



AMERICAN
BANKRUPTCY
INSTITUTE

Southwest Bankruptcy Conference

General

Cryptocurrency and Bankruptcy

Hon. Daniel P. Collins

U.S. Bankruptcy Court (D. Ariz.) | Phoenix

Matt Foster

Sonoran Capital Advisors | Mesa, Ariz.

Cathy L. Reece

Fennemore Craig, P.C. | Phoenix

Bryce A. Suzuki

Snell & Wilmer L.L.P. | Phoenix

CRYPTOCURRENCY & BANKRUPTCY

AUGUST 29, 2023

PRESENTED TO
ABI SOUTHWEST

Panelists

Hon. Daniel P. Collins

Bankruptcy Judge
District of Arizona

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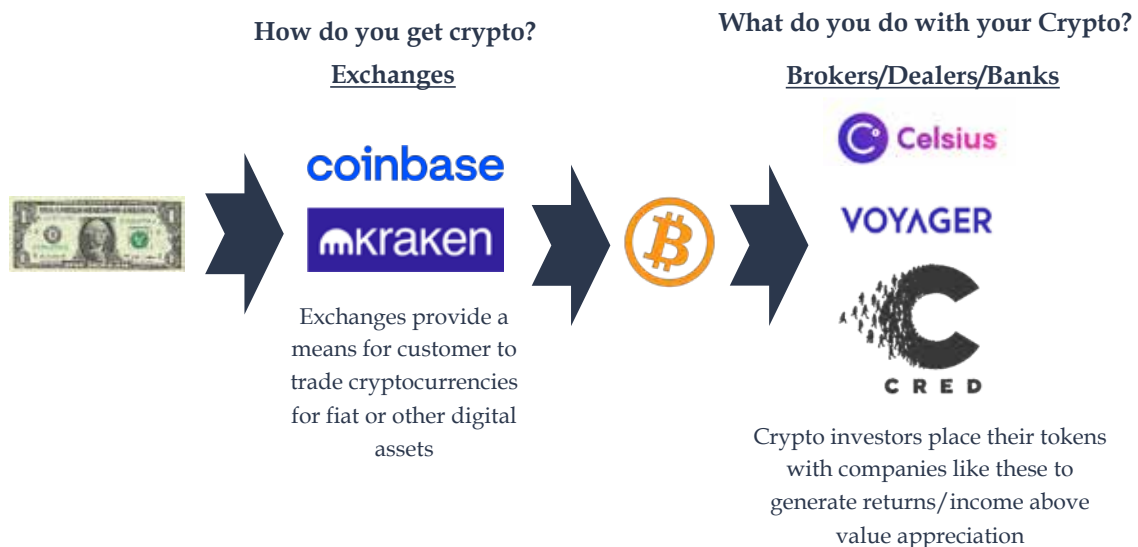
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Some Definitions

- **Cryptocurrency:** A way for storing value, usually in the form of coins/tokens, in many ways similar to money in your bank account.
- **Tokens and Coins:** A digital unit that represents an asset or data set on a blockchain
 - Ether is a coin because it is the native cryptocurrency of the Ethereum blockchain
 - Chainlink is a token that operates on the Ethereum blockchain
- **Blockchain:** A decentralized ledger (or record book) that is shared across a distributed network of peer-to-peer computers.
 - In English: All cryptocurrency transactions take place on a blockchain and are validated by a network of computers.
- **Wallet:** A specific address on a blockchain to store tokens, similar to a bank account.
 - Wallets store cryptocurrency tokens (BTC, ETH) while bank accounts store fiat currency (\$, €, £)
 - Wallets can be custodial, meaning they are accessed through an intermediary, like Coinbase
 - Wallets can be non-custodial meaning they accessed through a browser extension like MetaMask or a hardware device, like Ledger
- **NFT:** Non-fungible tokens created with a unique identifier code that attests to their only being one of that token in existence.
 - Think of a baseball card
- **Smart Contract:** A piece of software that is stored on the blockchain and can be executed automatically by anyone who pays the fee to run it on the blockchain.

3

What are the different roles in crypto?



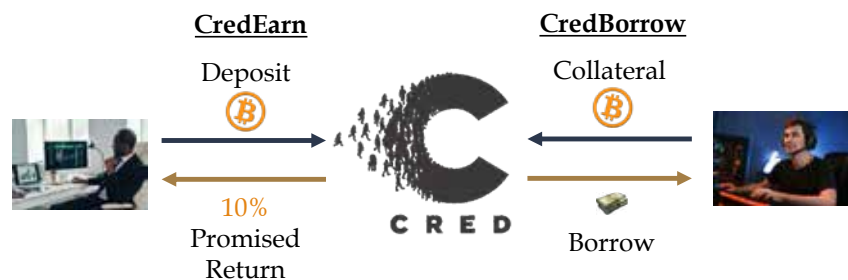
4

Cred, Inc

Case No. 20-12836 (Del.) cases.stretto.com/cred

- A provider of business and retail credit serving retail and institutional clients in 183 countries
- Based in San Mateo, California
- Filed for bankruptcy in Delaware on November 7, 2020

Cred had two major business lines:



5

Cred BK Issues

- All “depositors” are general unsecured creditors
- Some “Depositors” put their life savings in cryptocurrency
- “Depositors” are in crypto because they want to be off the grid...bankruptcy schedules are not off the grid
- Dealing with thousands of transactions worth millions of dollars
- Company operating under a growth technology mindset, not a banking mindset
- 800 bitcoin had gone missing prior to bankruptcy
- Chief Investment Officer had taken 225 bitcoin prior to leaving and it was discovered that he was an escaped convict from the U.K.
- Unsecured creditors did not want the company to operate as a going concern
- How do you keep a case administratively solvent when the only assets are cryptocurrency?

6

Prevalent Issues in Crypto Cases

Nothing new with process and issues – just a different type of business or industry

- What are the assets of the estate/ what digital assets are there?
- Who owns the assets and where are the assets?
- What are the specifics of contractual relationships/ what do the agreements provide about title, custody, control, or possession?
- What is the priority of creditors and investors?
- Valuation or estimation and date for determination
- Are there assets to sell or to pledge for DIP financing so there is sufficient cash flow to operate?

7

Prevalent Issues in Crypto Cases

- Is a reorganization possible/is the plan feasible?
- What do the real economic interest holders in the case want?
- Are there allegations of fraud/Ponzi scheme, misrepresentations against company and principals?
- Are there avoidance actions for trustee or liquidating trust to pursue/who are the third-party targets?
- Are there regulatory investigations ongoing/can they assist or benefit the estate?

8

Celsius Network LLC

Case No. 22-10964 (SDNY) cases.stretto.com/celsius

Filed July 15, 2022

- Judge ruled January 4, 2023 that the **Earn Accounts** with high interest yield **are property of estate** and the 600,000 customers in those accounts were **unsecured** creditors as a matter of contract law (DE 1822)
- **User Agreement for Earn Account (version 8)** said to customer “in consideration for the rewards payable to you on the Eligible Digital Assets using the Earn Service . . . and the use of our Services, **you grant Celsius all right and title to such Eligible Digital Assets, including ownership rights**, and the right, without further notice to you, to hold such Digital Assets in Celsius’ own Virtual Wallet or elsewhere, and to pledge. . . sell, lend or otherwise transfer or use any amount . . . and to use or invest such Digital Assets in Celsius’ full discretion.”
- Judge also ruled that **Debtor could use funds** from Earn Account as collateral or sell the funds and stablecoin of about \$20 million that it owned to finance the operations

9

Celsius Network LLC

- Judge later ruled the **Custody Accounts** were **not property of the estate** but **crypto belonged to the customer**.
- The **Withhold Accounts** were not yet decided by Judge so not certain it was property of the estate or property of the customer.
- In a **settlement** the parties agreed to settle the dispute and not litigate it. Under settlement **the Custody Account customer had the right to opt- in to receiving 72.5% of its crypto back** and give up right to recover from litigation, and the **Withhold Account customers agreed to receive cash amount of 70% of claim but no crypto** and would have a right to recovery from the litigation proceeds.

10

Celsius Network LLC

- Additional settlement with governmental agencies—Celsius banned from handling consumer assets
- Under the Plan a **new entity was to be formed**, to be capitalized and managed by Fahrenheit Group, and the **equity in new entity was to be distributed to creditors** plus cash distribution plus right to recover litigation proceeds. New entity would focus on Bitcoin mining and staking, with alternative for Orderly Wind Down Toggle if new entity could not operate.
- Disclosure Statement was approved August 14, 2023, voting will take place in September and Confirmation hearing will be October 2, 2023.

11

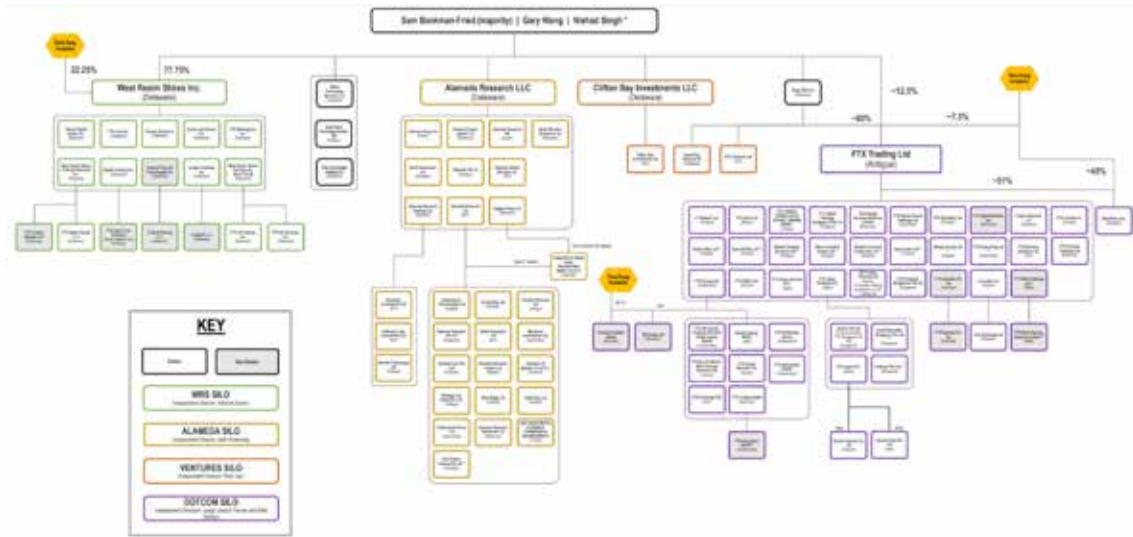
FTX Trading Ltd.

Case No. 22-11068 (Del) restructuring.ra.kroll.com/ftx



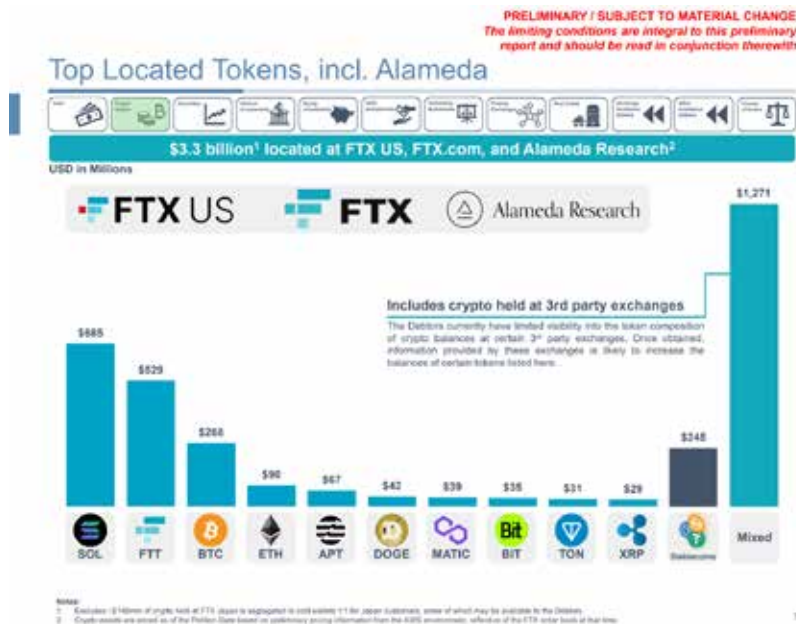
12

FTX Trading Ltd.



13

FTX Trading Ltd.



13

14

Resources

- the Cod3x: A Crypto Law Treatise, <https://www.thecod3x.com>
- Digital Gold, By Nathaniel Popper
- American Kingpin, By Nick Bilton
- Tracers in the Dark, By Andy Greenberg
- Cred Case - <https://cases.stretto.com/cred/>
- [Celsius](#) (Court Listener)
- [Voyager](#) (Court Listener) / [Voyager](#) (Stretto)
- [Three Arrows Capital](#) (Court Listener)

Need help tracing crypto?

- James Daniels, Director of Investigations, Blocktrace
james@blocktrace.com
- Jonelle Still, Director of Investigations, Ciphertrace
jonelle.still@ciphertrace.com

Faculty

Hon. Daniel P. Collins is a U.S. Bankruptcy Judge for the District of Arizona in Phoenix, appointed on Jan. 18, 2013. He served as chief judge from 2014-18 and is presently a conflicts judge in the Districts of Guam, Hawaii and Southern California. Previously, Judge Collins was a shareholder with the Collins, May, Potenza, Baran & Gillespie, P.C. in Phoenix, practicing primarily in the areas of bankruptcy, commercial litigation and commercial transactions. He is president of the National Conference of Bankruptcy Judges, is a Fellow in the American College of Bankruptcy, served on ABI's Board of Directors, is on the board of the Phoenix Chapter of the Federal Bar Association and is a member of the University of Arizona Law School's Board of Visitors. He also is a founding member of the Arizona Bankruptcy American Inn of Court. Judge Collins received both his B.S. in finance and accounting in 1980 and his J.D. in 1983 from the University of Arizona.

Matt Foster is a managing director and founding partner of Sonoran Capital Advisors in Phoenix. His clients include debtors (in and out of court), private-equity firms, secured creditors, unsecured creditors' committees, liquidating trustees, distressed investors and special committees. Mr. Foster has experience representing every portion of the balance sheet, including equity, unsecured debt and senior debt. Prior to co-founding Sonoran in 2017, he worked as a director for international insolvency firm KRYG Global, and before that he worked for another restructuring boutique, Odyssey Capital Group. Mr. Foster began his finance career in private equity working for Citizens Capital, Inc. (CCI), the private equity arm of RBS Citizens Bank. He oversaw CCI's interests in its private-equity portfolio consisting of investments in over a dozen private companies. Since that time, Mr. Foster has been involved in a wide range of restructuring engagements, including out-of-court restructurings, chapter 11 restructurings, litigation support and solvency. He has served in multiple CRO, CFO, financial advisor and investment banking positions across various industries. In the past few years, he's been engaged as the CRO of an oilfield services company, CRO of a cryptocurrency bank, and financial advisor to a land development and mining company. Mr. Foster received his B.S. in finance from the University of Utah and his M.B.A. from Northeastern University.

Cathy L. Reece is a director in the Financial Restructuring, Bankruptcy and Creditors' Rights Practice Group at Fennemore Craig, P.C. in Phoenix. She has experience in every aspect of complex corporate workouts and bankruptcies, and works with clients structuring complex transactions and purchasing distressed debt or assets. Ms. Reece has represented lenders in several commercial real estate receiverships, including receiverships involving an operating copper mine and three high-rise commercial office buildings, and she has represented committees and liquidating trusts in the liquidation of assets and distributions to creditors involving allegations of Ponzi schemes and securities fraud. Some of her cases include representing the investors' committee in the bankruptcy of hard money real estate lender Mortgages Ltd., the joint creditors' committee in the Baptist Foundation of Arizona bankruptcies, the secured lender in a publicly traded bankruptcy case involving time shares and resort properties, the municipality that owned the arena where the NHL team played in the Arizona Coyotes hockey bankruptcy cases, a major petroleum-producer and former owner of the El Paso Refinery in litigation over complex environmental claims and restrictive covenants, the debtor-in-possession lender and purchaser of gold mines in cross-border chapter 15 proceedings, and a chapter 11 trustee in several cases involving the sales and operations of health care facilities. Ms. Reece is the president-

elect of and serves on the Board of Regents for the American College of Commercial Finance Lawyers. She also is the chair of the American Bar Association Business Law Section's Subcommittee on Loan Workouts. Ms. Reece received her Bachelor's degree in music with high distinction from the University of Arizona and her J.D. from Arizona State University Sandra Day O'Connor College of Law, where she served as managing editor of the *Arizona State University Law Journal*. Following law school, she clerked for Hon. Sandra Day O'Connor at the Arizona Court of Appeals.

Bryce A. Suzuki is a partner of the Phoenix office of Snell & Wilmer L.L.P., where he focuses his practice in bankruptcy, restructuring and insolvency. He provides strategic business planning and dispute resolution to a diverse range of lenders, companies and business owners. He also advises businesses in the field of cryptocurrency, blockchain and related technology. Mr. Suzuki represents secured and unsecured creditors, debtors, landlords, vendors, investors and equity securityholders in a variety of commercial restructuring and insolvency issues such as loan workouts, distressed asset sales, chapter 11 bankruptcy administration and reorganization, receiverships, liquidation and distressed financing. He regularly first-chairs trials in bankruptcy courts and has significant experience managing appeals involving bankruptcy and insolvency issues. Mr. Suzuki is involved in numerous professional and community organizations, and for many of them he has served in board or leadership positions. A frequent speaker on bankruptcy and blockchain topics, he is also an adjunct professor at the ASU Sandra Day O'Connor College of Law, where he teaches a course on cryptocurrency and blockchain law and policy. Mr. Suzuki received his B.A. and M.A. from Brigham Young University and his J.D. from the University of Iowa College of Law.