



AMERICAN
BANKRUPTCY
INSTITUTE

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Dealing with Digital Assets

*Hosted by the Business Reorganization
and Secured Credit Committees*

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CRYPTOCURRENCY AND BLOCKCHAIN

Presented by
the Secured Credit Committee and
the Business Bankruptcy Committee

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OVERVIEW

A discussion of emerging issues and hot topics related to cryptocurrency

- What exactly is “cryptocurrency” and how is it evolving?
- How is cryptocurrency being used and utilized across various platforms?
- What services are provided by cryptocurrency companies?
- What are the unique challenges to bankruptcy cases involving these kind of service providers?
- Highlight other unique issues in the digital asset space

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WHAT IS “CRYPTOCURRENCY”
EXACTLY?

- Money?
- Investment Property?
- Digital Asset?
- Security?
- Random series of 1s and 0s?

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CRYPTOCURRENCY

- At its most basic level, cryptocurrency is a medium of exchange that exists in the digital universe with a unique identifier in the form of digital code (i.e. a series of 1s and 0s)
- That code is commonly manifested in the form of a digital “token” – or unique identifier - that is used in various forms of transactions
- Cryptocurrency is used to execute transactions on a “blockchain”
- Blockchain is a technology that verifies otherwise anonymous transactions through a rigorous mathematical process.
- Allows transactions to be permanently recorded without the need for a central authority or trusted third party to clear or verify the transaction, and provides digitally authenticated recordkeeping

FOUR GENERAL TYPES OF “TOKENS” OR “COINS”

Payment Token



- A crypto token that is used for making payments.
- Common examples include Bitcoin, Ethereum, Dogecoin.

Utility Token



- A crypto token that serves a specific use within a particular system, (i.e. to access to a blockchain)
- Typically not used for value, but for its “utility”
- Examples include NFTs, Binance Coin (BNB), Chainlink

Security Token



- A crypto token that represents ownership rights, analogous to a stock
- They are regulated by the SEC
- Not available for retail investors or on crypto exchanges

Stablecoin



- A crypto token that is backed by or pegged to fixed assets like gold or fiat currency
- Created to avoid volatility
- Preserve their value by controlling the supply
- Examples include Tether (tied to USD)

WHAT ARE THE WAYS WE INTERACT WITH CRYPTO?

- Crypto can be acquired through mining
- Crypto can be held and used as payment
- Crypto can be traded like a stock on an exchange
- Crypto can be lent, borrowed, and used as collateral

CRYPTO MINING

- Goal is to acquire new coins/payment tokens
- Achieved by validating transactions on the blockchain
- Computer runs equations to find the "hash" which is a unique code for a particular transaction
- Find the hash, you get to add to the blockchain (the public ledger tracking the transfer/use of the coin)
- As a reward for finding the hash you may be issued a token



WALLETS

- Wallet is a place where an owner can hold their crypto (ownership governed by agreement)
- Hot Wallet - connected to internet and may be used to store a variety of crypto independent of a particular exchange.
- Cold Wallet - stored on external hardware not connected to internet, considered less susceptible to hacking



coinbase



James Howells

EXCHANGES

- Online marketplace to buy, sell, and trade crypto
- Analogous to a stock exchange
- Control of the token usually is with the exchange, user maintains an account
- Crypto and funds are pooled with other assets, as opposed to wallet where it is segregated



VOYAGER

FTX US

Celsius

coinbase

LOAN TRANSACTIONS

Crypto as Collateral for Loan

- Borrower obtains liquid funds or credit to be paid back over time and pledges crypto as collateral
- Two varieties:
 - Centralized Finance (“CeFi”) Loan – a loan from central body (lender) with control over the platform and borrower’s crypto during the repayment term
 - Decentralized Finance (“DeFi”) Loan – a loan from a decentralized body that uses smart contracts to ensure the borrower adheres to the loan requirements
 - The borrower retains control of the crypto but a lender can take automatic actions against the crypto if you default or miss a payment

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Lending Crypto Itself

- “Traditional Lending” – user deposits their crypto to a platform to be lent to a borrower, to be repaid with principal and interest
 - Sometimes in return the “user/lender” will receive a token unique to the platform – which represents principal and interest – that can be surrendered to be “repaid”
- “Staking” – users deposit their crypto for the purpose of verifying transactions on the block chain
 - In exchange for depositing their crypto, the user is promised a yield to be paid over time, typically in the form of additional crypto
 - During the staking period, the owner is unable to use the crypto

REGULATION OF CRYPTO

- What law governs entity type?
- What law governs asset type?
- What non-bankruptcy law governs debtor eligibility?

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Various Regulatory Bodies & Laws

- Securities Exchange Commission
- Consumer Financial Protection Bureau
- Federal Deposit Insurance Corporation
- Commodities Futures Trading Commission
- Anti-money laundering laws
- UCC Article 12
- State and federal commodities and derivatives regulatory requirements
- State and federal securities regulatory requirements
- State lender licensing and related regulatory requirements
- State specific crypto laws

CRYPTO AS COLLATERAL

- Where does crypto fall as an asset?
 - Article 8 – “Financial Asset” UCC 8-102(a)(9)
 - Article 9 – “General Intangible” UCC 9-102(a)(42)/“Investment Property” UCC 9-102(a)(49)
 - Article 12 – “Controllable Electronic Record” UCC 12-105
- Perfecting a security interest? (Depends on characterization)
 - UCC-1?
 - Control or Possession?
- What non-bankruptcy law governs attachment and perfection?
 - UCC 9-301 – where the debtor is located or where the collateral is located?
 - Cf. 9-301(1) (applying to debtors) with 9-301(3) (applying to “money”)
 - Where are the locations?
 - Incorporation? Servers? DAOs?

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BANKRUPTCY ISSUES

- Who can file?
 - Is debtor a bank?
 - Brokerage?
 - Something else?
- What is property of the estate?
 - (See Voyager and Cred)
- How does a lender protect its interests?
 - What law controls relationship of parties?
- Jurisdictional issues?

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CRYPTO BANKRUPTCY CASES

CRED



- *In re Cred Inc.*, No. 20-12836 (JTD) (Bankr. D. Del. Nov. 7, 2020)
- Cryptocurrency lender

THREE ARROWS



- *In re Three Arrows Capital, Ltd.*, No. 22-10920 (MG) (Bankr. S.D.N.Y. July 1, 2022)
- Cryptocurrency hedge fund

VOYAGER



- *In re Voyager Digital Holdings, Inc.*, No. 22-10943 (MEW) (Bankr. S.D.N.Y. July 5, 2022)
- Cryptocurrency exchange

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CRYPTO BANKRUPTCY CASES (CONT.)

CELSIUS



- *In re Celsius Network LLC*, No. 22-10964 (MG) (Bankr. S.D.N.Y. July 13, 2022)
- Cryptocurrency lender

COMPUTE NORTH



- *In re Compute North Holdings, Inc.*, No. 22-90273 (MI) (Bankr. S.D. Tex. Sept. 22, 2022)
- Mining facilities

OTHERS COMING?



- FTX – filed November 11, 2022
- BlockFi – filed November 28, 2022
- Core Scientific (mining operation)

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QUESTIONS?

“Fortune favors the brave” – Matt Damon

Faculty

Douglas E. Deutsch is a partner with Clifford Chance US LLP in New York, where his practice focuses on representing secured and unsecured creditors, debtors, and unofficial and official creditors' committees in chapter 11 cases and out-of-court restructurings. He is a regular speaker and writer on bankruptcy law topics. Mr. Deutsch previously served as ABI's Vice President-Education and co-chaired a number of ABI conferences. He received his B.S. from Drew University and his J.D. from St. John's University School of Law, where he was editor-in-chief of the *ABI Law Review*. After graduation, he clerked for the Western District of Texas and then worked as an associate at a Texas law firm. He subsequently returned to St. John's to obtain his LL.M. and was awarded the first American Bankruptcy Institute Scholarship.

Evan T. Miller is a director at Bayard, P.A. in Wilmington, Del., where he concentrates his practice in the areas of corporate bankruptcy and restructuring, representing debtors (both voluntary and involuntary) and trustees, in addition to asset-purchasers, landlords, official committees of unsecured creditors, secured creditors, vendors, and preference and fraudulent transfer litigants in bankruptcy courts across the country. His clientele stems from a wide range of industries, including aviation, restaurants, insurance, retail, health care, energy and education, among many others. In addition to in-court and out-of-court restructuring matters, Mr. Miller has experience handling commercial litigation in Delaware, New Jersey and Pennsylvania jurisdictions, as well as Delaware Statutory Trust matters. In addition, he is a certified mediator for the U.S. Bankruptcy Court for the District of Delaware and is included on the Register of Mediators and Arbitrators maintained by the court. Since 2016, Mr. Miller has been recognized by *Super Lawyers* as a Delaware Rising Star in the area of business bankruptcy. He has also been named to *Benchmark Litigation's* 40 and Under Hot List since 2019 for his nationwide practice in bankruptcy litigation. In 2021, Mr. Miller was named an Emerging Leader by The M&A Advisor, was honored as one of ABI's 40 Under 40, and was named a Top Lawyer in the 2021 Top Lawyers Edition of *Delaware Today* magazine. He also was named an Americas Rising Star Dealmaker by the Global M&A Network in 2022, and *Chambers USA* recognized him in 2022 for his work in bankruptcy and restructuring in Delaware. Mr. Miller created and maintains the Avoidance Action Update Blog at www.bayardlaw.com/blog, which tracks the latest developments in avoidance action case law and jurisprudence, and he is very active in the local and national restructuring community, currently serving as vice chair of ABI's Real Estate Committee, an executive board member of the Turnaround Management Association Philadelphia/Wilmington (TMA) chapter (which covers the Philadelphia metro area, the state of Delaware and southern New Jersey), treasurer of the Delaware Bankruptcy American Inn of Court and chair of the Business Law Section for the Philadelphia Bar Association, of which he formerly served as vice chair, communications chair, secretary and treasurer. Previously, Mr. Miller served as chairman of TMA NextGen and as co-chair of ABI's Young & New Members Committee, and he served as chairman and treasurer of the Delaware State Bar Association's (DSBA's) Young Lawyer Section, vice chair of the Bankruptcy Committee for the American Bar Association's Young Lawyer Division, and chair of the Philadelphia Bar Association's Bankruptcy Committee. He currently serves as one of two member contacts for Meritas, an invitation-only international alliance of over 175 business law firms located in more than 80 countries. Mr. Miller received his undergraduate degree from Bloomsburg University and his J.D. *cum laude* from the Delaware Law School and with honors from the Delaware Law School's

Institute of Delaware Corporate and Business Law. While in law school, he served as the internal managing editor of the *Widener Law Review* for the 2008-09 academic year and interned for Hon. Chandlee Kuhn, chief judge of the Family Court of the State of Delaware. In his final year of law school, he served as a judicial extern to Hon. Jane R. Roth of the U.S. Court of Appeals for the Third Circuit.

Shirley R. Palumbo is a bankruptcy senior counsel and general counsel at NextEra Energy Resources, LLC in Juno Beach, Fla. She provides transactional structure and court representation on restructuring, insolvency and bankruptcy on matters related to distressed investments. Ms. Palumbo represents businesses and individuals on bankruptcy-related issues of national or international scope on behalf of creditors, debtors, trustees, third-party purchasers and financial institutions. She also has knowledge of the cryptocurrency ecosystem and players involved. Ms. Palumbo is Board Certified in Consumer Bankruptcy Law by the American Board of Certification and has received Martindale-Hubbell's highest ranking. She is a member of the Florida and Puerto Rico (federal) Bars and is admitted to the Eleventh Circuit Court of Appeals. Ms. Palumbo is a member of ABI and INSOL, and she is a member of the Southern District of Florida Bankruptcy Bar Association and the Judicial Liaison of the Florida Bar's Bankruptcy/UCC and Communications Committee. She received her J.D. from St. Thomas University and her LL.M. in international law from the University of Miami.

Ian Rubenstrunk is a management consultant with Alliance Management Company in Minneapolis and has more than 10 years of experience working in the distressed and turnaround industry. His career began working for a small debtor's side chapter 11 bankruptcy firm in Chicago during law school, followed by a brief stint in Arizona consulting clients facing foreclosure and debt collection. In 2012, Mr. Rubenstrunk moved to Minnesota and spent five years clerking for the U.S. Bankruptcy Court for the District of Minnesota with Chief Judge Gregory F. Kishel and Hon. William J. Fisher. During his clerkship, he worked on a wide array of cases covering myriad issues, including the fallout from a multi-billion-dollar Ponzi scheme. Following his clerkship, Mr. Rubenstrunk was an attorney Winthrop & Weinstine in its Creditors' Remedies and Financial Services Litigation Groups. His work as an attorney focused on foreclosures, receiverships, bankruptcies, out-of-court workouts, and litigation involving financial transactions. Mr. Rubenstrunk has represented banks, nontraditional lenders, equipment-financers, receivers, landlords and asset-buyers, among others, across the country in a variety of proceedings and courts. He is a member of the Minnesota State Bar Association's Bankruptcy Section, Newsletter Editor of ABI's Secured Credit Committee, and a member of the Turnaround Management Association's Minnesota Chapter's Awards Committee, the Risk Management Association and the Secured Finance Network. Mr. Rubenstrunk received his B.A. in English and political science from the University of Colorado at Boulder and his J.D. from The University of Illinois Chicago School of Law, where he served as staff and articles editor of the *Review of Intellectual Property Law*.