(d)(1) of the Act, 7 U.S.C. § 13a-1(d)(1), as adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114–74, 129 Stat. 584, title VII, Section 701, *see* Commission Regulation 143.8, 17 C.F.R. § 143.8 (2021), for each violation of the Act, as described herein;

H. An order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2); and

I. Such other and further relief as the Court deems proper.

VIII. DEMAND FOR JURY TRIAL

Plaintiff CFTC hereby demands a jury trial.

Dated: December 13, 2022

Commodity Futures Trading Commission

By its attorneys:

/s/ Jack Murphy

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Ryne Miller

General Counsel at FTX US
United States
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Partner
Jan 2019 - Aug 2021 · 2 years 8 months
New York, New York

Associate Attorney
Sep 2013 - Dec 2018 · 5 years 4 months
New York City
General Practice:
* Commodities, Futures & Derivatives
* Corp & Finance; Capital Markets
* Financial Services
* FinTech

Commodity Futures Trading Commission
3 years 4 months

Legal Counsel to Chairman Gary Gensler
May 2012 - Sep 2013 · 1 year 5 months
Washington D.C. Metro Area
Other:
* Guest Lecturer - Stanford Law School (Stanford University), Policy & Strategy Issues in Financial Engineering (Apr. 2013)

* Guest Lecturer - NYU School of Law, Financial Instruments and the Capital Markets (Feb. 2013)

* Presentation to American Gas Association Federal Regulatory Committee - Dodd Frank, Trade Options, etc. (June 2013)

* Presentation to Illinois Agricultural Leadership Foundation (IALF), re: Dodd-Frank and Derivatives Reform; at World Bank...

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Attorney Advisor
Jun 2010 - May 2012 · 2 years
Chief Counsel's Office, Division of Market Oversight.

Other:
* Commodity Options Presentation - DC Bar Association (Derivatives, Securitization, and Project Finance Committee of the Corporation, Finance and Securities Section) (Apr. 2012)

* Guest Lecturer - Georgetown University Law Center - Energy Trading & Market Regulation II (Jan. 2012)

Judicial Law Clerk
U.S. District Court for the Eastern District of Oklahoma
Jun 2009 - Jun 2010 · 1 year 1 month
Commercial Dispute Resolution (civil case docket).
Other Administrative Appeals.

Legal Research Assistant & LL.M.
NYU School of Law
Aug 2008 - May 2009 · 10 months

Legal Research Assistant & LL.M.
NYU School of Law
Aug 2008 - May 2009 · 10 months
Derivatives Law/ Financial Instruments.
Capital Markets Regulation (SEC and CFTC).
Investment Arbitration.

Associate
McAfee & Taft
Jul 2007 - Aug 2008 · 1 year 2 months
Financial Institution Regulation (Banking).
ISDA Documentation.
General Corporate Transactions.

Education

New York University School of Law
LL.M.
2008 - 2009
NYU Journal of International Law and Politics - Graduate Editor.
Research Assistant - Professor Jose Alvarez.

University of Oklahoma College of Law
JD
2004 - 2007
JD with honors.
Oklahoma Law Review.
President, Oklahoma International Law Society.
Research Assistant.
Study Abroad - Chulalongkorn University Faculty of Law (Bangkok, TH).
Bangkok Southerners Rugby Club.

Oklahoma State University
B.S. · Economics
2001 - 2004
Honors College Degree, Summa Cum Laude (4.0/4.0).
Economic Club of Oklahoma Award (top graduating senior in economics).
OSU Men's Rugby Team.
Exchange Student - University of Hertfordshire (U.K.); Hertfordshire Hurricanes (British Universities American Football League); College Bowl XVII (2003).
Oklahoma State Regent's for Higher Education Scholarship.

Licenses & Certifications

New York State Bar - Appellate Division, First Department
Registered Attorney
Credential ID Registration No. 5002795

State Bar of Oklahoma - Oklahoma Bar Association
Registered Attorney
Credential ID Registration No. 21754

State Bar of Oklahoma - Oklahoma Bar Association
Registered Attorney
Credential ID Registration No. 21754

More activity by Ryne

It's a case of the industry has outgrown the space. Hopefully we can work towards reshaping the "dock" as it's affectionately called in order to...
Liked by Ryne Miller

2023 is the year of the rabbit. Do not be a tortoise in registering for the 2023 Options Industry Conference in Nashville, TN. There are plenty of...
Liked by Ryne Miller

As we near the end of December, I wanted to take a moment and reflect on what a year this has been. If 2020 and 2021 limited our travels, 2022 let us...
Liked by Ryne Miller

Today is my 🎂 birthday. As I stand a couple years from 50, I have never worked harder, run 🏃 faster, loved more deeply or had more fun. 😁 And...
Liked by Ryne Miller

https://lnkd.in/eJyM9GjH Great news! #irishwhiskey #whiskey
Liked by Ryne Miller

The Senate voted in bipartisan fashion to confirm Magistrate Judge Dana M. Douglas to the Fifth Circuit Tuesday, making her the first woman of color...
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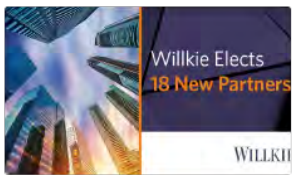
Photo
Liked by Ryne Miller

It was a difficult year in crypto for sure, but I've seen far worse. On this day in 2004, this piece of shrapnel nearly

Liked by Ryne Miller

Photo
Liked by Ryne Miller

It was a difficult year in crypto for sure, but I've seen far worse. On this day in 2004, this piece of shrapnel nearly took my life. So every year...
Liked by Ryne Miller



I'm so thrilled and honored to have been selected to join the partnership along with such talented colleagues!
Liked by Ryne Miller

Transparency is often the answer to any problem. "Hi, I'm George and I am an #economics nerd, recovering banker & hedge fund trader, writer, teacher,...
Liked by Ryne Miller

The folks at CoinDesk asked me to write something for their Crypto 2023 feature. I wrote the following op ed: https://lnkd.in/dnqzx_8h In short...
Liked by Ryne Miller

Happy Holidays! Perhaps my inner Scrooge is coming out during this blessed season, but here's a "humbug" of a rant, below... (1) It used to be that...
Liked by Ryne Miller