



AMERICAN
BANKRUPTCY
INSTITUTE

2023 Annual Spring Meeting

Issues Impacting Unsecured Creditors in Crypto Bankruptcies

*Hosted by the Business Reorganization,
Emerging Industries and Technology &
Unsecured Trade Creditors Committees*

Darren T. Azman

McDermott Will & Emery; New York

Shari I. Dwoskin

Brown Rudnick LLP; Boston

Mark A. Renzi

Berkeley Research Group, LLC; Boston

Michael H. Torkin

Simpson Thacher & Bartlett LLP; New York

Hon. Michael E. Wiles

U.S. Bankruptcy Court (S.D.N.Y.); New York








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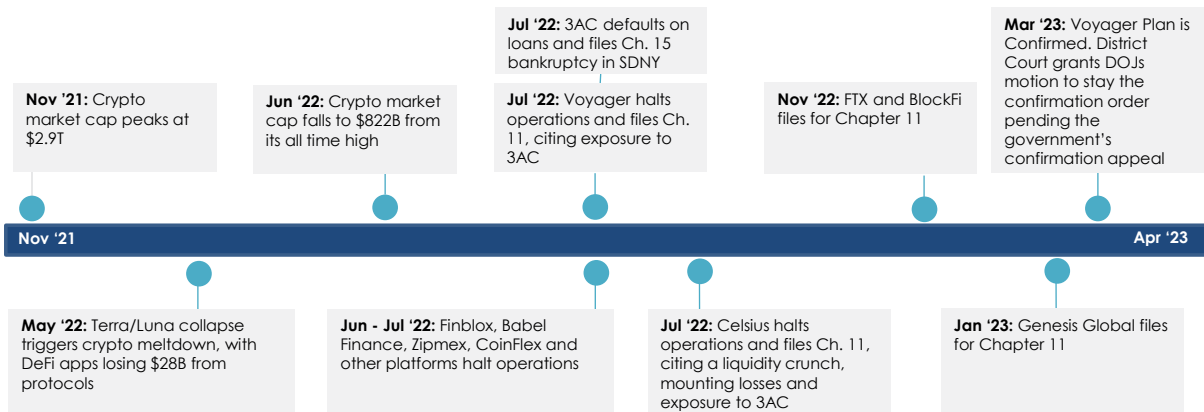
Today's Panel

				
Darren Azman	Shari Dwoskin	Mark Renzi	Michael Torkin	Hon. Michael Wiles
Partner McDermott Will & Emery <i>Restructuring</i> New York	Partner Brown Rudnick LLP <i>Restructuring</i> Boston	Managing Director BRG Global FIG Leader <i>Restructuring</i> Boston	Partner Simpson Thacher & Bartlett LLP <i>Restructuring</i> New York	Judge U.S. Bankruptcy Court (S.D.N.Y) <i>Restructuring</i> New York

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Timeline of Key Industry Events



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Operation Chokepoint 2.0

- Following the collapse of FTX, the U.S. government has placed increased scrutiny on crypto in what appears to be a sophisticated and coordinated crackdown on the crypto industry
 - Industry observers have termed this apparent government campaign "Operation Chokepoint 2.0"
- Since December 2022, there have been over 20 actions from the U.S. government against crypto companies ranging across several state and federal agencies, suggesting potential coordination across departments
 - Departments / agencies engaged in actions against crypto companies include the White House, SEC, DOJ, FDIC, Federal Reserve, Treasury Department and the United States Congress, as well as state regulators
- Regulatory crackdowns has spanned the crypto ecosystem, impacting trading, lending, staking, custody, mining, crypto banking partners and NFTs
- During the Voyager Chapter 11 Plan (the "Plan") confirmation process, there were numerous objections from the federal government and several state governments, including certain disclosure objections and objections related to customers in unsupported jurisdictions
- On March 27, the U.S. District Court granted the U.S. government's motion to stay the Voyager confirmation order pending the government's confirmation appeal

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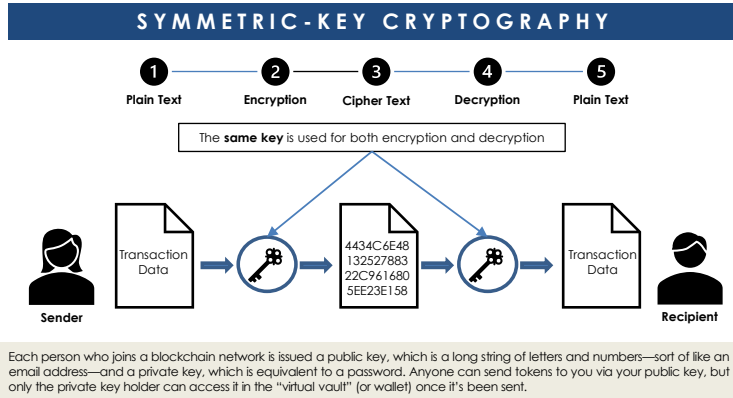
Industry Snapshot

ASSETS	BTC	ETH	Crypto Mining Assets	Crypto Loan	NFT
MEDIUM OF EXCHANGE	Crypto Exchange	DeFi Protocols	Peer to Peer	CeFi Platforms	NFT Marketplaces
INFRASTRUCTURE	Proof of Work	Proof of Stake	Hot Wallet	Cold Wallet	Web3
BENEFITS	Intermediate Settlement	Lower Fees	Global Access	Identity Protection	Fraud Prevention
FUTURE	Regulatory Scrutiny	Debit/Credit Cards	Financial Action Task Force	Global Economic Interconnectedness	

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Blockchain Technology



One of the key attributes of blockchain technology is that it enables a trustless, decentralized peer-to-peer system with no central authority.

- A blockchain is a distributed, digital database on which transactions are recorded and copied in real-time to the blockchain’s network of participants.
- Transactions on a blockchain are packaged into a “block” of data where participants must validate. This is done through an agreed-upon consensus mechanism, which replaces the trusted third party on a centralized network.
 - Blockchain protocols use a ledger maintained through consensus.
 - Instead of requiring real-world identities and admin-based permissions, blockchain protocols allow for anonymity through key cryptography to assign ownership to tokens on the ledger.

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DEFI vs. CEFI

- **Decentralized Finance (DeFi)** promotes using shared blockchain-powered digital infrastructure to create peer-to-peer (p2p) financial products and services
 - DeFi projects rely on smart contract infrastructure primarily provided in the Ethereum and Solana blockchain networks.
- **Centralized Finance (CeFi)** involves centralized institutions storing funds (custody) and providing services primarily such as exchange, trading, and lending
 - CeFi serves as the primary on/off ramp for exchanging fiat currency to crypto-currency;

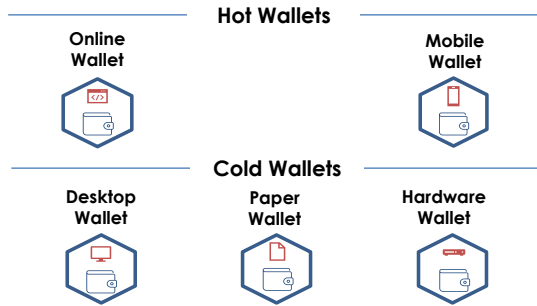
	Governance	Custody	Pros/Cons
DeFi	<ul style="list-style-type: none"> ▪ Companies specialize in broad p2p ecosystem ▪ Includes infrastructure, payments, compliance, tokenization, lending, etc. 	<ul style="list-style-type: none"> ▪ Always self - or hybrid custody 	<ul style="list-style-type: none"> ▪ Pros: Open, fast, flexible and transparent ▪ Cons: Lack of regulatory clarity, risk of smart contract exploits
CeFi	<ul style="list-style-type: none"> ▪ Single exchanges or other institutions offer a suite of financial products and solutions to account holders 	<ul style="list-style-type: none"> ▪ Sometimes hybrid but often third-party custody 	<ul style="list-style-type: none"> ▪ Pros: Intuitive and efficient with a clear method to move from fiat to crypto. ▪ Cons: Limited (but growing) capabilities, risk of asset loss from CeFi failure, uncertain regulatory environment

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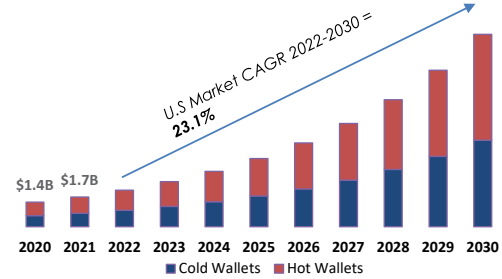
Wallet Overview

- **Self Custody** is when users store the private keys for their crypto in a private wallet not associated with an exchange or third party
- **Hybrid Custody** lies between self-custody and third-party management, allowing user flexibility while a custodian maintains key security
- **Hot Wallets (desktop, mobile or web)** are always connected to the blockchain; free and easy to use but has risks
- **Cold Wallets (paper or hardware)** have no internet connectivity; more secure option and easy to carry around



U.S. Crypto Wallet Market

size, by wallet type, 2020-2030 (USD Billions)

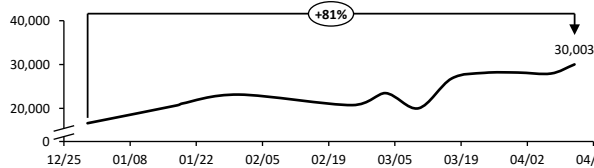


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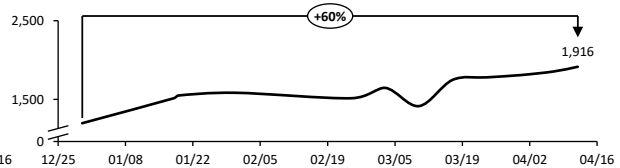


Crypto Pricing Movement

BTC +81% YTD Performance



ETH +60% YTD Performance



- Major crypto assets (e.g., BTC, ETH) pricing rallied in 2023
- Mar-23 stablecoin de-pegging:
 - Disruption in the stablecoin segment was temporarily disrupted in Mar-23
 - The market soon restabilized and risk of currency de-pegging was mitigated within 24 hours
- Implications for coverage for crypto lending platforms in bankruptcy:
 - Mismatched coins (i.e., majors vs. alt coins) on balance sheet could have significant impact on asset coverage

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Section II: Collateral & Valuation

Valuation Issues:

- Custody Accounts & Wallets
 - Custody of customer crypto and loan collateral is controlled by the service provider
 - Crypto is deposited into custodian providers that offer private key security for a fee on deposits and withdrawals (hot and cold wallet storage)
 - Recent market events have resulted in increased counter party risk. If a custodian fails, there can be delays in withdrawals and risk of losses.
- FBO Accounts
- Loan Collateral

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Section II: Collateral & Valuation

Rehypothecation:

- Rehypothecation is a way of generating credit from assets and allowing multiple financial transactions to be collateralized by the same asset
- Benefits: It helps to create liquidity for individual market participants and across the market and increases access to capital for businesses
- Criticisms: Destabilization of the crypto space, suppression of prices and reduction in the efficacy of blockchain security by taking claims to ownership off-chain that have not materialized
- Typical of assets that can be rehypothecated (subject to the terms of customer agreements) include collateral pledged against loans and crypto in yield / margin accounts
- Wallet agreements may restrict rehypothecation

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Section III: Valuation Section IV: Distribution Issues

III. Valuation

- Avoidance Actions and Preferences
- Setoff
 - Collateral setoff reduces unsecured claim
 - Contestant movement in pricing impacts value of collateral

IV. Distribution Issues

- Cash vs. In-Kind
- Rebalancing portfolios
- Logistical issues
- Tax and Tax Basis

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Section V: Transaction Issues Section VI: Communications

V. Transaction Issues

- Taxable event
- In-kind recovery
- Regulatory oversight

VI. Creditor Communications – these cases have much more fluid communications and more prolific use of social media and virtual town halls

- Social Media
- Town Halls
- Pro Se creditors / motions

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Q&A

Faculty

Darren T. Azman is a restructuring partner in the New York office of McDermott Will & Emery and a member of the firm's Management Committee. He was lead counsel to the unsecured creditors' committee in the first U.S. crypto chapter 11 case, Cred Inc., and is currently leading the firm's representation of the Cred Liquidation Trust in pursuing recoveries of lost and stolen cryptocurrency around the world. Mr. Azman's clients also include private-equity sponsors, troubled companies, official creditors' committees, financial and strategic purchasers of distressed assets, and other constituents in connection with in-court and out-of-court restructurings. In addition, he has restructuring experience in the fields of energy, manufacturing, health care, technology, maritime and transportation and cross-border restructurings, including insolvency proceedings in Brazil, Germany, Japan and Korea. Mr. Azman acts as a trusted advisor to emerging companies by helping them navigate a wide range of business and legal issues, including capital-formation, licensing, developing and leveraging intellectual property, strategic alliances, regulatory compliance, employee and labor matters, litigation and general corporate matters. During law school, he took a leave of absence to start a health care technology company in New York, which still exists today. His clients include emerging companies in the technology, health care, energy, blockchain, cryptocurrency, telecommunications and media space. Mr. Azman was honored as a member of ABI's 2021 class of "40 Under 40" and has been recognized in *The American Lawyer* as Litigator of the Week Runner-Up (February 2021), *The Best Lawyers in America* as one of the "Ones to Watch" for Bankruptcy and Debtor Credit Rights/Insolvency and Reorganization Law for 2021, and Turnarounds & Workouts as a 2021 Outstanding Young Restructuring Lawyer. He also was part of the team that won the ABI Asset Sales Committee's Asset Sale of the Year for his work as lead debtor's counsel in *In re Agera Energy*. Mr. Azman received his B.S. *magna cum laude* from Bentley University and his J.D. *cum laude* from Georgetown University Law Center.

Shari I. Dwoskin is a partner in Brown Rudnick LLP's Bankruptcy & Corporate Restructuring Practice Group in Boston. She represents creditors' committees, tort victims, bondholders, equity interest-holders, and debtors in chapter 11 restructurings and litigation arising from related disputes, as well as out-of-court wind-downs. Ms. Dwoskin has experience managing many facets of the restructuring process in some of the largest recent bankruptcy cases, including negotiating restructuring support agreements, plans and DIPs; plan-confirmation trials; valuation; avoidance actions; bankruptcy auctions; the claims-resolution process; and related motion practice and litigation. She also regularly consults with Brown Rudnick's Corporate, Intellectual Property and Real Estate Groups on bankruptcy-related matters. Ms. Dwoskin co-chairs the New England Network of the International Women's Insolvency & Restructuring Confederation (IWIRC) and was named an Up and Coming Lawyer by *Massachusetts Lawyers Weekly* in 2021. She received her B.A. in 2002 from McGill University, her M.A. in 2006 from Harvard University and her J.D. in 2014 from Harvard University, where she was editor-in-chief of the *American Criminal Law Review* and was a member of the Georgetown Law Barristers' Council, Appellate Advocacy Division.

Mark A. Renzi is a member of Berkeley Research Group, LLC Corporate Finance in Boston and specializes in performance improvement and restructurings. He has more than 20 years of business experience, with approximately 16 years of financial consulting experience, including liquidity and

capital structure assessment, debt and equity restructuring advice, and identification of reorganization alternatives. Mr. Renzi has experience across a broad range of industries, including financial services, retail and consumer products, metals, manufacturing, health care, chemical, oil and gas, and telecommunications. He has provided restructuring services on more than 35 engagements in both out-of-court workout situations and chapter 11 proceedings. Further, he has advised distressed companies with day-to-day management activities, including development of *pro forma* financials, cash-flow management, cost rationalization, and identification of liquidity enhancing activities. He also has provided restructuring advice to portfolio companies of private-equity firms and has served in interim management positions. Mr. Renzi is experienced in analyzing and implementing strategic and operational change, including the refinement of business plans and redeployment of capital to address changing industry conditions, as well as stabilizing and fixing noncore operations through product and customer rationalization initiatives. He has developed options and solutions through detailed financial and operational analyses while collaborating closely with management and other stakeholders. In addition to operational turnarounds, he has assisted in financial restructurings, including refinancings, recapitalizations, debt-for-equity swaps, and strategic mergers and acquisitions. Previously, Mr. Renzi was a senior managing director at a global business advisory firm with a 15-year tenure. He also worked at a boutique money management firm in New York evaluating equity and commodity derivative portfolios, and he held various positions in FP&A, business plan development, treasury and global cash management. Mr. Renzi received his B.A. in economics from Washington College and his M.S. in finance from Boston College.

Michael H. Torkin is a partner with Simpson Thacher & Bartlett LLP in its Restructuring Practice in New York, and he founded the firm's Private Capital and Special Situations Investment Group. His multidisciplinary practice includes representing companies on liability management, recapitalization and restructuring transactions, both in and out of court, domestically and internationally. He also routinely represents sponsors, acquirers of distressed businesses, and hedge fund and private-equity fund clients in connection with a broad array of special-situation investments and recapitalization transactions. During his career, Mr. Torkin has been involved in restructuring matters across the globe, including Canada, Latin American, Mexico, the U.K., Israel, Africa, The Netherlands and Australia. His practice has included the representation of numerous private-equity and hedge fund clients, including Angelo Gordon, The Blackstone Group, The Carlyle Group, Chambers Energy Partners, Charterhouse, First Reserve, KKR Credit, Platinum Equity, Pointstate Capital, Primavera Capital Group, Riverstone and Silver Lake Partners, as well as corporates on an array of transactions. Mr. Torkin is ranked as a leading lawyer by *Chambers USA* and by *Chambers Global* and *The Legal 500 United States*, and he was recognized by The M&A Advisor as one of the top "40 under 40" M&A, financing and turnaround professionals in 2010 and by *Turnarounds & Workouts* as one of 12 "Outstanding Young Restructuring Lawyers" in 2009 and 2010. He is a member of ABI and the Turnaround Management Association. Mr. Torkin received his B.A. in 1993 from the University of Western Ontario and his J.D. in 1997 from Osgoode Hall Law School.

Hon. Michael E. Wiles is a U.S. Bankruptcy Judge for the Southern District of New York in New York, sworn in on March 3, 2015. Previously, he was a partner with Debevoise & Plimpton LLP, where he focused on general commercial litigation and bankruptcy. Judge Wiles co-authored the *Collier Business Workout Guide* (Mathew Bender 2007) and has appeared on panels organized by the Association of the Bar of the City of New York, the American College of Investment Council and others to discuss current issues in bankruptcy litigation. He is a former member of the Committee on

Bankruptcy and Reorganization of the Association of the Bar of the City of New York. His publications and written CLE materials include “May Parties Consent to Bankruptcy Court Adjudication of ‘Stern Claims’” (September 2014) (presented at a continuing legal education session at the Association of the Bar of the City of New York); “Ponzi Schemes and Avoidance Actions: 3 Issues,” *Law360* (March 7, 2011); “The Good Faith Defense to Fraudulent Transfer Claims” (December 2010) (presented at a continuing legal education session at the Association of the Bar of the City of New York); and “At the Crossroads: The Intersection of the Federal Securities Laws and the Bankruptcy Code,” *The Business Lawyer* (November 2007). Judge Wiles received his A.B. from Georgetown University in 1975 and his J.D. from Yale Law School in 1978.