

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

<i>In re</i>	:	
	:	
	:	Chapter 11
	:	
FTX TRADING LTD., <i>et al.</i> , ¹	:	Case No. 22-bk-11068 (JTD)
	:	(Jointly Administered)
Debtors.	:	
	:	
	:	
	:	
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	:	
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REPORT OF ROBERT J. CLEARY, EXAMINER

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 bankruptcy 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>. The principal place of business of Debtor Emergent Fidelity Technologies Ltd is Unit 3B, Bryson's Commercial Complex, Friars Hill Road, St. John's, Antigua and Barbuda.

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DEFINED TERMS

ADAM	Association of Digital Asset Markets
Additional S&C Materials	Materials and allegations put forward by former employees, third-party observers, and other parties in interest concerning S&C’s conflicts of interest, including the Friedberg Declaration; <i>Garrison v. Sullivan & Cromwell, LLP</i> , No. 24-cv-20630 (S. D. Fla.) (KMM), Dkt. No. 1; Jonathan C. Lipson & David A. Skeel, <i>FTX’d: Conflicting Public and Private Interests in Chapter 11</i> (Mar. 13, 2024), U of Penn, Inst. for Law & Econ Research Paper No. 24-08, https://ssrn.com/abstract=4760736 , archived at https://perma.cc/CGQ6-CUY5 ; and <i>Vara v. FTX Trading (In re FTX Trading)</i> , No. 23-2297 (3d Cir.), Dkt. No. 27
Alameda	Alameda Research LLC and other entities in the “Alameda Silo,” as set forth in the Ray First Day Declaration
Alameda Ventures	Clifton Bay Investments LLC, f/k/a Alameda Research Ventures LLC, and related entities.
AlixPartners	AlixPartners, LLP
Alvarez & Marsal	Alvarez & Marsal Holdings, LLC, an investigatory firm retained by S&C
AMT	Anderson Mōri & Tomotsune
bankruptcy cases	The jointly administered chapter 11 proceedings of FTX Trading, and certain of its affiliates captioned <i>In re FTX Trading Ltd.</i> , No. 22-bk-11068 (Bankr. D. Del) (JTD)
Bankruptcy Court	The United States Bankruptcy Court for the District of Delaware
Bankruptcy Code	Title 11 of the United States Code
Bankruptcy Rule(s)	Federal Rules of Bankruptcy Procedure
BDO	BDO USA LLP
Binance	Binance Holdings Ltd. and its affiliates
BlockFi	BlockFi International Ltd and BlockFi, Inc.
BlockFi SEC Settlement	Public settlement reached between BlockFi and the SEC
Bracewell	Bracewell LLP
Brian Simms	Brian Simms KC, Bahamas counsel to FTX Group and JPL
CEO	Chief Executive Officer
CFTC	Commodity Futures Trading Commission

Clement T. Maynard & Co	Bahamas counsel to FTX Group
Coinbase	A cryptocurrency exchange at which the FTX Group maintained accounts
Consensus Law	A law firm operated by Pavel Pogodin that was retained by FTX Group after it represented a whistleblower
Consultants	Sports, media, and corporate partnership consultants engaged by the FTX Group
Cottonwood Grove	Cottonwood Grove Limited
CRO	Chief Restructuring Officer
Crypto.com	A cryptocurrency exchange at which the Debtors maintained accounts
CZ	Changpeng Zhao, the founder of cryptocurrency exchange Binance
DAAG	Digital Assets DA AG, renamed FTX Europe after its acquisition by the FTX Group
Debtors	FTX Trading, Ltd. and its affiliated entities that are debtors in the Chapter 11 bankruptcy cases
Deck	Deck Technologies, a political data analytics company
Deltec	Deltec International Group
Deltec Bank	Deltec Bank & Trust Co. Ltd.
Dietderich Declaration	<i>Declaration of Andrew G. Dietderich In Support of 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, Dkt. No. 270-3</i>
Dkt. No.	Citations to “Dkt. No.” without a case name or number refer to docket entries in <i>In re FTX Trading Ltd.</i> , No. 22-bk-11068 (Bankr. D. Del) (JTD)
DOJ	U.S. Department of Justice
Embed	A securities clearing and custody business acquired by the FTX Group
Emergent	Emergent Fidelity Technologies Ltd.
Evolve Bank	Evolve Bank & Trust, a bank where Wise held an FBO account
Examination	The Examiner’s methods and procedures underlying this Report
FBO	For Benefit Of

FCA	U.K. Financial Conduct Authority
FDM	FTX Digital Markets Ltd.
FEC	Federal Election Commission
Fenwick	Fenwick & West, LLP
FinCEN	Financial Crimes Enforcement Network
First Ray Report	The First Interim Report of John J. Ray III to the Independent Directors on Control Failures at the FTX Exchanges, Dkt. No. 1242-1
Friedberg Declaration	<i>Declaration of Daniel Friedberg In Support of Amended Objection of Warren Winter 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, Dkt. No. 530</i>
FTI	FTI Consulting, Inc.
FTT	The exchange token for FTX.com
FTX Foundation	A non-profit that made charitable contributions with funds from FTX Group, later known as FTX Philanthropy
FTX Group	FTX Trading Ltd., West Realm Shires Services Inc., d/b/a FTX.US, Alameda Research LLC, and their directly and indirectly owned subsidiaries and affiliates
FTX Philanthropy	A non-profit that made charitable contributions with funds from FTX Group, previously known as FTX Foundation
FTX Trading	FTX Trading Ltd.
FTX Ventures	FTX Ventures, Ltd.
FTX.com	A cryptocurrency exchange operated by FTX Trading
FTX.US	An exchange for spot trading of cryptocurrency and other digital assets in the United States operated by the FTX Group, and controlled by WRS
GAAS	Generally Accepted Auditing Standards
GAP	Guarding Against Pandemics, a political action committee
Gate.io	A cryptocurrency exchange at which Debtors maintained accounts
Genesis Block	Genesis Block Ltd., a cryptocurrency trading firm
HiveEx	Hive Empire Trading Pty Ltd.
Hogan	Hogan Lovells International LLP

Holland & Knight	Holland & Knight LLP
Inca	Inca Digital, Inc.
JOLs	Joint Official Liquidators of FTX Digital Markets Ltd. appointed in the Bahamas
JPLs	Joint Provisional Liquidators of FTX Digital Markets Ltd. appointed in the Bahamas
K5	K5 Global and related entities
KuCoin	A cryptocurrency exchange at which Debtors maintained accounts
Landis	Landis Rath & Cobb LLP
Latona	Latona Biosciences Group
LayerZero	LayerZero Labs Ltd.
LedgerX	LedgerX LLC
Lennox Patton	Bahamas counsel to the FTX Group
LHI	Ledger Holdings, Inc., a holding company for LedgerX
Liquid	A Japanese cryptocurrency exchange operated as FTX Japan after its acquisition by the FTX Group
LPTCC	Limited Purpose Trust Company Charter
M 7 Holdings	M 7 Holdings, LLC
M Group	M Group Strategic Communications, a public relations firm
MAPS	The token for Maps.me
Mazars	Mazars LLP
MEXC	A cryptocurrency exchange at which Debtors maintained accounts
MIAX	Miami International Holdings, Inc.
MicroLedgers	MicroLedgers Co. Ltd.
Barbara Miller	Barbara Miller d/b/a BGM Consultants
Mirana	Mirana Corp., the investment arm of Bybit, a cryptocurrency exchange
Modulo	Modulo Capital
MoFo	Morrison & Foerster LLP
Moonstone Bank	Farmington State Bank d/b/a Moonstone Bank
Moore Stephens	Moore Stephens CPA Limited

MR Holdings and Varin Strategies	MR Holdings, Varin Strategies (d/b/a Compliers Consulting)
MTG	Mind the Gap, a political action committee
Nardello	Nardello & Co., an investigative firm retained by S&C
NFT	A non-fungible token, a type of cryptocurrency token designed to be uniquely identifiable
North Dimension	North Dimension Inc. and related entities
Norton Hall	Norton Hall Ltd.
OKCoin	A cryptocurrency exchange at which Debtors maintained accounts, sometimes referred to as OKX
Omnibus Authority	Document appointing John J. Ray III as CEO of the FTX Group
Orrick	Orrick Herrington & Sutcliffe LLP
Other FTX-Affiliated Tokens	SRM, OXY, and MAPS
OXY	The token for the Oxygen Protocol
Paul Hastings	Paul Hastings LLP, counsel to the Unsecured Creditors' Committee
Petition Date	The dates that the bankruptcy cases were commenced, November 11 and 14, 2022
Poloniex	A cryptocurrency exchange at which the Debtors maintained accounts
Prime Trust	Prime Trust LLC
ProCo	ProCo Global (d/b/a Chartwell Compliance)
Professionals	A group of 195 law firms, auditors, accountants, financial consultants, and other professionals engaged by the FTX Group between 2017 and 2022
PwC AG	PricewaterhouseCoopers AG
PwC LLP	Pricewaterhouse Coopers LLP
Pyth Network	Pyth Network, a pricing data aggregator, and associated entities including Pyth Data Association, the minter of the PYTH token
Quinn Emanuel	Quinn Emanuel Urquhart & Sullivan, LLP, conflicts counsel to the Debtors
R&M	Rivers & Moorehead
Ray Employment Declaration	<i>Declaration of John J. Ray III in Support of Debtors' Application for an Order Authorizing the Retention and Employment of Sullivan</i>

	<i>& Cromwell LLP as Counsel to the Debtors and Debtors-in-Possession Nunc Pro Tunc to the Petition Date, Dkt. No. 270-2</i>
Ray First Day Declaration	Declaration of John J. Ray III in Support of Chapter 11 Petitions and First Day Pleadings, Dkt. No. 24
Redwood	Redwood Valuation Partners
RFA	Rich Feuer Anderson
RLA	Robert Lee & Associates
Robinhood	Robinhood Markets, Inc.
Robinhood Shares	Approximately \$500 million worth of shares of Robinhood acquired by Bankman-Fried
Robinhood Transaction	Acquisition of Robinhood Shares by Bankman-Fried
S&C Employment Application	<i>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, Dkt. No. 270</i>
SBF Criminal Case, Dkt. No.	Citations to "SBF Criminal Case, Dkt. No." refer to docket entries in <i>United States v. Bankman-Fried</i> , No. 22-cr-00673 (S.D.N.Y.) (LAK)
SCB	Securities Commission of the Bahamas
Scope Order	<i>Order (I)(A) Establishing the Scope, Cost, Degree, and Duration of the Examination and (B) Granting Related Relief; and (II) Permitting the Filing of Certain Information Regarding Potential Parties in Interest Under Seal, Dkt. No. 9883</i>
SEC	U.S. Securities and Exchange Commission
Second Ray Report	The Second Interim Report of John J. Ray III to the Independent Directors: The Commingling and Misuse of Customer Deposits at FTX.com, Dkt. No. 1704-1
Sheth	Alpen Sheth d/b/a Canopy Labs LLC
Signature	Signature Bank
Silver Miller	Silver Miller Law
Silergate	Silergate Bank
Simmons & Simmons	Simmons & Simmons JWS Pte. Ltd
Skadden	Skadden Arps Slate Meagher & Flom LLP
SRM	The exchange token for the Serum exchange

Supplemental Dietderich Declaration	<i>Supplemental Declaration of Andrew G. Dietderich in Support of 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, Dkt. No. 510</i>
Supplemental Ray Employment Declaration	<i>Supplemental Declaration of John J. Ray III in Support of Debtors’ Applications for Orders Authorizing the Retention and Employment of Sullivan & Cromwell LLP, Alix Partners LLP and Quinn Emanuel Urquhart & Sullivan, LLP, Dkt. No. 511</i>
TaxBit	TaxBit Inc., a tax and accounting firm
Teknos	Teknos Associates LLP
TigerWit	TigerWit Holdings Ltd./ TigerWit Limited (UK)
Unsecured Creditors’ Committee	The official committee of unsecured creditors in the Debtors’ bankruptcy cases
Upbit	A cryptocurrency exchange at which Debtors maintained accounts
U.S. Trustee Objection	<i>Objection of the United States Trustee 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, Dkt. No. 496</i>
USAO-SDNY	The United States Attorney’s Office for the Southern District of New York
Venture Book	A fund created by FTX Group to invest in companies and tokens
Voyager Digital	Voyager Digital Holdings, Inc., and its debtor affiliates
Willkie	Willkie Farr & Gallagher LLP
Winter Objection	<i>Collectively: (i) 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, Dkt. No. 369; and (ii) 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, Dkt. No. 459</i>
Wise	A payment processor used by non-Debtor FTX Philanthropy
WRS	West Realm Shires Inc.
WRSS	West Realm Shires Services Inc.
XReg	XReg Consulting Ltd.

EXECUTIVE SUMMARY

This is the Report of Examiner Robert J. Cleary in the Chapter 11 bankruptcy cases of FTX Trading, Ltd. (“FTX Trading”) and certain of its affiliates (collectively, the “FTX Group” or the “Debtors”),² No. 22-bk-11068 (Bankr. D. Del) (JTD).

Part One of the Report sets out the history of the bankruptcy cases, the background of the Examiner’s appointment, and the scope of the Examiner’s duties. Pursuant to the Bankruptcy Court’s order of March 20, 2024, the Examiner was tasked with compiling and summarizing the completed and ongoing investigations, and the findings thereof, into the FTX Group by the Debtors’ counsel, by the Unsecured Creditors’ Committee, and by any third parties (including government agencies), and making recommendations for additional investigations. The Examiner was further instructed to address three specific issues: (1) whether the Bankruptcy Court correctly ruled on the Debtors’ application to employ Sullivan & Cromwell LLP³ as counsel despite alleged conflicts of interest; (2) whether existing and ongoing investigations adequately addressed fraud by the former and current employees of the Debtors; and (3) whether the investigations have adequately addressed the Debtors’ use of its cryptocurrency token FTT to inflate the value of FTX Group entities. Part One concludes with a discussion of the methodology the Examiner has used to accomplish these assigned tasks.

Part Two addresses the Debtors’ engagement of S&C. It sets out the legal framework governing the retention of professionals in bankruptcy cases—with particular attention to how that framework has been applied by the United States Court of Appeals for the Third Circuit—and analyzes the Bankruptcy Court’s ruling on the Debtors’ application to engage S&C. It also

² This Report generally refers to these entities as the “FTX Group” when describing prepetition conduct or events, and as the “Debtors” when describing postpetition conduct or events.

³ This Report will refer to Sullivan & Cromwell LLP as “S&C.”

describes an investigation into S&C's prepetition representation of the FTX Group conducted by the Debtors' conflicts counsel, Quinn Emanuel Urquhart & Sullivan, LLP,⁴ as well as allegations made by interested parties regarding S&C's conduct. Ultimately, Part Two concludes that the Examiner did not identify any error in the Bankruptcy Court's decision authorizing the Debtors to retain S&C. However, the Examiner recommends two additional investigations into S&C-related issues: an investigation into S&C's representation of Samuel Bankman-Fried ("Bankman-Fried")⁵ in connection with his purchase of shares of Robinhood Markets, Inc., and an inquiry into the postpetition sale of LedgerX that specifically addresses any potential claims the Debtors may have against non-released shareholders in the LedgerX parent company, LHI.

Part Three assesses the adequacy of investigations into prepetition fraud by prepetition employees of the FTX Group, and whether any employees involved in that fraud remain employed by the Debtors. This Part describes the extensive investigative work by the Debtors' counsel and government agencies. Part Three then surveys the results of investigations by government agencies and the Debtors' counsel into fraudulent conduct, including any perpetrated by Bankman-Fried, the co-founder of FTX.com and Alameda and the former CEO of FTX.com; by FTX Group executives Bankman-Fried, Caroline Ellison, Nishad Singh, Zixiao ("Gary") Wang, and Ryan Salame; by the FTX Group's in-house legal and compliance teams; and by other FTX Group employees. It also addresses several instances in which current or former FTX Group employees made whistleblower complaints, circumstances in which the FTX Group sought to resolve those whistleblower complaints by making payments, and other instances when the FTX Group made payments to departing employees that were not clearly tied to known

⁴ This Report will refer to Quinn Emanuel Urquhart & Sullivan, LLP as "Quinn Emanuel."

⁵ This Report refers to Samuel Bankman-Fried as "Bankman-Fried." When other individuals with the surnames "Bankman-Fried," "Bankman," or "Fried" are referenced, the Report uses their first and last names.

whistleblower complaints. The Examiner concludes that no further investigation is warranted by him, as the ongoing and completed investigations have established the facts surrounding fraud by former employees of the FTX Group and demonstrated with sufficient confidence that current employees of the Debtors were not likely complicit in the prepetition fraud.

Part Four evaluates the adequacy of investigations into whether FTX Group entities manipulated cryptocurrency tokens or used cryptocurrency tokens they controlled to inappropriately inflate the value of FTX Group entities. This Part reviews investigations into the use of four cryptocurrency tokens that may have been employed for these purposes: FTT, SRM, MAPS, and OXY. It summarizes the investigations into instances of manipulation that have been conducted by the Debtors' counsel and governmental units. Ultimately, the Examiner concludes that these investigations have been sufficient to identify the significant instances of manipulation and the individuals who were principally involved, and that additional investigation into this subject by him is not necessary.

Part Five addresses investigations into prepetition conduct by professional service firms engaged by the FTX Group, including law firms, accounting firms, auditing firms, valuation firms, and other consultants. It summarizes completed and ongoing investigations conducted by the Debtors' counsel into potential misconduct by these professional services firms. The Examiner concludes that these investigations have been thorough and complete, such that there are no areas in which further investigation by the Examiner would be productive.

Part Six addresses other investigations into the prepetition conduct of the FTX Group and affiliated individuals and how those investigations have led, or could lead, to recovery of assets for the Debtors' estates. Investigations addressed in this section include inquiries into (1) corporate acquisitions by the FTX Group, (2) Bankman-Fried's family members, (3) charitable

and political contributions by the FTX Group and affiliated individuals, (4) cryptocurrency tokens that the FTX Group held at third-party exchanges, (5) the collapse of FTX.US, (6) miscellaneous investigations, (7) political contributions by the FTX Group and affiliated individuals, (8) payments to foreign officials, and (9) the FTX Group's Venture Book. The Examiner concludes that the completed and ongoing investigations into these issues have largely been sufficient to establish the facts concerning the FTX Group's conduct and to identify potential areas for asset recovery. However, he recommends one additional project to be undertaken by him: an investigation into potential misconduct at FTX.US.

Part Seven summarizes other adversary proceedings brought by the Debtors that are not addressed in other Parts.

Finally, Part Eight outlines the expected duration and proposed budget for the Examiner's recommended investigations.

PART 1: BACKGROUND AND METHODOLOGY

Part One of this Report sets out the relevant history of these bankruptcy cases, the scope of the Examiner’s investigation, and the Examiner’s methodology.

I. The Examiner’s Appointment and Assigned Duties

On November 11, 2022, many FTX Group entities filed for Chapter 11 bankruptcy in the United States District Court for the District of Delaware (the “Bankruptcy Court”), and West Realm Shires Inc. (“WRS”) followed on November 14 (together, the “Petition Date”). On December 1, 2022, the United States Trustee for Region 3 (the “U.S. Trustee”) moved for appointment of an examiner pursuant to section 1104(c) of title 11 of the United States Code (the “Bankruptcy Code”).⁶ The Debtors,⁷ the Official Committee of Unsecured Creditors (“Unsecured Creditors’ Committee”),⁸ and the Bahamas-based Joint Provisional Liquidators (“JPLs”) of FTX Digital Markets Ltd.⁹ (“FDM”) opposed the U.S. Trustee’s motion. The

⁶ *In re FTX Trading Ltd.*, No. 22-bk-11068 (Bankr. D. Del) (JTD), Dkt. No. 176. Further citations in this Report to a docket number, without an accompanying case name or number, are to docket entries in *In re FTX Trading Ltd.*, No. 22-bk-11068 (Bankr. D. Del) (JTD).

⁷ Dkt. No. 573.

⁸ Dkt. No. 571.

⁹ Dkt. No. 572. In Bahamian insolvency law, provisional liquidators are appointed by the court to act as agents of a company placed into provisional liquidation before a winding up order has been entered. Provisional liquidators are empowered to take various actions to maintain the value of the company. Once a winding up order has been entered, the official liquidators conduct the winding up of a company, including collecting, realizing, and distributing assets.

On November 10, 2023, the SCB “presented a winding up petition against [FDM] and suspended its license to operate” as a digital asset business in the Bahamas. *See Third Interim Report and Accounts of the Joint Provisional Liquidators to the Supreme Court of the Commonwealth of the Bahamas*, Joint Provisional Liquidators of FTX Digit. Mkts., at 4 (Nov. 9, 2023), <https://www.pwc.com/bs/en/services/business-restructuring-ftx-digital-markets/assets/third-update-from-the-jpls-10-nov-2023.pdf>, archived at <https://perma.cc/4N9U-3ZBJ>. The Supreme Court of the Bahamas subsequently ordered FDM be placed into provisional liquidation and appointed Brian Simms KC of Lennox Paton, Kevin Cambridge of PricewaterhouseCoopers Advisory (The Bahamas) Limited, and Peter Graves of PricewaterhouseCoopers Limited as the JPLs. *See id.* About a year later, pursuant to the Supreme Court of the Bahamas’ November 10, 2023 order, the Bahamian court ordered FDM be wound up, and the JPLs were appointed as Joint Official Liquidators (“JOLs”). *See FTX Digital Markets Ltd. (In Official Liquidation)*, PWC, <https://www.pwc.com/bs/en/services/business-restructuring-ftx-digital-markets.html>, archived at <https://perma.cc/98G4-EQHF>.

Bankruptcy Court held a hearing on the U.S. Trustee’s motion on February 6, 2023,¹⁰ and subsequently denied the motion for appointment of an examiner.¹¹

The U.S. Trustee appealed the Bankruptcy Court’s order to the United States Court of Appeals for the Third Circuit,¹² which reversed.¹³ The Third Circuit explained that section 1104(c) instructs that a bankruptcy court “‘shall’ appoint an examiner if the terms of the statute have been met,” which is an “obligatory command to appoint an examiner.”¹⁴ The Third Circuit remanded the case to the Bankruptcy Court “with instructions to order the appointment of an examiner[.]”¹⁵

On remand, the Bankruptcy Court held a hearing,¹⁶ and subsequently directed the U.S. Trustee to appoint an examiner.¹⁷ The U.S. Trustee appointed Robert J. Cleary as the Examiner,¹⁸ and in an order dated March 20, 2024, the Bankruptcy Court approved that appointment.¹⁹

On March 20, 2024, the Bankruptcy Court also issued an order concerning the scope of the Examiner’s investigation (the “Scope Order”).²⁰ The Scope Order instructed the Examiner to issue a report that:

¹⁰ Dkt. No. 622.

¹¹ Dkt. No. 746.

¹² Before appealing the Bankruptcy Court’s order, the U.S. Trustee successfully moved in the United States District Court for the District of Delaware for an order certifying a direct appeal to the Third Circuit. *Vara v. FTX Trading Ltd.* (*In re FTX Trading Ltd.*), No. 22-bk-11068 (JTD), 2023 WL 3721527 (D. Del. May 30, 2023).

¹³ *In re FTX Trading Ltd.*, 91 F.4th 148 (3d Cir. 2024).

¹⁴ *Id.* at 153.

¹⁵ *Id.* at 157.

¹⁶ Dkt. No. 6366.

¹⁷ Dkt. No. 7909.

¹⁸ Dkt. No. 8048.

¹⁹ Dkt. No. 9882.

²⁰ Dkt. No. 9883 (the “Scope Order”).

(i) summarizes the investigations of the Debtors conducted by the Debtors, the [Unsecured Creditors'] Committee, and any third parties (including any governmental units, to the extent such information is made available to the Examiner) which are pending or have concluded (the 'Investigations'), (ii) summarizes the findings or status of such Investigations, and (iii) makes recommendations for additional investigations.²¹

The Bankruptcy Court also directed the Examiner to undertake the following tasks, which the Third Circuit expressly enumerated in its opinion:

- a. An examination of the Court's ruling on the Debtors' application to employ Sullivan & Cromwell (respectively, "S&C" and the "Employment Application"), including whether there are potential conflicts of interest involving S&C which were not adequately addressed by the Court's hearing and ruling on the Employment Application;²²
- b. An examination of whether the Investigations adequately addressed fraud by the Debtors' employees and whether employees involved in such fraud are still working for the Debtors;²³ and
- c. An examination of whether the Investigations adequately addressed the Debtors' use of its cryptocurrency, FTT, to inflate the value of FTX and Alameda Research.²⁴

In accordance with the Bankruptcy Court's instructions, this Report addresses each of these topics.

II. The Examiner's Methodology

The Scope Order tasked the Examiner with assessing and summarizing the completed and ongoing investigations undertaken by counsel for the Debtors and counsel for the Unsecured

²¹ *Id.* at ¶ 2.

²² *Id.* at ¶ 3(a); *see also In re FTX*, 91 F.4th at 157 ("This requirement of disinterest is particularly salient here, where issues of potential conflicts of interest arising from debtor's counsel serving as pre-petition advisors to FTX have been raised repeatedly.").

²³ Scope Order at ¶ 3(b); *see also In re FTX*, 91 F.4th at 157 ("Moreover, the U.S. Trustee raised the concern that, given the reports of widespread fraud, officers or employees who may have engaged in wrongdoing could remain at FTX Group.").

²⁴ Scope Order at ¶ 3(c); *see also In re FTX*, 91 F.4th at 157 ("[A]n investigation into FTX Group's use of its own cryptocurrency tokens, FTTs, to inflate the value of FTX and Alameda Research could bring this practice under further scrutiny, thereby alerting potential investors to undisclosed credit risks in other cryptocurrency companies.").

Creditors' Committee, as well as their findings. The Examiner requested initial briefings from the Debtors' primary counsel, S&C, and its conflicts counsel, Quinn Emanuel, as well as from Paul Hastings LLP,²⁵ counsel for the Unsecured Creditors' Committee. All three law firms provided timely, complete, and very helpful cooperation, beginning with comprehensive briefings. The law firms produced relevant investigative documentation, including memoranda of investigations and interviews, reports of financial data analyses, and other documents. Members of the Examiner's team reviewed and analyzed these investigative documents. When the Examiner's team had follow-up questions, members of the team requested additional information and investigative documents from the three law firms and discussed issues of interest with them. The law firms supplied virtually all of the information requested. In a few limited instances, the law firms declined to produce requested materials to the Examiner. Whenever a law firm withheld requested materials, it provided a reasonable justification for doing so, and there was no negative impact on the Examiner's work. In total, the Examiner's team (1) reviewed hundreds of investigative documents and reports prepared by or at the direction of the three law firms, and (2) had dozens of discussions with attorneys at these firms who participated in the investigations.

The Scope Order also instructed the Examiner to summarize investigations conducted by third parties, including governmental units, as well as their findings. In accordance with this instruction, members of the Examiner's team conferred with representatives of each of the many government agencies that have investigated the Debtors, including the United States Attorney's Office for the Southern District of New York ("USAO-SDNY"), the U.S. Securities and Exchange Commission ("SEC"), the Commodity Futures Trading Commission ("CFTC"), the

²⁵ This Report will refer to Paul Hastings LLP as "Paul Hastings."

United States Department of Justice (“DOJ”), a committee of the United States House of Representatives, state securities regulators, and a money transmitter regulator. Each governmental unit reported on the status of its respective investigations, to the extent that doing so was possible without compromising non-public investigations. Members of the Examiner’s team also undertook a comprehensive review of (1) civil complaints against the FTX Group and associated individuals, (2) criminal information and indictments filed against individuals affiliated with the FTX Group, and (3) the transcripts of Bankman-Fried’s criminal trial and sentencing, and related filings.²⁶ Finally, the Examiner’s team reviewed testimony and other materials from Congressional hearings into the collapse of the FTX Group.

The Examiner also gathered information from sources other than the Debtors, the Unsecured Creditors’ Committee, and the government. Members of the Examiner’s team received information from counsel for certain senior FTX Group executives (Caroline Ellison, Gary Wang, and Nishad Singh) via attorney proffers. Members of the Examiner’s team also spoke with John Ray, current Chief Executive Officer (“CEO”) of the Debtors, and Adam Moskowitz and David Boies, counsel for the plaintiff class in an ongoing multidistrict litigation against the Debtors and affiliated individuals and entities.²⁷ The Examiner reviewed unsolicited written materials provided by Bankman-Fried. The team conferred with Bahamas counsel for the JOLs. Finally, the Examiner received and considered unsolicited information from several individuals and law firms. In some instances, the Examiner’s team followed up with additional

²⁶ A review of the USAO-SDNY investigations and prosecutions involving senior FTX Group executives, as well as the SEC and CFTC complaints, is addressed throughout this Report. The Examiner also understands that certain state securities regulators, including the Wisconsin Department of Financial Institutions, Division of Securities, have filed proofs of claim outlining an investigation into FTX.US “for offering and selling unregistered securities in the form of its Earn program.” See Claim No. 72749, *In re West Realm Shires Inc.*, No. 22-bk-11183 (Bankr. D. Del.) (JTD).

²⁷ *In re: FTX Cryptocurrency Exchange Collapse Litigation*, No. 23-md-03076 (S.D. Fla) (KMM). Moskowitz is also lead counsel in a separate lawsuit against S&C stemming from the collapse of the FTX Group.

questions, but only did so when the providers of unsolicited information identified themselves. The Examiner did not communicate with individuals who did not reveal their identities, nor did he respond to every named individual or entity who provided unsolicited information.

As noted above, the Examiner was guided by the Scope Order, which framed the Examiner's task as summarizing and assessing investigations completed by others rather than conducting a *de novo* investigation into issues concerning the collapse of the FTX Group. Many percipient witnesses were previously interviewed by the Debtors' counsel and/or the government. Because of the limited scope of the Examiner's assigned tasks, the Examiner generally did not interview percipient witnesses. Similarly, the Examiner did not review primary source documents that were already reviewed by the Debtors' counsel and/or the government, except in some limited circumstances or to the extent that these documents were excerpted or quoted in investigative work product prepared by others.

Bankruptcy examiners are appointed to conduct "an investigation of the debtor as is appropriate, including an investigation of any allegations of fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the affairs of the debtor or by current or former management of the debtor."²⁸ However, examiners do not have free rein to investigate any matter of potential private or public interest related to a debtor. Rather, "[t]he Examiner performs his duties at the request of the Court,"²⁹ and the Court "direct[s] the examiner's investigation."³⁰ Accordingly, the Examiner did not investigate every matter related to the Debtors that has attracted public or press attention. Nor did he investigate every known

²⁸ 11 U.S.C. § 1104(c).

²⁹ *In re New Century TRS Holdings, Inc.*, 407 B.R. 558, 566 (Bankr. D. Del. 2009).

³⁰ *In re FTX*, 91 F.4th at 156 (quoting 5 William L. Norton III, *Norton Bankruptcy Law and Practice* § 99:25 (3d ed. 2023)).

complaint regarding the prepetition conduct of the FTX Group or the postpetition course of these bankruptcy cases. Instead, the Examiner investigated only the matters assigned to him by the Scope Order. This Report should not be interpreted as a comment on any issues beyond the Examiner's remit.

Throughout the Report, names of certain individuals and entities are anonymized.³¹

³¹ Dkt. No. 15271, at 2.

PART 2: EMPLOYMENT OF S&C

I. Overview

As set forth in the Scope Order, the Examiner was tasked with reporting on “the Court’s ruling on the Debtors’ application to employ [S&C], including whether there are potential conflicts of interest involving S&C which were not adequately addressed by the Court’s hearing and ruling on the Employment Application.”³² The Examiner has reviewed in detail the record before the Court regarding S&C’s employment and considered whether facts outside the record should have been brought to the Court’s attention.

The second section of this Part reviews the bankruptcy conflict rules that govern a court’s consideration of a professional’s retention application. The following section describes (1) the record that was before the Court on the S&C Employment Application (as defined below), and (2) the hearing held by the Court, and then analyzes the Court’s ruling. The fourth and fifth sections discuss investigations and other assessments of S&C’s alleged conflicts by other law firms, academics, and other parties in interest. Finally, the sixth section makes recommendations for further investigative work related to S&C’s retention as the Debtors’ primary counsel in these bankruptcy cases.

In sum, the Examiner has concluded that, in light of the record before the Court, there was no error in the Court’s decision concerning the Debtors’ retention of S&C. However, after a review of investigations and other analyses of S&C, the Examiner has found that there were some additional facts relevant to S&C’s conflicts or disinterestedness that were not before the Court when it ruled on the S&C Employment Application. None of the additional facts reviewed to date suggests that S&C was in fact conflicted from representing the Debtors, or that the

³² Scope Order at ¶ 3(a).

Court's decision was compromised by the lack of such information. However, the Examiner sets forth below two recommendations for limited further investigation concerning facts that were not before the Court. These recommendations are in the public interest as they are made with the goal of ensuring that material questions that have been raised by observers of these cases are fully and completely vetted and answered.

II. Rules Governing the Retention of Professionals

a. *Section 327 of the Bankruptcy Code*

Bankruptcy Code section 327(a) provides that, with court approval, a debtor may employ attorneys that “do not hold or represent an interest adverse to the estate, and that are disinterested persons.”³³ The term “disinterested person” is defined as:

[A] person that (A) is not a creditor, an equity security holder, or an insider; (B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and (C) 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.³⁴

Therefore, both the first and second prong of section 327(a) prohibit a debtor's lawyer from holding an interest adverse to the bankruptcy estate. The Third Circuit has observed that, while the two prongs of section 327(a) are “formally distinct,” they “effectively collapse into a single test.”³⁵ But because the Bankruptcy Code does not define the term “adverse interest,” the language is left open to interpretation by the courts.

The Bankruptcy Code does include other guidance on the application of section 327(a). Under section 1107(b), a professional is not automatically disqualified under section 327 solely

³³ 11 U.S.C. § 327(a).

³⁴ 11 U.S.C. § 101(14).

³⁵ *In re Boy Scouts of Am.*, 35 F.4th 149, 157 (3d Cir. 2022) (citing *In re BH & P, Inc.*, 949 F.2d 1300, 1314 (3d Cir. 1991)).

because that professional represented the debtor on prior occasions. Similarly, under section 327(c), a professional is not disqualified solely because of that professional's employment by, or representation of, a creditor.

b. Bankruptcy Rule 2014

Rule 2014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") enforces the provisions of section 327(a) by requiring disclosure of a professional's relationships with parties in interest. Bankruptcy Rule 2014 requires that an application to retain a professional under section 327 be accompanied by a "verified statement of the person to be employed setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee."³⁶

Courts have held that "Bankruptcy Rule 2014 requires that the attorney seeking employment disclose to the Court all connections with parties in interest in the case, rather than furnishing only those which appear to implicate 'disinterestedness' or 'adverse interest' concerns under section 327(a)."³⁷ The Third Circuit has further emphasized that the obligation to disclose possible conflicts of interest "belongs to the party who seeks employment by the estate" because it is not the bankruptcy court's obligation "to search the record for possible conflicts of interest," and that "negligence does not excuse the failure to disclose a possible conflict of interest[.]"³⁸ But a bankruptcy court's "discretion in determining whether to disqualify counsel for inadequate

³⁶ Fed. R. Bankr. P. 2014(a).

³⁷ *In re eToys, Inc.*, 331 B.R. 176, 190 (Bankr. D. Del. 2005) (emphasis in original); see also *In re Blue Ridge Limousine & Tour Serv., Inc.*, No. 12-bk-17551 (BFK), 2014 WL 4101595 (Bankr. E.D. Va. Aug. 20, 2014); *In re Harris Agency, LLC*, 451 B.R. 378 (Bankr. E.D. Pa.), *aff'd sub nom. Paul J. Winterhalter, P.C. v. Off. of the U.S. Tr. (In re The Harris Agency, LLC)*, 462 B.R. 514 (E.D. Pa. 2011).

³⁸ *In re BH & P, Inc.*, 949 F.2d at 1317-18 (alterations and internal citations omitted).

disclosure is broad” and “[a] [B]ankruptcy [C]ourt may excuse the original failure to disclose because complete disclosure is for the Court’s benefit so that it can scrutinize any adverse interests of the attorney.”³⁹

c. Application of the Law

In the Third Circuit, conflicts under section 327 fall into three categories: “(1) actual conflicts of interest, (2) potential conflicts of interest, and (3) appearances of conflict.”⁴⁰ Actual conflicts of interest result in per se disqualification of professionals, potential conflicts of interest are left to the bankruptcy court’s discretion to determine if they are disqualifying, and appearances of conflicts alone cannot lead to disqualification.⁴¹ Because only actual or potential conflicts of interest can be disqualifying, this section of the Report focuses on the case law regarding those types of conflicts.

1. Actual Conflicts

The term “actual conflict of interest” is not defined in the Bankruptcy Code; however, the Third Circuit has stated that “[p]ragmatically, a conflict is actual when the specific facts before the bankruptcy court suggest that it is likely that a professional will be placed in a position permitting it to favor one interest over an impermissibly conflicting interest.”⁴² The Third Circuit has observed that the determination of a “conflict as ‘potential’ or ‘actual’ . . . [is] committed to the bankruptcy court’s sound exercise of discretion.”⁴³ Indeed, courts in the Third

³⁹ *Magten Asset Mgmt. Corp. v. Paul Hastings Janofsky & Walker LLP (In re Northwestern Corp.)*, 346 B.R. 84, 89 (D. Del. 2006) (quoting *First Interstate Bank of Nev., N.A. v. CIC Inv. Corp. (In re CIC Inv. Corp.)*, 175 B.R. 52, 54 (B.A.P. 9th Cir. 1994)).

⁴⁰ *In re Boy Scouts of Am.*, 35 F.4th at 157 (citing *In re Marvel Ent. Grp., Inc.*, 140 F.3d 463, 476 (3d Cir. 1998)).

⁴¹ *Id.* at 157-58.

⁴² *Id.* (internal quotations omitted) (quoting *In re Pillowtex, Inc.*, 304 F.3d 246, 251 (3d Cir. 2002)).

⁴³ *In re Marvel Ent. Grp., Inc.*, 140 F.3d at 476.

Circuit “have been accorded considerable latitude in using their judgment and discretion in determining whether an actual conflict exists in light of the particular facts of each case.”⁴⁴

That said, the Third Circuit has also stated that while “a bankruptcy court enjoys considerable discretion in evaluating whether professionals suffer from conflicts . . . [it] does not enjoy the discretion to bypass the requirements of the Bankruptcy Code.”⁴⁵ Accordingly, courts rigorously adhere to the statutory requirement that a disinterested person cannot be an officer within two years before the petition date,⁴⁶ and courts strictly prohibit a creditor from serving as a debtor’s professional.⁴⁷

In addition, the Third Circuit has held that, while prior representation of a debtor does not by itself merit disqualification, receipt of a preferential transfer under section 547(b) of the Bankruptcy Code constitutes an actual conflict of interest requiring disqualification of the professional.⁴⁸ This is due to the fact that “receipt of a preference creates a conflict with unpaid creditors because a payment by an insolvent debtor to one creditor is necessarily paid at the

⁴⁴ *In re BH & P, Inc.*, 949 F.2d at 1315 (quoting *In re Star Broad., Inc.*, 81 B.R. 835, 844 (Bankr. D.N.J. 1988)).

⁴⁵ *In re Pillowtex, Inc.*, 304 F.3d at 253 n.5, 254 (citing *U.S. Tr. v. Price Waterhouse*, 19 F.3d 138 (3d Cir.1994) for the proposition that “based on the language of the Code, a bankruptcy court that approves the retention of a prepetition creditor of the estate necessarily abuses its discretion”—as under section 101(14), a “disinterested person” must be a person who “is not a creditor”).

⁴⁶ *In re Essential Therapeutics, Inc.*, 295 B.R. 203, 211 (Bankr. D. Del. 2003) (holding that an individual who served as secretary for the debtors was not disinterested even though he only performed ministerial tasks because the proposed representation was contrary to the clear and unambiguous language of the statute).

⁴⁷ See *Price Waterhouse*, 19 F.3d at 142 (finding that an accounting firm that was also one of the twenty largest creditors of the estate was not disinterested even though the accounting firm promised not to participate in the case or vote its claim in the plan process).

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

expense of another creditor.”⁴⁹ At the time of retention, then, courts will determine if a prepetition payment is preferential.⁵⁰

2. Potential Conflicts

When a professional has a potential conflict of interest, a bankruptcy court has wide discretion to approve or reject the professional’s retention based on the court’s assessment of the totality of the circumstances in light of the specific facts of the case.⁵¹ Most courts look to the materiality of the potentially disqualifying facts and balance them against the potential advantages to the estate of having the professional in question represent the debtor.⁵²

(i) Professional’s Prepetition Work for a Debtor

As noted above, “[p]rior representation of the debtor does not, by itself, merit disqualification” of a professional under section 327.⁵³ But such prior representation does constitute a potential conflict of interest. Accordingly, courts will evaluate the nature of the prior representation to determine if a disqualifying conflict exists under section 327.⁵⁴

Most courts have held that customary prepetition bankruptcy services—i.e., preliminary work performed to prepare a bankruptcy filing—do not, standing alone, require

⁴⁹ *In re Fleming Cos., Inc.*, 305 B.R. 389, 393 (Bankr. D. Del. 2004) (citing *In re Pillowtex, Inc.*, 304 F.3d at 252).

⁵⁰ *In re Pillowtex, Inc.*, 304 F.3d at 248 (finding that, even though counsel agreed to (1) return any preference payments it might have received, and (2) waive any claim resulting from the preference payments, the firm could not continue with its representation until the court determined whether a preference existed).

⁵¹ *In re Marvel Ent. Grp., Inc.*, 140 F.3d at 477; see also *In re BH & P, Inc.*, 949 F.2d at 1315 (“[C]ourts have generally declined to formulate bright-line rules concerning the criteria for disqualification but have favored instead an approach which gives the bankruptcy court discretion to evaluate each case on its facts, taking all circumstances into account.”).

⁵² *In re Boy Scouts of Am.*, 35 F.4th at 161 (“Because Sidley’s representation of BSA did not prejudice Century but disqualifying it would have been a significant detriment to BSA, it was well within the Court’s discretion to determine that the drastic remedy of disqualification was unnecessary”).

⁵³ *In re Fleming Cos., Inc.*, 305 B.R. at 393 (noting that “neither of the parties involved in the prior transaction ha[d] complained about [counsel’s] representation,” the objecting creditor was “not a creditor of either party at the time the transaction took place,” and that counsel had “disclosed its involvement in the transaction to the satisfaction of the United States Trustee”).

⁵⁴ *Waldron v. Adams & Reese, L.L.P. (In re Am. Int’l Refinery, Inc.)*, 676 F.3d 455, 464 (5th Cir. 2012).

disqualification under section 327(a).⁵⁵ Relatedly, a firm’s receipt of a retainer prepetition does not automatically disqualify it under section 327, despite its status as a creditor.⁵⁶ Circuit courts have highlighted that “[a]ll professionals become ‘creditors’ when they perform services for which the estate must pay. When the services are performed, the professional is not thereupon disqualified as not disinterested.”⁵⁷ Ultimately, whether a professional who has received a retainer is disinterested will depend on the totality of the circumstances.⁵⁸

Courts have determined that a disqualifying potential conflict does exist if the debtor’s attorney is required to review her own legal work during the bankruptcy case. For example, where an attorney provided prepetition advice on transactions that would be scrutinized postpetition, the attorney could be disqualified from serving as the debtors’ counsel because as “a participant in those decisions, it was impossible for [counsel] to review those decisions with disinterestedness.”⁵⁹

⁵⁵ See *In re Hall*, 520 B.R. 116, 121 (Bankr. D. Kan. 2014) (citing *In re Watson*, 94 B.R. 111, 114 (Bankr. S.D. Ohio 1988), *reconsideration denied*, 102 B.R. 112 (Bankr. S.D. Ohio 1989)); *In re Creative Rest. Mgmt., Inc.*, 139 B.R. 902, 918 (Bankr. W.D. Mo. 1992) (“Each case in which counsel performed pre-bankruptcy services must be evaluated based on the facts presented. Where, as here, the services were overwhelmingly related to a bankruptcy which was being contemplated throughout the period, no such basis for removal exists”).

⁵⁶ *Rus, Miliband & Smith, APC v. Yoo (In re Dick Cepek, Inc.)*, 339 B.R. 730, 739 (B.A.P. 9th Cir. 2006) (“The professional’s status as a secured creditor by virtue of the retainer does not disqualify the professional from being retained by the estate as required by section 327 of the Code.”) (quoting 3 Collier on Bankruptcy ¶ 328.02[4] (15th ed. 2005)).

⁵⁷ *Id.* at 739 n.10; *In re Martin*, 817 F.2d 175, 180 (1st Cir.1987) (noting that, despite section 327’s apparent bar against the employment of any attorney who is a creditor, any attorney who provides legal services to a debtor “becomes a creditor of the estate just as soon as any compensable time is spent on account. Thus, to interpret the law in such an inelastic way would virtually eliminate any possibility of legal assistance for a debtor in possession”).

⁵⁸ See *In re Insilco Techs., Inc.*, 291 B.R. 628, 634 (Bankr. D. Del. 2003) (listing factors to be considered, including whether “terms of an engagement agreement reflect normal business terms . . . whether the parties involved are sophisticated business entities with equal bargaining power who engaged in an arms-length negotiation[] [and] . . . whether the retention, as proposed, is in the best interests of the estate . . .”).

⁵⁹ *DeAngelis v. Geisenberger (In re Ressler Hardwoods & Flooring, Inc.)*, No. 1:08-bk-01878MDF, 2010 WL 2342497, at *7 (Bankr. M.D. Pa. June 8, 2010); *aff’d sub nom. Geisenberger v. DeAngelis*, No. 1:10-CV-01660, 2011 WL 4458779 (M.D. Pa. Sept. 23, 2011); see also *In re Granite Sheet Metal Works, Inc.*, 159 B.R. 840 (Bankr. S.D. Ill. 1993) (holding that while representation of the debtor prepetition is not, in itself, a basis for disqualification, and even simultaneous representation of the debtor and its controlling shareholder may be permissible, counsel for the debtor was involved in a prepetition stock redemption transaction that would need to be scrutinized postpetition).

In contrast, courts have held that disqualification is not necessary if there is no evidence that counsel's prepetition work for the debtor was improper or would influence counsel's postpetition representation of the debtor.⁶⁰ For example, in one Delaware case, the court determined that disqualification of a debtor's proposed counsel under section 327 was not warranted, despite counsel's representation of the debtor and its subsidiary in a prepetition transaction. This was because (1) neither of the parties in the transaction had complained about the representation, (2) the complaining creditor was not a creditor of either party at the time of the transaction, and (3) the debtor's counsel had disclosed its involvement in the transaction to the satisfaction of the U.S. Trustee.⁶¹

Courts also look to other factors to evaluate the significance of a professional's prepetition work. These factors include the revenue earned by the professional from the prior representation and whether it was a material percentage of the firm's overall revenue,⁶² whether the party was a significant client of the firm, whether the prior representation would influence the firm to not engage in its best representation of the debtor, and whether the firm had adequately and sufficiently disclosed the relationship.⁶³

(ii) Professional's Relationship with a Debtor's Principals

and that counsel, who played an instrumental role in that transaction, might have difficulty conducting the necessary review).

⁶⁰ See, e.g., *In re Am. Int'l Refinery, Inc.*, 676 F.3d at 465 (noting that there was "no evidence in the record indicating that A&R's advice on the treatment of these claims was clouded"); *In re Caesars Ent. Operating Co., Inc.*, 561 B.R. 420, 433 (Bankr. N.D. Ill. 2015).

⁶¹ *In re Northwestern Corp.*, 346 B.R. at 88.

⁶² See *In re Filenes Basement, Inc.*, 239 B.R. 850, 853 (Bankr. D. Mass. 1999) ("The billings to any one client or the aggregate group is not material to the Firm's revenues. Individually, no client represented more than 1% of the Firm's total billings, and the aggregate group represented less than 1.1% of the total billings, of the Firm for calendar year 1998."); *In re Rockaway Bedding, Inc.*, No. 04-bk-14898, 2007 WL 1461319, at *3 (Bankr. D.N.J. May 14, 2007) ("PNC Bank represented less than 1% of Duane Morris LLP's 2006 annual gross revenue.").

⁶³ See *Kennedy v. Skadden, Arps, Slate, Meagher & Flom LLP (In re Radnor Holdings Corp.)*, 528 B.R. 245 (D. Del. 2014), *aff'd sub. nom. In re Radnor Holdings Corp.*, 629 F. App'x 277 (3d Cir. 2015).

In some circumstances, a professional's representation of other parties closely related to the debtor, such as the debtor's directors, officers, or principal stakeholders, may give rise to a disqualifying conflict.⁶⁴ These types of representations "are not a disqualifying conflict per se" but they may become disqualifying "when adverse interests either exist *or are likely to* develop."⁶⁵

In one Third Circuit case, a debtor's law firm simultaneously represented the debtor and the debtor's sole shareholder, president, and CEO, who had personally guaranteed the debtor's secured debts. The Third Circuit ruled that there was no significant risk of an adverse interest developing because the debtor's assets far exceeded the value of secured claims, such that it was substantially certain that all secured claims would be satisfied and the CEO would likely never be called upon to satisfy her guarantees.⁶⁶ Therefore, the court determined that despite there being a potential conflict, the possibility that this conflict would become an actual conflict was remote.⁶⁷ Similarly, in a bankruptcy case in the Southern District of New York, the debtor's proposed counsel had represented a corporate director prepetition. Proposed counsel was allowed to represent the debtor in the bankruptcy case because the prior representation had

⁶⁴ See *Rome v. Braunstein*, 19 F.3d 54 (1st Cir. 1994) (denying fee application of debtor's counsel that previously represented both sole shareholder, president of the debtor and certain of his other family members); *In re EZ links Golf, LLC*, 317 B.R. 858 (Bankr. D. Colo. 2004) (denying retention of debtor's proposed counsel because it had close ties and consequential relationships with parties that were inseparable with the debtor).

⁶⁵ *In re Jade Mgmt. Services*, 386 F. App'x 145, 149 (3d Cir. 2010) (emphasis in original) (quoting *In re Plaza Hotel Corp.*, 111 B.R. 882, 890 (Bankr. E.D. Cal. 1990); see also *In re Angelika Films 57th Inc.*, 227 B.R. 29, 40 (Bankr. S.D.N.Y. 1998), *aff'd sub. nom. Tenzer Greenblatt LLP v. Silverman (In re Angelika Films 57th, Inc.)*, 246 B.R. 176 (S.D.N.Y. 2000).

⁶⁶ *In re Jade Mgmt. Servs.*, 386 F. App'x at 149; but see *Parker v. Frazier (In re Freedom Solar Ctr., Inc.)*, 776 F.2d 14 (1st Cir. 1985) (reversing lower court's order permitting attorney to continue to represent debtor, debtor's sole shareholder, and a new corporation organized by shareholder where shareholder might be liable for preferential transfers); *In re Grabill Corp.*, 113 B.R. 966, 969 (Bankr. N.D. Ill. 1990), *aff'd sub nom. Grabill Corp. v. Pelliccioni*, 135 B.R. 835 (N.D. Ill. 1991), *aff'd sub nom. In re Grabill Corp.*, 983 F.2d 773 (7th Cir. 1993) ("Representation of more than one person or entity in a matter which ends up in bankruptcy court is fraught with ethical quagmires . . . temporary alliances forged between parties on a matter one day, frequently dissolve shortly thereafter when battle is joined on another matter arising in that same case.").

⁶⁷ *In re Jade Mgmt. Servs.*, 386 F. App'x at 149.

terminated before the petition date, and there were no allegations that the prepetition work substantially related to any claims asserted in the bankruptcy cases.⁶⁸ Therefore, the bankruptcy court held that the debtor's proposed counsel was not disqualified under section 327(a).

In contrast to the cases cited above, courts have disqualified counsel based on longstanding relationships and close connections between a debtor's counsel and its principals, when counsel acted in the principals' interests to the detriment of the debtor.⁶⁹

When a professional does not represent an insider, yet has a relationship with an insider, courts evaluate the materiality of the relationship to determine whether a conflict exists. In one case, the court stated that a firm's former attorney being an insider of the debtor "alone might not cause [us] to find material adversity" requiring disqualification of the firm.⁷⁰ Moreover, courts have acknowledged that the specialized nature of bankruptcy practice means that relationships between professionals and others involved in a bankruptcy case are "inevitable."⁷¹ And, therefore, even close familial relationships may not require disqualification. One court examining a familial relationship between debtor's counsel and the debtor explained that the question presented by such a relationship is whether "counsel, as the debtors' nephew, possess[es] an interest such as would color the requisite independent and impartial judgment

⁶⁸ *In re Level 8 Apparel LLC*, No. 16-bk-13164 (JLG), 2023 WL 2940489, at *16 (Bankr. S.D.N.Y. Apr. 13, 2023).

⁶⁹ *In re Rusty Jones, Inc.*, 134 B.R. 321, 344 (Bankr. N.D. Ill. 1991) (finding a conflict of interest under section 327 when a partner at debtor's counsel had significant personal and business relationships with indirect controlling owners of the debtors, leading counsel to act on several occasions to further the goals of these owners to the detriment of the debtor's estate).

⁷⁰ *Petrallex Stainless, Ltd. v. Bishop Tube Div. of Christiana Metals (In re Petrallex Stainless, Ltd.)*, 78 B.R. 738, 746 (Bankr. E.D. Pa. 1987).

⁷¹ *In re eToys, Inc.*, 331 B.R. at 195 (determining that the relationship between counsel for the unsecured creditors' committee and the individual hired to coordinate debtor's liquidation, which extended over many years and involved several bankruptcy cases was "not unusual" and "[i]n fact, given the specialized nature of the bankruptcy practice, it is inevitable.").

required to handle the case.”⁷² That court determined that the relationship “does not outweigh the value afforded by his experience and familiarity with the affairs of the debtors.”⁷³

Courts have held, however, that professionals will not be found to be disinterested due to close relationships with insiders of the debtor if it is not clear whether the professional will be acting in the best interest of the bankruptcy estate. In a case in which a debtor’s counsel had many important and consequential connections with parties who were integral to and somewhat inseparable from the debtor, the court determined that the interrelationship of the parties meant that there were far too many areas where questions could arise as to whether debtor’s counsel’s action or inaction on behalf of the debtor was driven by what was in the best interest of the estate and its creditors or by what would be in the best interest of the individuals.⁷⁴

(iii) Professional’s Simultaneous Representation of Multiple Debtors

The majority of courts, including the Third Circuit, have held that the representation of multiple related debtors does not alone create a *per se* conflict of interest warranting disqualification under section 327.⁷⁵ The Second Circuit has explained that “[i]nterdebtor issues arise in most large multidebtor bankruptcy cases. [Therefore,] [r]equiring appointment of independent professionals to represent each individual debtor in all such cases, regardless of the factual circumstances, would burden estates with unjustified and insurmountable costs.”⁷⁶

⁷² *In re Covey*, 57 B.R. 665, 667 (Bankr. D.S.D. 1986).

⁷³ *Id.*

⁷⁴ *In re EZ Links Golf, LLC*, 317 B.R. at 864.

⁷⁵ See *In re BH & P, Inc.*, 949 F.2d at 1314 (holding that “the existence of interdebtor claims is . . . no longer an automatic ground for disqualification of counsel . . .”); *In re Adelpia Commc’ns Corp.*, 342 B.R. 122, 128 (S.D.N.Y. 2006) (“[P]resence of intercompany claims between debtors represented by the same counsel does not automatically warrant the disqualification of that counsel”) (quoting *In re Adelpia Commc’ns Corp.*, 336 B.R. 610, 672-73 (Bankr. S.D.N.Y. 2006)); *In re Int’l Oil Co.*, 427 F.2d 186, 187 (2d Cir. 1970) (the existence of intercompany claims was not enough “to saddle these estates with the expense of separate trustees and trustees’ attorneys”).

⁷⁶ *In re Adelpia*, 342 B.R. at 128.

Instead, courts have determined that only the presence of an “actual” conflict, as opposed to a “potential” conflict, will prevent simultaneous representation of debtors.⁷⁷

As with the analysis of all conflicts under section 327, a determination as to whether a single professional’s representation of multiple debtors rises from a potential conflict to a disqualifying actual conflict is highly fact-specific. The Third Circuit has held that factors to be considered “include, but are not limited to, the nature of the disclosure of conflict made at the time of appointment, whether the interests of the related estates are parallel or conflicting, and the nature of the interdebtor claims made.”⁷⁸ However, in addition to these factors, the Circuit has reiterated the general rule that bankruptcy “[c]ourts have been accorded considerable latitude in using their judgment and discretion in determining whether an actual conflict exists.”⁷⁹

When multiple debtors have intercompany claims against one another, many courts take a wait-and-see approach before deciding whether additional professionals are necessary.⁸⁰ Counsel will not necessarily be disqualified at the outset of a case due to the possibility that a conflict might arise. Should conflicts surface, then conflicts counsel can be retained.⁸¹

⁷⁷ *In re Glob. Marine, Inc.*, 108 B.R. 998, 1004 (Bankr. S.D. Tex. 1987) (“[T]here is a fundamental distinction between the ‘potentially’ conflicting interests that may arise in every instance of joint representation and an ‘actual conflict of interest’ as envisioned by § 327(c).”).

⁷⁸ *In re BH & P Inc.*, 949 F.2d at 1316.

⁷⁹ *Id.* at 1315; *see In re Glob. Marine, Inc.*, 108 B.R. at 1004 (finding no actual conflict of interest that would require disqualification of bankruptcy counsel that represented multiple corporate debtor affiliates with a complex web of intercompany debts, who used each other’s assets, and guaranteed each other’s debts to third parties); *but see Quarles & Brady LLP v. Maxfield (In re Jennings)*, 199 F. App’x 845, 849 (11th Cir. 2006) (holding that an actual conflict arose where “one debtor depleted its assets despite another debtor’s secured claim against those assets” forcing counsel “to advance two diametrically opposed goals” that “created an actual dispute”) (internal quotation marks omitted).

⁸⁰ *In re Adelpia*, 342 B.R. at 128.

⁸¹ *In re Wheatfield Bus. Park LLC*, 286 B.R. 412, 423 (Bankr. C.D. Cal. 2002) (“[I]f a potential conflict of interest arises because of a transaction between two affiliated business entities that are both debtors in bankruptcy cases, the appointment of special counsel to deal with that transaction may be sufficient to permit a single attorney or law firm to represent the related entities as their general bankruptcy counsel.”)

d. The Role of Conflicts Counsel

When a debtor's primary counsel cannot handle a matter in a bankruptcy case due to a conflict of interest, courts will often allow the debtor to retain another law firm as conflicts counsel.⁸² In certain circumstances, courts have held that a potential conflict can be avoided by the retention of conflicts counsel when a case begins.⁸³ In other instances, courts will wait to see how the case plays out before requiring the retention of conflicts counsel.⁸⁴

The retention of conflicts counsel, however, is not a cure-all for every situation. Courts have held that conflicts counsel will not provide a solution to conflicts arising when the party with whom the professional has a relationship has a significant and pervasive role in the case.⁸⁵ Situations in which courts have held the appointment of conflicts counsel to be insufficient include those in which the professional has a conflict of interest with the debtor's largest creditor who was central to the reorganization,⁸⁶ or when the professional has a conflict with a debtor's major competitor with multiple claims, including more than half the total unsecured claims against the debtor.⁸⁷ Therefore, if the retention of conflicts counsel cannot ensure that a lawyer or law firm will provide the debtor with undivided loyalty, then that lawyer or law firm must be disqualified.

⁸² See, e.g., *In re Enron Corp.*, No. 01-bk-16034(AJG), 2002 WL 32034346, at *11 (Bankr. S.D.N.Y. May 23, 2002), *aff'd sub. nom. Exco Res., Inc. v. Milbank, Tweed, Hadley & McCloy LLP (In re Enron Corp.)*, No. 02-cv-5638(BSJ), 2003 WL 223455 (S.D.N.Y. Feb. 3, 2003) (describing conflicts counsel as an "acceptable procedure[] to address conflict of interest issues . . . in numerous large bankruptcy cases.").

⁸³ See, e.g., *In re J&M Dev. of Cass Cnty, Inc.*, No. 04-br-41065-JWV, 2004 WL 1146451, at *3 (Bankr. W.D. Mo. May 19, 2004) (citing *In re BH & P, Inc.*, 103 B.R. 556 (Bankr. D.N.J. 1989)), *remanded*, 119 B.R. 35 (D.N.J. 1990), *aff'd*, 949 F.2d 1300 (3d Cir. 1991)).

⁸⁴ See, e.g., *Hassett v. McColley (In re O.P.M. Leasing Servs., Inc.)*, 16 B.R. 932, 939 (Bankr. S.D.N.Y.1982) (citing *Dresner, Gomberg & Co., Inc. v. Kilsheimer (In re G.E.C. Secs., Inc.)*, 331 F.2d 655, 656 (2d Cir. 1964) and *Katz v. Kilsheimer*, 327 F.2d 633, 636 (2d Cir. 1964)).

⁸⁵ See, e.g., *In re Amdura Corp.*, 121 B.R. 862 (Bankr. D. Colo. 1990).

⁸⁶ *In re Project Orange Assocs., LLC*, 431 B.R. 363, 375.

⁸⁷ *In re WM Distribution, Inc.*, 571 B.R. 866 (Bankr. D.N.M. 2017).

III. The Court's Ruling on the Debtors' Application to Employ S&C

a. *Summary of the Record*

On December 21, 2022, the Debtors filed an application to retain S&C as counsel (the "S&C Employment Application").⁸⁸ Objections to the S&C Employment Application were due on January 4, 2023. The hearing was initially scheduled for January 11, 2023, and then later adjourned to January 20, 2023. Attached as exhibits to the S&C Employment Application were declarations from CEO John Ray (the "Ray Employment Declaration") and S&C partner Andrew G. Dieterich (the "Dieterich Declaration"). The Ray Employment Declaration discusses the Debtors' decision to select S&C as counsel, as well as S&C's rate structure and cost supervision. The Dieterich Declaration contains, among other things, a short statement that "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 related to certain U.S. business lines."⁸⁹ For this work, S&C was paid \$8,564,487 in total.⁹⁰ The S&C Employment Application and related declarations provide few specifics on the nature of S&C's prior work for the Debtors.

On January 4, 2023, one of the Debtors' customers and creditors filed an objection to the S&C Employment Application.⁹¹ The objection was amended on January 10, 2023 (together, the "Winter Objection").⁹² The Winter Objection asserts that S&C had an actual conflict of interest arising from: (1) S&C's relationship with Ryne Miller, described as General Counsel to

⁸⁸ Dkt. No. 270.

⁸⁹ Dkt. No. 270-3 at ¶ 16.

⁹⁰ *Id.*

⁹¹ Dkt. No. 369.

⁹² Dkt. No. 459.

FTX.US,⁹³ and Tim Wilson, described as General Counsel to FTX Ventures, Ltd. (“FTX Ventures”), both of whom were former S&C attorneys and, Winter argues, worked with S&C to mount an extreme pressure campaign so that Bankman-Fried would place the FTX Group into bankruptcy; (2) S&C’s prepetition representations, which would allegedly need to be investigated and were not sufficiently disclosed; (3) S&C’s preference exposure; and (4) S&C’s representation of potential targets of investigations and litigation to be brought by the estates. One other creditor joined the Winter Objection.⁹⁴

On January 13, 2023 (after an extension of the objection deadline), the U.S. Trustee filed an objection to the S&C Employment Application (the “U.S. Trustee Objection”).⁹⁵ The U.S. Trustee Objection raises two concerns. First, the U.S. Trustee asserts that S&C’s disclosures were “wholly insufficient to evaluate whether S&C satisfies the Bankruptcy Code’s conflict-free and disinterestedness standards.”⁹⁶ Second, the U.S. Trustee argues that the scope of S&C’s retention should not include an investigation of the Debtors’ downfall given S&C’s close connection to “an insider” of the Debtors (likely a reference to Miller) and because such an investigation would be more appropriately tasked to an examiner.⁹⁷

On January 17, 2023, Dietderich filed a supplemental declaration containing more robust disclosures than the initial Dietderich Declaration (the “Supplemental Dietderich Declaration”).⁹⁸

The Supplemental Dietderich Declaration discusses how S&C was retained by the FTX Group

⁹³ The Examiner has seen references to both West Realm Shires Inc. and its subsidiary West Realm Shires Services Inc. as doing business as FTX.US.

⁹⁴ Dkt. No. 502.

⁹⁵ Dkt. No. 496.

⁹⁶ *Id.* at 2.

⁹⁷ *Id.*

⁹⁸ Dkt. No. 510.

and describes the days leading up to the Petition Date. Dietderich explicitly denies pressuring Bankman-Fried to commence the bankruptcy cases, as alleged in the Winter Objection. Dietderich also discusses the negotiation and execution of the document appointing Ray as CEO (the “Omnibus Authority”). Dietderich explains that Ray was one of several candidates identified by S&C for the position of Chief Restructuring Officer (“CRO”), but the Supplemental Dietderich Declaration does not explain why Ray was appointed CEO instead.

According to Dietderich, in the days leading up to the Petition Date, Dietderich and other S&C attorneys were in contact with various members of the FTX Group leadership, including Bankman-Fried (represented by his own counsel), Can Sun (General Counsel to FTX Trading Ltd.), and Zach Dexter (CEO of LedgerX LLC (“LedgerX”). At this time, Dietderich states that S&C was also taking direction from Miller and Wilson who, as mentioned, were both senior legal officers at the FTX Group and prior S&C attorneys. Notably, in the lead up to the bankruptcy filing, two FTX Group senior legal officers—Sun and Daniel Friedberg—resigned from their positions.⁹⁹

The Supplemental Dietderich Declaration explains S&C’s relationship with both Miller and Wilson, as well as two other former S&C associates with more junior roles at the FTX Group. Miller was an associate at S&C for several years before being elected to the partnership. He was a partner of the firm from January 2019 to July 2021, when he left to join the FTX Group. Wilson was an associate at S&C from September 2019 to April 2021. He did not leave S&C to join the FTX Group. Instead, he left S&C for another law firm that also did work for the

⁹⁹ *Id.* at ¶ 15. With respect to Sun, Dietderich testifies that he was in contact with Sun during November 8, but that Sun resigned later that same day.

FTX Group, Fenwick & West, LLP (“Fenwick”).¹⁰⁰ The Supplemental Dietderich Declaration does not disclose (and Dietderich may not know) when Wilson joined the FTX Group.

Regarding S&C’s prepetition work, the Supplemental Dietderich Declaration contains disclosures, referred to as a *Pillowtex* analysis,¹⁰¹ regarding the fees received by S&C from the FTX Group for the one-year period prior to the Petition Date.¹⁰² The purpose of this analysis is to determine whether S&C received a potentially avoidable transfer. Beyond the preference disclosures, Dietderich also asserts that S&C did not classify the FTX Group as “regular clients,” which is a designation the firm uses for clients with whom it has a standing relationship.¹⁰³ In his declaration, Dietderich predicts that work for the FTX Group in 2022 would represent less than 1% of S&C’s total revenues in 2022.¹⁰⁴

As set forth in the Supplemental Dietderich Declaration, starting in July 2021, S&C opened 20 matters prepetition on behalf of the FTX Group. The most significant representation of the FTX Group, based on the fees generated, was S&C’s representation of West Realm Shires Services Inc. (“WRSS”) in its bid for substantially all of the assets of Voyager Digital Holdings, Inc. and its debtor affiliates (“Voyager Digital”). S&C was paid approximately \$3,128,000 for this work.¹⁰⁵ S&C also received \$1,513,000 for its representation of WRS in connection with its acquisition of LedgerX LLC. S&C also represented WRS in its formal request to the CFTC to modify WRS’ registration as a derivative clearing organization so it could offer margined products directly to participants. S&C was paid approximately \$662,000 for this

¹⁰⁰ *Id.* at ¶¶ 62-66.

¹⁰¹ This analysis is so termed because it is based on the Third Circuit decision *In re Pillowtex, Inc.*, 304 F.3d at 251.

¹⁰² Dkt. No. 510 at ¶ 59.

¹⁰³ *Id.* at ¶ 40.

¹⁰⁴ *Id.* at ¶ 44.

¹⁰⁵ *Id.* at ¶ 48.

representation.¹⁰⁶ And S&C advised the FTX Group in connection with other investigations and inquiries from the CFTC. One involved inquiries concerning third-party crypto businesses, for which S&C received approximately \$220,000.¹⁰⁷ There was one CFTC matter for which S&C received fees in excess of \$1,000,000, which was in connection with the agency's investigation into the FTX Group's Know Your Customer policies and procedures, for which S&C received \$1,405,000.¹⁰⁸

The remaining matters disclosed in the Supplemental Dietderich Declaration were much smaller engagements. However, two of these comparatively small engagements merit further comment here because they were representations of individuals from the FTX Group's leadership on a personal basis. First, Dietderich discloses that S&C advised Bankman-Fried in his individual capacity in connection with Hart-Scott-Rodino Act compliance and public reporting obligations, "arising out of a position that had been established in the stock of Robinhood Markets, Inc."¹⁰⁹ Second, S&C provided tax and estate planning advice to Nishad Singh. The modest fees for both matters were paid for by Alameda Research LLC ("Alameda").¹¹⁰

The Supplemental Dietderich Declaration also discloses S&C's representation of certain parties included on the "interested parties list" that was provided to S&C by the Debtors for the purposes of preparing its disclosures pursuant to Bankruptcy Rule 2014. For example, the Supplemental Dietderich Declaration discloses that S&C represented BlockFi International Ltd.

¹⁰⁶ *Id.* at ¶ 49.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at ¶ 48.

¹⁰⁹ Dkt. No. 510 at ¶ 52.

¹¹⁰ *Id.* at ¶ 51. The work for Singh amounted to \$22,000 in fees. The work for Bankman-Fried amounted to \$195,000 in fees.

and BlockFi, Inc. (collectively, “BlockFi”) in a regulatory matter that resulted in a public settlement (the “BlockFi SEC Settlement”).¹¹¹ It notes that, at the time the declaration was filed, the matter was substantially complete, and that S&C did not expect any further work.¹¹²

On the same day that the Supplemental Dietderich Declaration was filed, two additional declarations were filed. First, Ray filed a supplemental declaration (the “Supplemental Ray Employment Declaration”).¹¹³ The Supplemental Ray Employment Declaration provides additional background on Ray’s decisions to retain S&C as primary legal counsel and to engage Quinn Emanuel to, among other things, serve as counsel on matters for which S&C is conflicted. Ray also clarified that, although Miller was still employed at the Debtors, he had no day-to-day responsibilities. Second, Alexa J. Kranzley, an S&C partner, filed a declaration attaching emails between S&C and the U.S. Trustee regarding S&C’s Employment Application.¹¹⁴ Those emails, collectively, demonstrate that there were extensive communications between S&C and the U.S. Trustee regarding the additional disclosures in the Supplemental Dietderich Declaration.

On January 17, 2023, the Unsecured Creditors’ Committee filed a statement saying that it did not share the U.S. Trustee’s concerns regarding the retention of S&C, particularly given S&C’s additional disclosures. This statement also asserts that denial of the S&C Employment Application would cause “disruption and expense” that “would not be in the best interests of the estates.”¹¹⁵

¹¹¹ *Id.* at ¶ 76. BlockFi operates another crypto platform.

¹¹² *Id.*

¹¹³ Dkt. No. 511.

¹¹⁴ Dkt. No. 512.

¹¹⁵ Dkt. No. 508 at ¶ 5.

On January 19, 2023, Dietderich filed a second supplemental declaration that contains minor additional disclosures as well as clarifications to the existing S&C disclosures.¹¹⁶

Also on January 19, 2023, Daniel Friedberg filed a declaration purportedly in support of the Winter Objection (the “Friedberg Declaration”).¹¹⁷ Among other things, Friedberg asserts that S&C had breached ethical obligations and overbilled the FTX Group for certain prepetition work;¹¹⁸ that S&C had a conflict concerning its prepetition representation of both the “Alameda Group”¹¹⁹ and BlockFi;¹²⁰ that S&C mistakenly filed FTX.US¹²¹ into Chapter 11 when “the group appears to have been solvent”;¹²² and that S&C erred in making the “unexplainable decision to leave open withdrawals at FTX.US for several days and not secure the crypto assets of the entities *after* filing bankruptcy.”¹²³

The filing of the Friedberg Declaration prompted the objectors to file an emergency motion asking the Court to adjourn the January 20 hearing on the S&C Employment Application.¹²⁴ Characterizing the Friedberg Declaration as a “bombshell” and its allegations against S&C as “explosive,” the objectors opined that “it is in the best interest of our clients and all stakeholders to have additional time to arrange testimony, secure a deposition and, otherwise,

¹¹⁶ Dkt. No. 533.

¹¹⁷ Dkt. No. 530.

¹¹⁸ *Id.* at ¶¶ 48-55.

¹¹⁹ This term is not defined in the declaration.

¹²⁰ *Id.* at ¶¶ 56-63. The declaration also does not include a definition of BlockFi.

¹²¹ Defined in the declaration as WRSS, but, as noted *supra* note 93, the Examiner has also seen references to WRSS’ parent entity, WRS, doing business as FTX.US.

¹²² *Id.* at ¶ 64.

¹²³ *Id.* at ¶ 66 (emphasis in original).

¹²⁴ Dkt. No. 535.

get to the bottom of this unexpected development.”¹²⁵ No other objections, statements, or declarations were filed in connection with the S&C Employment Application.

b. The Court Hearing

At the January 20 hearing, the Court denied the objectors’ emergency motion to adjourn the hearing and declined to consider the Friedberg Declaration. The Court noted that Friedberg had filed neither a motion nor a joinder to a motion, and his declaration was not filed in support of anyone else’s motion. As a result, the Court held that the Friedberg Declaration was “not . . . appropriate—procedurally it’s not appropriate.”¹²⁶ In addition, the Court concluded that the declaration was “full of hearsay, innuendo, speculation, rumors; certainly not something I would allow to be introduced into evidence in any event.”¹²⁷ The Court also noted that Friedberg was not present in the courtroom. “He is simply trying to be a witness, I suppose, but witnesses are not allowed unless [they are] here live.”¹²⁸

Also at the hearing, counsel for the U.S. Trustee informed the Court that the U.S. Trustee’s objection to the S&C Employment Application was resolved as a result of S&C’s extensive additional disclosures.¹²⁹ An S&C partner, an attorney representing the Unsecured Creditors’ Committee, and an attorney representing the objectors all addressed the Court on the merits of the S&C Employment Application.

Based on this record, the Court ruled that, despite the prepetition work performed by S&C, there was no evidence of an actual conflict and no potential conflict that would require

¹²⁵ Transcript at 17:20, 18:12, 19:6-9, Dkt. No. 558.

¹²⁶ *Id.* at 24:1-5.

¹²⁷ *Id.* at 24:6-9.

¹²⁸ *Id.* at 25:1-3.

¹²⁹ *Id.* at 9:5-10:8.

disqualification. The Court reached this conclusion because nothing in the extensive record before it indicated “any investigation would be required of those transactions with which [S&C] might have been involved” and, even if there were, the “[D]ebtors have retained conflict counsel.”¹³⁰ The Court also noted that Ray and four independent directors were appointed “who are all consummate professionals, who were not involved in the company’s collapse, and there’s no evidence that Miller or Wilson are involved in the management of the [D]ebtors at this time.”¹³¹ Regarding the preference allegations, the Court ruled that “the payments made within the 90-day preference period constitute ordinary course payments” and therefore were not recoverable by the Debtors.¹³² Accordingly, the Court overruled the Winter Objection and granted the S&C Employment Application. The Court’s decision was not appealed by any party.

c. Analysis of Court’s Ruling

As directed in the Scope Order, the Examiner reviewed the Court’s ruling on the S&C Employment Application to determine whether there were any potential conflicts of interest involving S&C which were not adequately addressed.

At the time of the hearing on the S&C Employment Application, there were just two objections before the Court: The Winter Objection and a joinder to the Winter Objection. In light of the Friedberg Declaration’s procedural and evidentiary deficiencies, the Examiner does not believe that the Court erred by disregarding the Friedberg Declaration.¹³³

With respect to each of the objectors’ arguments, the Court had “considerable latitude in using [its] judgment and discretion in determining whether an actual conflict exists ‘in light of

¹³⁰ Transcript at 48:18-25, Dkt. No. 558.

¹³¹ *Id.* at 50:3-8.

¹³² *Id.* at 51:2-6.

¹³³ Nonetheless, the allegations contained in the Friedberg Declaration are addressed *infra*, at Section IV.

the particular facts of each case.”¹³⁴ Likewise, the Court had “wide discretion . . . to approve or disapprove” S&C’s retention based on the existence of a potential conflict.¹³⁵ Indeed, as noted above, potential conflicts are not *per se* disqualifying.¹³⁶ And any concerns about potential conflicts can be alleviated through the employment of conflicts counsel.¹³⁷

The Court addressed and responded to each of the objectors’ arguments. First, the objectors argued that S&C’s prepetition work for the Debtors gave rise to potential conflicts. But, as discussed previously, if there is no evidence in the record that counsel’s prepetition work for a debtor related to or would influence counsel’s representation of the debtor, then disqualification for such work is not warranted.¹³⁸ The Court found that there was nothing in the record that would merit disqualification of S&C based on its prepetition work.¹³⁹ After carefully reviewing the record that was before the Court, the Examiner agrees with the Court’s conclusion.

Second, the objectors cited S&C’s relationship with Miller and Wilson. To be sure, the case law reveals that longstanding relationships with insiders can be disqualifying if it is unclear whether the professional will act in the best interest of the estate or the insider.¹⁴⁰ Here, however, the Court concluded that “there’s no evidence that Miller or Wilson are involved in the management of the [D]ebtors at th[e] time [of the retention decision]” and that generally these

¹³⁴ *In re BH & P, Inc.*, 949 F.2d at 1315 (quoting *In re Star Broad., Inc.*, 81 B.R. at 844).

¹³⁵ *In re Marvel Ent. Grp., Inc.*, 140 F.3d at 477; see also *In re BH & P, Inc.*, 949 F.2d at 1315.

¹³⁶ *In re Boy Scouts of Am.*, 35 F.4th at 157 (citing *In re Marvel Ent. Grp., Inc.*, 140 F.3d at 476).

¹³⁷ See, e.g., *In re J&M Dev. of Cass Cnty., Inc.*, 2004 WL 1146451, at *3 (citing *In re BH & P, Inc.*, 103 B.R. at 564); Transcript at 48:22-24, Dkt. No. 588.

¹³⁸ See, e.g., *In re Am. Int’l Refinery, Inc.*, 676 F.3d at 465; *In re Caesars Ent. Operating Co., Inc.*, 561 B.R. at 433.

¹³⁹ Transcript at 48:18-25, Dkt. No. 558.

¹⁴⁰ *In re Jade Mgmt. Servs.*, 386 F. App’x at 148; see also *In re Angelika Films 57th Inc.*, 227 B.R. at 40; *In re Rusty Jones, Inc.*, 134 B.R. at 344.

relationships posed no conflicts issues that would require disqualification.¹⁴¹ Again, the Examiner has seen nothing in the record to question the Court’s conclusion on this issue.

Finally, the Court addressed the objectors’ arguments regarding S&C’s receipt of a prepetition retainer and other payments within the 90-day preference period.¹⁴² Receipt of a retainer does not automatically prevent a finding of disinterestedness, as “[a]ll professionals become ‘creditors’ when they perform services for which the estate must pay.”¹⁴³ In addition, as noted above, the Court reviewed S&C’s *Pillowtex* analysis and determined that the payments S&C received were within the ordinary course—a dispositive fact that was unchallenged by the objectors.¹⁴⁴ Once again, having carefully reviewed the record that was before the Court on this issue, the Examiner agrees that (1) the retainer paid to S&C prepetition, and (2) all other payments S&C received during the 90-day preference period provided no basis to disqualify S&C from representing the Debtors in these bankruptcy cases.

In light of the record before the Court, the Court’s analysis of each of the objectors’ arguments, and the wide discretion afforded to the Court in determining whether disqualifying conflicts exist, the Examiner has concluded that there was no error in the Court’s decision concerning the Debtors’ retention of S&C.

IV. Analysis of Other Investigations

In accordance with the directive from the Court, the Examiner has also sought to identify any facts relevant to S&C’s alleged conflicts or disinterestedness that were not before the Court

¹⁴¹ Transcript at 50:5-8, Dkt. No. 558.

¹⁴² *Id.* at 50:19-21; 51:2-4.

¹⁴³ *In re Dick Cepek, Inc.*, 339 B.R. at 739 n.10.

¹⁴⁴ Transcript at 50:24; 51:4, Dkt. No. 558. Pursuant to section 547 of the Bankruptcy Code, transfers made in the ordinary course of business are non-avoidable. *See* 11 U.S.C. §547(c)(2).

when it ruled on the S&C Employment Application. This section summarizes other investigations and discusses key findings regarding S&C's retention.

a. Quinn Emanuel Investigation

Quinn Emanuel conducted an investigation into S&C's prepetition work. Upon the instruction of Ray, Quinn Emanuel's mandate was to investigate facts relating to whether, and to what extent, attorneys at S&C may have advised on, possessed knowledge of, or been made aware of critical facts concerning these categories of misconduct:¹⁴⁵

(a) the alleged commingling of FTX Trading Ltd. (["FTX.com") customer deposits/funds with the corporate assets of Alameda [] and other [entities in the FTX Group]; (b) the alleged misappropriation of FTX.com customer deposits/funds to pay for various unauthorized personal and corporate expenditures; (c) the allegedly false and misleading statements and representations made to FTX.com's customers, specific FTX.com investors, FTX.com's outside auditors, lenders and creditors of Alameda [], the investing public generally, and Silvergate Bank; (d) an alleged bribe of over \$40 million paid to Chinese government officials to unfreeze approximately \$1 billion in cryptocurrency held in various trading accounts associated with Alameda; (e) an alleged lack of internal controls at FTX.com and [WRSS], among other FTX entities; and (f) an alleged conflict of interest that S&C maintained in connection with a potential acquisition of BlockFi [by WRSS].¹⁴⁶

Quinn Emanuel conducted a thorough investigation. It ran targeted searches over approximately 320,000 documents, reviewed approximately 14,000 documents, and interviewed seven S&C partners who provided prepetition legal services to the Debtors.¹⁴⁷ When determining which S&C attorneys' documents to review, Quinn Emanuel looked for lawyers (1) with substantial prepetition documents, (2) who billed significant hours to the FTX Group

¹⁴⁵ Quinn Emanuel, *Report to CEO John Ray and the Independent Directors of the FTX Group Debtors Entities Regarding Sullivan & Cromwell LLP*, Feb. 2024 (the "Quinn Report on S&C"), at 1.

¹⁴⁶ *Id.* at 2.

¹⁴⁷ *Id.* at 4.

prepetition, or (3) who signed an engagement letter with the FTX Group.¹⁴⁸ Eight attorneys were identified as meeting at least two of the three criteria.¹⁴⁹ Quinn Emanuel chose not to interview one of these attorneys, though his emails were a part of the 14,000 documents reviewed.¹⁵⁰

Significantly, however, Quinn Emanuel's investigative mandate had certain limitations. For instance, Quinn Emanuel was not asked to consider and, hence, did not investigate, the broader question of whether S&C had any conflicts of interest that might have disqualified it from serving as counsel under Bankruptcy Code section 327. This is because S&C's retention had already been approved by the Bankruptcy Court. As another limitation, Quinn Emanuel did not investigate S&C's representation of either Bankman-Fried or Singh as individuals because it was not charged with that responsibility. As one final limitation, Quinn Emanuel did not interview individuals outside of S&C, such as Miller, in connection with its investigation into S&C. Once again, this was because such interviews were beyond the scope of Quinn Emanuel's investigative mandate.

There were also constraints on Quinn Emanuel's ability to collect certain documents. At times, some S&C attorneys used Signal¹⁵¹ to communicate with the FTX Group's employees, and often those communications were auto-deleted after a specific period of time. S&C produced various Signal communications, and the Examiner has reviewed all of those documents.¹⁵² However, because of the use of Signal auto-deletion features, it is likely—and

¹⁴⁸ S&C Investigation Annotated Steps.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* Quinn Emanuel did not interview one S&C partner because his documents either were not relevant or entirely overlapped with other partners' emails. As a result, Quinn Emanuel did not believe that this additional interview would have revealed further relevant information.

¹⁵¹ Signal is an encrypted messaging system that employees of the FTX Group frequently used for both internal and external communications. Among other features, Signal provided options for ephemeral messaging.

¹⁵² S&C has represented that they produced all relevant Signal messages that they were able to retrieve.

indeed appears to be the case—that the production of these messages is not and potentially could never be complete.

Notwithstanding these impediments, Quinn Emanuel is comfortable with the scope of its review, including with respect to the Signal messages provided by S&C. In particular, Quinn Emanuel noted that, in the Bankman-Fried criminal proceedings, no additional e-mail, Signal or other communications with S&C were proffered by the prosecution or the defense.

Through its investigation, Quinn Emanuel did not find any evidence that S&C advised on, had knowledge of, or ignored red flags relating to the six areas of FTX Group malfeasance identified by Quinn Emanuel.

After reviewing the Quinn Emanuel investigation, the Examiner is satisfied with the process and methodology that the firm used, as well as the overall thoroughness of its review. While the scope of the investigation was, out of necessity, not all-encompassing, the Examiner has found no evidence suggesting that he cannot rely on Quinn Emanuel’s conclusions.

b. Additional Materials Regarding S&C

The Examiner also reviewed and analyzed materials and allegations put forward by former employees, third-party observers, and other parties in interest concerning S&C’s alleged conflicts of interest (the “Additional S&C Materials”).¹⁵³

The Additional S&C Materials contain many factual allegations. Some of them were before the Court when it ruled on the S&C Employment Application, such as S&C’s relationship with Miller. For the reasons discussed above, the Examiner has concluded that the Court did not

¹⁵³ These materials include: Dkt. No. 530; *Garrison v. Sullivan & Cromwell, LLP*, No. 24-cv-20630 (S.D. Fla.) (KMM), Dkt. No. 1; Jonathan C. Lipson & David A. Skeel, *FTX’d: Conflicting Public and Private Interests in Chapter 11* (Mar. 13, 2024), U of Penn, Inst. for Law & Econ Research Paper No. 24-08, <https://ssrn.com/abstract=4760736>, archived at <https://perma.cc/CGQ6-CUY5>; and *Vara v. FTX Trading (In re FTX Trading)*, No. 23-2297 (3d Cir.), Dkt. No. 27.

err in determining that the facts before it did not require the disqualification of S&C from serving as Debtors' counsel under the applicable rules. Other allegations contained in the Additional S&C Materials appear to be conclusory, such as allegations regarding S&C's purported knowledge of unlawful conduct. These statements are both generally unsupported by specific factual evidence and contradicted by Quinn Emanuel's findings in its investigation.

The Examiner also disagrees with certain other allegations and conclusions in the Additional S&C Materials. For example, certain academics have argued that S&C's cooperation with prosecutors may have violated S&C's duties to the Debtors, wasted estate assets, or misled Bankman-Fried.¹⁵⁴ Specifically, these scholars allege that, prior to the Petition Date, S&C violated its duty of confidentiality, candor, and loyalty to its client by disclosing to prosecutors, without proper authorization from the FTX Group, that a crime had occurred at the company.¹⁵⁵ But the Examiner has not seen any email or other document in which S&C expressly disclosed a crime to prosecutors or regulators prepetition. The Examiner has seen communications disclosing to the government that FTX.US had discovered an anomaly on its balance sheet—that there were not enough assets to cover liabilities.¹⁵⁶ Those disclosures do not conclude that the anomaly amounted to, or was the result of, a crime.¹⁵⁷ Notably, these prepetition disclosures were made either by Miller himself or by S&C at the direction of Miller while he was still acting

¹⁵⁴ See Jonathan C. Lipson & David A. Skeel, *FTX'd: Conflicting Public and Private Interests in Chapter 11* (Mar. 13, 2024), U of Penn, Inst. for Law & Econ Research Paper No. 24-08, at 5, 6, 31, 42, 52, 53, <https://ssrn.com/abstract=4760736>, archived at <https://perma.cc/CGQ6-CUY5>; *Vara v. FTX Trading (In re FTX Trading)*, No. 23-2297 (3d Cir.), Dkt. No. 27, at 32-35.

¹⁵⁵ See Jonathan C. Lipson & David A. Skeel, *FTX'd: Conflicting Public and Private Interests in Chapter 11* (Mar. 13, 2024), U of Penn, Inst. for Law & Econ Research Paper No. 24-08, at 5, 6, 31, 42, 52, 53. <https://ssrn.com/abstract=4760736>, archived at <https://perma.cc/CGQ6-CUY5>; *Vara v. FTX Trading (In re FTX Trading)*, No. 23-2297 (3d Cir.), Dkt. No. 27, at 5.

¹⁵⁶ Further discussion of this anomaly, or "hole," is found *infra*, at Part 6, Section V.

¹⁵⁷ See emails from Ryne Miller to various regulators, Nov. 9, 2022, Quinn Emanuel Interview Documents, F10705-E035453307.

as General Counsel to FTX.US.¹⁵⁸ Regarding their allegations about S&C’s ethical duties, the academics appear to conflate the FTX Group and Bankman-Fried, whereas in fact there is a distinction between a corporate client and its principals. At that time, S&C was representing the FTX Group, not Bankman-Fried. Significantly, Bankman-Fried was then separately represented by sophisticated, experienced counsel. Furthermore, the FTX Group’s decision, in consultation with S&C, to make a swift and decisive self-disclosure concerning the balance sheet anomaly is consistent with the prudent and common strategy for companies to promptly self-disclose corporate misconduct, and may have helped preserve estate resources by enabling the company to earn cooperation credit.¹⁵⁹ Lastly, the Examiner has confirmed that, since Ray’s appointment, S&C’s continued cooperation with prosecutors has been at Ray’s direction.

Other factual assertions in the Additional S&C Materials are not relevant to the Examiner’s conflicts analysis. For example, some of those allegations criticize S&C’s postpetition work, including the sales of certain cryptocurrency assets, and the decision to wind down certain operations rather than maintaining those businesses as going concerns.¹⁶⁰ But these business decisions were made by Ray and the independent directors, not S&C. And all asset sales were approved by the Court after notice to parties in interest—including the U.S. Trustee

¹⁵⁸ *See id.* The Examiner has also seen a Signal message where Miller informed various FTX Group executives, including Bankman-Fried, that he was reporting the financial anomaly to regulators and Bankman-Fried did not protest the decision. *See* Signal message from Ryne Miller to Gary Wang, Bankman-Fried, Joseph Bankman, Mark Wetjen, Zach Dexter, Nishad Singh, Nov. 9, 2022. Instead, Bankman-Fried apologized to the other chat participants and directed them to continue to rely on Miller for information related to FTX.US.

¹⁵⁹ *See Memorandum from the Office of the Deputy Attorney General*, U.S. Dep’t of Justice (Sept. 15, 2022) (requiring companies to produce “on a timely basis” facts and evidence about misconduct in order to receive full cooperation credit) (emphasis in original). “Cooperation is a mitigating factor, by which a corporation—just like any other subject of a criminal investigation—can gain credit in a case that otherwise is appropriate for indictment and prosecution . . . Credit for cooperation takes many forms and is calculated differently based on the degree to which a corporation cooperates with the government’s investigation and the commitment that the corporate demonstrates in doing so.” U.S. Dep’t of Just., Just. Manual § 9-28.700 (2024).

¹⁶⁰ *See e.g.*, Jonathan C. Lipson & David A. Skeel, *FTX’d: Conflicting Public and Private Interests in Chapter 11* (Mar. 13, 2024), U of Penn, Inst. for Law & Econ Research Paper No. 24-08, at 54-57, 59, <https://ssrn.com/abstract=4760736>, archived at <https://perma.cc/CGQ6-CUY5>.

and the Unsecured Creditors' Committee—and opportunity for hearings. For at least some of the sales, no objections were filed. The Examiner has seen no evidence that these postpetition business decisions were made by S&C. Moreover, the Examiner has uncovered no proof suggesting that these core business decisions were unreasonable or that the Court's approval of these transactions was flawed in any respect.

The Additional S&C Materials also criticize the amount of fees that S&C has been paid as Debtors' counsel. Even if that complaint were well grounded, it is irrelevant to this inquiry. The fees that S&C has incurred postpetition are not germane to the section 327 analysis, and a detailed assessment of these fees is not within the scope of the Examiner's review. Even so, the Examiner notes that S&C's fees are (1) publicly disclosed in monthly fee statements and quarterly fee applications that include detailed time records, and (2) subject to review by the Court, the U.S. Trustee, a court-appointed fee examiner, the Unsecured Creditors' Committee, and all other parties in interest. Other than some minor adjustments requested by the fee examiner or the U.S. Trustee, no objections have been filed by any party in interest in response to S&C's monthly fee statements or quarterly fee applications, and the quarterly applications all have been approved by the Court on an interim basis.

Notwithstanding the above, the Examiner has identified several categories of allegations within the Additional S&C Materials that merit further discussion.

V. Conflicts That S&C Allegedly Did Not Adequately Disclose To the Court

a. Representation of Bankman-Fried in Connection with His Purchase of Robinhood Stock

The Supplemental Dietderich Declaration discloses one instance where S&C represented Bankman-Fried prepetition in his individual capacity. In that declaration, Dietderich states that, “[u]nder the supervision of Dan Friedberg, the senior legal officer of the FTX [G]roup, and Ryne

Miller, General Counsel of FTX[.]US, S&C advised Mr. Sam Bankman-Fried in connection with Hart-Scott-Rodino compliance and public reporting obligations arising out of a position that had been established in the stock of Robinhood[.]”¹⁶¹ S&C received fees and expenses for this matter of approximately \$195,000. The payment was arranged and paid for by Alameda.¹⁶² The Supplemental Dietderich Declaration further states that, other than this representation and one other individual representation of Singh, S&C did not represent or perform services for any of the Debtors’ current or former officers or directors, including Bankman-Fried.¹⁶³

A letter from the USAO-SDNY to U.S. District Court Judge Lewis Kaplan revealed that, through an entity called Emergent Fidelity Technologies Ltd., (“Emergent”), a special purpose entity owned primarily by Bankman-Fried, Bankman-Fried acquired approximately \$500 million worth of shares of Robinhood Markets, Inc. (the “Robinhood Shares”) using misappropriated FTX Group customer funds.¹⁶⁴ And because the prosecutors found no public connection between Emergent and the Debtors, they seized the Robinhood Shares after a showing of probable cause that they were the proceeds of wire fraud and property involved in money laundering.¹⁶⁵

The Additional S&C Materials contain various allegations with respect to S&C’s involvement in this acquisition of the Robinhood Shares (the “Robinhood Transaction”). Specifically, the materials assert that S&C acted as both personal counsel for Bankman-Fried and

¹⁶¹ Dkt. No. 510 at ¶ 52.

¹⁶² *Id.*

¹⁶³ *Id.* at ¶ 53.

¹⁶⁴ *United States v. Samuel Bankman-Fried* (“SBF Criminal Case”), No. 22-cr-00673 (S.D.N.Y.) (LAK), Dkt. No. 53; *see also* Robinhood Markets, Inc., (Form SC 13D) (May 12, 2022).

¹⁶⁵ SBF Criminal Case, Dkt. No. 53.

primary counsel for Emergent.¹⁶⁶ In contrast to the statement in the Supplemental Dieterich Declaration that S&C merely advised on “Hart-Scott-Rodino compliance and public reporting obligations,”¹⁶⁷ the Additional S&C Materials claim that S&C provided expertise and advice to both Bankman-Fried and Emergent regarding the structuring of the Robinhood Transaction itself.¹⁶⁸ Therefore, based on this work by S&C, the Additional S&C Materials allege that S&C knew how the Robinhood Shares were purchased and with what funds—in other words, that S&C was aware of the misappropriation of customer funds.¹⁶⁹

The Examiner has seen no evidence that S&C acted as the primary counsel for Emergent or that S&C’s advice regarding the Robinhood Transaction involved the structuring of the transaction itself. However, there does not appear to have been any independent examination into S&C’s work on the Robinhood Transaction. The Quinn Emanuel investigation did not involve any review of S&C’s representation of Bankman-Fried or Singh individually. But references to the Robinhood Transaction did arise during Quinn Emanuel’s document review and interviews.¹⁷⁰ For instance, when he was interviewed by Quinn Emanuel, S&C Partner Mitch Eitel, explained that he and S&C represented Bankman-Fried in his personal capacity by advising on an SEC 13D filing and related Hart-Scott-Rodino compliance.¹⁷¹ Quinn Emanuel

¹⁶⁶ *Garrison v. Sullivan & Cromwell, LLP*, No. 24-cv-20630 (S.D. Fla.) (KMM), Dkt. No. 1 at ¶ 176; Dkt. No. 530 at ¶ 16.

¹⁶⁷ Dkt. No. 510 at ¶ 52.

¹⁶⁸ *Garrison v. Sullivan & Cromwell, LLP*, No. 24-cv-20630 (S.D. Fla.) (KMM), Dkt. No. 1 at ¶ 198 (“This was, therefore, no simple transaction, and despite S&C’s expertise and advice to Bankman-Fried on the transaction, the purchase was not arranged through sophisticated financial institutions but rather over the course of 29 separate trading days over a period of two months via Emergent.”).

¹⁶⁹ *Id.* at ¶ 201 (“S&C represented at the same time both Emergent, the special purpose vehicle used to accomplish the share purchase (such that S&C knew how the shares were purchased and with what funds) and also Bankman-Fried who purchased the Robinhood shares.”).

¹⁷⁰ This was confirmed to the Examiner during his meeting with Quinn Emanuel on April 1, 2024.

¹⁷¹ Quinn Emanuel, *Memorandum re: Interview of Mitch Eitel*, July 28, 2023, at 3.

asked Eitel about an email chain in which Miller discussed various options for structuring a transaction to ensure that Alameda (which initially held some of the Robinhood Shares) would not be identified on the SEC 13D form. Indeed, Miller explicitly told S&C that “[w]e have a desire not to identify Alameda.”¹⁷² In his interview, Eitel explained to Quinn Emanuel that, in the private equity and hedge fund space, it is not unusual for companies to want to remain anonymous and, therefore, Miller’s request did not seem aberrant.

Beyond this brief exchange in the Eitel interview, no investigation appears to have been done into the Robinhood Transaction and, in particular, there has been no larger review of S&C’s role in the transaction. As a result, there are no findings regarding the extent to which, if at all, S&C (1) advised on the transaction itself, (2) had access to and received inside information regarding the transaction (or the FTX Group more generally), or (3) simultaneously advised Emergent and Bankman-Fried. While Quinn Emanuel did not otherwise find any evidence that S&C advised on, possessed knowledge of, or was made aware of facts relating to the FTX Group’s misappropriation of customer funds, Quinn Emanuel’s investigation did not include a full analysis of the Robinhood Transaction.

In fact, only S&C itself appears to have looked further into the Robinhood Transaction postpetition. S&C conducted this inquiry as part of its efforts to recover the Robinhood Shares for the benefit of the bankruptcy estates, as the stock represented one of the estates’ largest monetizable assets.

Given that no prior investigation has been conducted into the Robinhood Transaction, the Examiner recommends an investigation into the details of this transaction to confirm that there were no conflicts of interest on account of S&C’s work (see *infra*, at Section VIII).

¹⁷² Email from R. Miller to J. Hearn, Apr. 20, 2022, Quinn Emanuel Interview Documents, F10705-E016516334.

b. LedgerX Transaction

Debtor Ledger Holdings, Inc. (“LHI”) was a holding company for non-debtor LedgerX, which operated a CFTC-regulated Bitcoin options exchange and clearing house.¹⁷³ In October 2021, WRS purchased LedgerX through the acquisition of LHI’s shares for approximately \$300 million.¹⁷⁴ As noted above, the Supplemental Dietderich Declaration discloses that S&C represented WRS in this transaction.

In December 2022, the Debtors commenced a sale process for the LedgerX business.¹⁷⁵ In January 2023, the Debtors received six non-binding indications of interest for the purchase of LHI’s interests in LedgerX, or portions thereof, ranging from \$500,000 to \$90 million.¹⁷⁶ In March 2023, two final bids were received.¹⁷⁷ The Debtors received a \$35 million bid from M 7 Holdings, LLC (“M 7 Holdings”), a wholly-owned subsidiary of Miami International Holdings, Inc. (“MIAX”), and a \$14 million bid from another bidder.¹⁷⁸ Notably, MIAX was a major shareholder of LHI up until the WRS acquisition.¹⁷⁹ In addition, various directors and officers of MIAX also served on the board of LHI until the time of the WRS acquisition.¹⁸⁰

In May 2023, LHI was sold to M 7 Holdings in a deal that provided approximately \$50 million in proceeds to the Debtors.¹⁸¹ The sale agreement was (1) approved by the Debtors’

¹⁷³ Dkt. No. 233 at ¶ 3.

¹⁷⁴ *Id.*; Alexander Saeedy, *FTX Poised for \$250 Million Loss on LedgerX Sale*, Wall St. J., (Apr. 25, 2023), <https://www.wsj.com/articles/ftx-poised-for-250-million-loss-on-ledgerx-sale-d591e99f>, archived at <https://perma.cc/832F-96Q5>.

¹⁷⁵ Dkt. No. 233.

¹⁷⁶ See Dkt. No. 1344 at ¶ 13; S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 104.

¹⁷⁷ See Dkt. No. 1344 at ¶ 14.

¹⁷⁸ See *id.* at ¶ 14; Dkt. No. 1342, at 2; S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 104.

¹⁷⁹ See Dkt. No. 1342, at 2.

¹⁸⁰ See *id.*

¹⁸¹ See Dkt. No. 4862, at 26.

board, (2) subject to review and objection by parties in interest (with no objections received), and (3) approved by the Court. In order to obtain Court approval, the Debtors presented evidence that the sale transaction was the “highest or otherwise best bid,” and because no one objected to the proposed sale this evidence was uncontested.¹⁸² It is outside the scope of the Examiner’s mandate to evaluate the appropriateness of this sale transaction. However, the Debtors’ inability to obtain a sale price anywhere near the price that WRS paid for the assets less than two years earlier suggests that WRS overpaid for LHI in October 2021. As such, the prepetition transaction, which S&C advised on, could be the subject of an avoidance action. In fact, S&C appears, at least preliminarily, to have concluded as much because, in April 2023, it drafted a clawback complaint against the former shareholders of LHI that sold their interests to WRS.

The Court specifically contemplated the possibility that one or more of the transactions that S&C advised the Debtors on prepetition could become the subject of a postpetition investigation. The Court held that, if “any investigation would be required of those transactions with which Sullivan & Cromwell might have been involved . . . debtors have retained conflict counsel to conduct *any investigation* that might touch on those issues.”¹⁸³ Thus, the Court approved S&C’s retention on the basis that, if a postpetition investigation were required into any transaction that S&C was involved in, conflicts counsel would be retained for that work.¹⁸⁴ As a result, no later than when S&C determined that there might a potential clawback action, the investigation into WRS’ prepetition purchase of LHI should have been handed over to Quinn Emanuel as conflicts counsel. Quinn Emanuel attorneys have confirmed that they were not involved in any such investigation.

¹⁸² Dkt. No. 1344 at ¶ 17.

¹⁸³ Transcript at 48:19-24, Dkt. No. 558 (emphasis added).

¹⁸⁴ *Id.* at 48:18-25.

That being said, while S&C failed to turn over the investigative work related to WRS' prepetition purchase of LHI to Quinn Emanuel, it is unclear whether that has had any impact whatsoever on the estates. The May 2023 sale agreement between the Debtors, M 7 Holdings, and MIAX included the sale of the Debtors' claims against former shareholders of LHI associated with M 7 Holdings, including MIAX.¹⁸⁵ Therefore, the sale agreement essentially released those former LHI shareholders and reduced the amount of funds that could be recovered in any clawback claim.¹⁸⁶ Importantly, M 7 Holdings would not have agreed to purchase LedgerX absent the purchase of these claims.¹⁸⁷ Therefore, while it appears that S&C should have handed over this work to Quinn Emanuel, many of the claims that might have been pursued in an avoidance action were released, and the sale of claims was ultimately beneficial for the estates because, as was noted in the sale hearing, without it, the Debtors could not have consummated this sale of LedgerX.

Regarding the releases, it has also been asserted that the LedgerX sale included a release of any legal malpractice claims that LedgerX may have had against S&C, which would include any claims derived from what S&C allegedly knew about the fraud at the FTX Group.¹⁸⁸ The basis for this argument is that the sale released "directors, officers, employees, [and] agents" of

¹⁸⁵ See Dkt. No. 1342-1 § 5.3(a). As noted above, all parties had notice and opportunity to object to these releases, but no objections were filed. Notably, MIAX would not have entered into the purchase agreement absent the purchase of these claims. See Dkt. No. 1344 at ¶ 26; Transcript at 7:16-22, Dkt. No. 1436.

¹⁸⁶ Dkt. No. 1344 at ¶ 17 (describing the scope of the claims purchased and noting that it covers former shareholders that collectively received approximately 37% of the proceeds of WRS' acquisition).

¹⁸⁷ Transcript at 7:16-22, Dkt. No. 1436.

¹⁸⁸ Jonathan C. Lipson & David A. Skeel, *FTX'd: Conflicting Public and Private Interests in Chapter 11* (Mar. 13, 2024), U of Penn, Inst. for Law & Econ Research Paper No. 24-08, at 57, <https://ssrn.com/abstract=4760736>, archived at <https://perma.cc/CGQ6-CUY5>.

LedgerX, and S&C could be considered an “agent” of LedgerX.¹⁸⁹ However, it is not obvious that the term “agent” is meant to include a law firm or any other professional, because the rest of the phrase refers to directors, officers and employees. Furthermore, S&C was not acting as LedgerX’s counsel in either the prepetition or postpetition sale transaction. Prepetition, S&C represented WRS. Postpetition, S&C represents the Debtors, but LedgerX is not a Debtor, and the sale transaction was a sale of debtor LHI’s equity interests rather than a sale of non-debtor LedgerX’s assets. Notably, in a meeting with the Examiner, S&C represented that it does not view itself as an “agent” that was released by this language. The Examiner expects that S&C would stand by this stated position.

Nonetheless, as noted above, the Examiner believes that S&C should have turned over to Quinn Emanuel, as conflicts counsel, the postpetition investigation into WRS’ prepetition acquisition of LedgerX. Accordingly, the Examiner is recommending a further investigation. Specifically, the Examiner notes that not all claims against LHI’s former shareholders were sold in the postpetition transaction.¹⁹⁰ The Debtors did retain the right to pursue claims against other former shareholders (i.e., those that are not associated with M 7 Holdings), and any investigation into these claims should not be conducted by S&C. Instead, the Examiner recommends he conduct an investigation into the potential claims against the non-released shareholders. This investigation will determine if there are any claims, including any avoidance action claims,

¹⁸⁹ *Id.*; Dkt. No. 1433 at ¶ S (defining “Released Parties” to include “LedgerX’s current directors, officers, employees, agents and the predecessors, successors and assigns of each of the foregoing (in each case, solely in their capacity as such)”).

¹⁹⁰ *See* Dkt. No. 1343 at ¶ 8 (“[T]he substantial majority of the potential causes of [action] held by the Debtors in relation to the LedgerX Business, including in connection with the acquisition of Seller by West Realm Shires Inc., will be preserved by the Debtors.”); Dkt. No. 1344 at ¶ 17 (describing the scope of the claims purchased and noting that it covers former shareholders that collectively received approximately 37% of the proceeds of WRS’ acquisition).

against the non-released shareholders. This investigation may also provide additional insight into how the LedgerX transactions unfolded (*see infra*, at Section VI).

c. BlockFi

As noted above, the Supplemental Dietderich Declaration discloses that S&C represented BlockFi in a regulatory matter, and that the representation resulted in the BlockFi SEC Settlement.¹⁹¹ Although the Court was aware of this representation at the time of S&C's retention, and the representation was by then substantially complete, questions have been raised regarding this representation.¹⁹²

For instance, the Friedberg Declaration, which the Court appropriately did not consider when ruling on the S&C Employment Application, makes allegations regarding the BlockFi representation. Specifically, Friedberg contends that an entity in the "Alameda Group" loaned \$200 million to BlockFi with an option to purchase BlockFi.¹⁹³ Friedberg also alleges that, before the Petition Date, S&C provided "Alameda advice with respect to diligence on whether the option should be exercised."¹⁹⁴ In connection with this representation, Friedberg accused S&C of failing to advise the Alameda Group that no exemption under the Securities Act of 1933 could apply to Alameda's exercise of the purchase option.¹⁹⁵ Friedberg also claimed that, if S&C had advised Alameda on this issue, then Alameda "would not have entered into the loan agreement with BlockFi in the first place."¹⁹⁶

¹⁹¹ Dkt. No. 510 at ¶ 76.

¹⁹² *See, e.g., Garrison v. Sullivan & Cromwell, LLP*, No. 24-cv-20630 (S.D. Fla.) (KMM), Dkt. No. 1 at ¶¶ 11-16.

¹⁹³ Dkt. No. 530 at ¶ 57.

¹⁹⁴ *Id.* at ¶ 58.

¹⁹⁵ *Id.* at ¶¶ 58-63.

¹⁹⁶ *Id.* at ¶ 63.

On its face, this argument is questionable because Friedberg never asserted that S&C advised Alameda on the underlying loan agreement, but rather only on the exercise of the purchase option. And Friedberg's allegations appear to be factually incorrect in several respects. Significantly, Quinn Emanuel's investigation confirmed that S&C did not represent either BlockFi or the FTX Group in connection with the loan agreement or the related purchase option.¹⁹⁷ In connection with his investigation, the Examiner has seen an email communication regarding the loan agreement that shows that another sophisticated law firm—not S&C—was representing the FTX Group in connection with that transaction.¹⁹⁸

However, S&C did discuss the BlockFi SEC Settlement and related regulatory issues with the FTX Group,¹⁹⁹ a fact that does not appear to have been before the Court when it ruled on the S&C Employment Application. That said, because S&C had limited involvement in this transaction, and S&C was not acting as legal counsel to either party to the transaction, this fact likely would not have impacted the Court's ruling on S&C's disinterestedness. Accordingly, the Examiner does not recommend further investigation regarding this representation.

d. Events Leading Up to the Bankruptcy Filings

S&C did a substantial amount of work for the Debtors leading up to the Petition Date. For the reasons discussed above, (*see supra*, at Section II(c)(2)(i)), the work S&C did to prepare the Debtors for bankruptcy did not create an actual conflict of interest so long as the work was

¹⁹⁷ Quinn Report on S&C, at 8.

¹⁹⁸ *See* email from Can Sun to various Blockfi email addresses, attorneys at Davis, Polk & Wardwell LLP, and lawyers at Latham & Watkins LLP, dated June 24, 2022, with the subject line "RE: BlockFI <> FTX – Loan Agreement."

¹⁹⁹ Quinn Report on S&C, at 8.

not improper, illegal, or negligent.²⁰⁰ However, some observers have alleged such impropriety and argued that (1) S&C hand-picked Ray as CEO to lead the Debtors' restructuring efforts because he is loyal to S&C, (2) S&C pressured Bankman-Fried to resign from his position at the company, (3) S&C induced Bankman-Fried to resign by lying to him, (4) Miller inappropriately pushed for the Debtors to file Chapter 11 in the United States so that S&C could act as counsel, and (5) S&C erred in deciding to include FTX.US but to exclude LedgerX from the Chapter 11 filings.²⁰¹ None of these allegations, to the extent they have any validity, were before the Court when it ruled on the S&C Employment Application.

Regarding Ray's appointment, on November 11, 2022, Bankman-Fried signed the Omnibus Authority pursuant to which Ray was appointed CEO. S&C had recommended Ray, someone who does have a professional relationship with an attorney at S&C.²⁰² But that fact did not create an actual conflict of interest.²⁰³ The Examiner has seen no evidence that the relationship between Ray and that S&C attorney (1) reflects anything more than a history of professional engagements, or (2) was not fully disclosed to the Court. However, as noted above, Ray was initially proposed to serve as the Debtors' CRO. It is not clear why Ray was appointed CEO instead of CRO as originally planned, and it is not apparent who made that decision or why. Ray confirmed that he was not involved in these negotiations or the decision to appoint

²⁰⁰ See *In re Hall*, 520 B.R. at 121 (citing *In re Watson*, 94 B.R. at 114); *In re Creative Rest. Mgmt., Inc.*, 139 B.R. at 918; see also, e.g., *In re Am. Int'l Refinery, Inc.*, 676 F.3d at 465; *In re Caesars Ent. Operating Co., Inc.*, 561 B.R. at 433.

²⁰¹ *Vara v. FTX Trading (In re FTX Trading)*, No. 23- 2297 (3d Cir.), Dkt. No. 27, at 28-29; Jonathan C. Lipson & David A. Skeel, *FTX'd: Conflicting Public and Private Interests in Chapter 11* (Mar. 13, 2024), U of Penn, Inst. for Law & Econ Research Paper No. 24-08, <https://ssrn.com/abstract=4760736>, archived at <https://perma.cc/CGQ6-CUY5>; *Garrison v. Sullivan & Cromwell, LLP*, No. 24-cv-20630 (S.D. Fla.) (KMM), Dkt. No. 1, at ¶ 32; Dkt. No. 530 at ¶¶ 33-37, 64.

²⁰² Dkt. No. 510 at ¶ 68.

²⁰³ *In re eToys, Inc.*, 331 B.R. at 195.

him CEO instead of CRO. When the Examiner asked S&C attorneys about this decision, the S&C lawyers pointed to Bankman-Fried's inexperience with corporate restructurings, which is the reason why CROs are usually appointed. Nonetheless, as noted above, Bankman-Fried signed the Omnibus Authority and, in consultation with his counsel, chose to appoint Ray CEO.

In addition, S&C was not representing Bankman-Fried in the days leading up to the Petition Date. Bankman-Fried had retained other sophisticated counsel to represent him in his individual capacity.²⁰⁴ Bankman-Fried's personal attorneys were involved in the drafting of the Omnibus Authority, were able to advise Bankman-Fried on the terms of the Omnibus Authority, and could explain to him the consequences of signing it. Although the Examiner has reviewed emails between S&C and Bankman-Fried where Bankman-Fried's personal counsel was not included, these appear to be typical communications between a lawyer and a corporate client's principal where the lawyer provides advice to the corporate client. In particular, these emails did not relate to the Omnibus Authority and do not appear to have pressured Bankman-Fried in any way to either resign from his position as CEO or commence the bankruptcy cases.²⁰⁵ The Examiner has seen no evidence that S&C acted improperly in connection with Bankman-Fried's execution of the Omnibus Authority.

To the extent S&C advised the Debtors to file for bankruptcy in the United States, this advice appears sound. The United States has a well-developed Bankruptcy Code and system.

²⁰⁴ Dkt. No. 510 at ¶ 19; Jonathan C. Lipson & David A. Skeel, *FTX'd: Conflicting Public and Private Interests in Chapter 11* (Mar. 13, 2024), U of Penn, Inst. for Law & Econ Research Paper No. 24-08, at 29, 31, 32 (providing screenshots of emails that include Bankman-Fried's personal attorneys), <https://ssrn.com/abstract=4760736>, archived at <https://perma.cc/CGQ6-CUY5>.

²⁰⁵ See, e.g., Jonathan C. Lipson & David A. Skeel, *FTX'd: Conflicting Public and Private Interests in Chapter 11* (Mar. 13, 2024). U of Penn, Inst. for Law & Econ Research Paper No. 24-08, at 29, 31, 32 (providing four screenshots of emails from S&C attorneys to Bankman-Fried), <https://ssrn.com/abstract=4760736>, archived at <https://perma.cc/CGQ6-CUY5>.

For many reasons, corporations often prefer to file for bankruptcy relief in the United States.²⁰⁶ To cite just one example, the Bankruptcy Code places an automatic and immediate worldwide moratorium on adverse creditor actions against debtors.²⁰⁷ Many jurisdictions, including the Bahamas, do not offer debtors the same degree of protection.²⁰⁸ Of course, there are times when filing for bankruptcy in the United States might not be feasible or advisable. But the Examiner has seen nothing to suggest that it would have been prudent for the Debtors to avoid filing these bankruptcy cases in the United States.

Finally, S&C has been criticized for excluding LedgerX from the bankruptcy filing and also for including LedgerX's parent company, FTX.US,²⁰⁹ in the filing.²¹⁰ More specifically, S&C has been accused of (1) leaving LedgerX out of the bankruptcy filing in order to obtain a larger retainer, and (2) including FTX.US in the filing for the same reason.²¹¹ In the first instance, S&C did not make any final decisions as to which entities would file for bankruptcy. While S&C provided advice, Ray and the directors made the final decision. Nonetheless, in light of these assertions, the Examiner has tried to reconstruct what was known when S&C was

²⁰⁶ Steven Church & Jeremy Hill, *Bankruptcy-Friendly U.S. Extends Lead as Haven of Foreign Filers*, Bloomberg, (July 21, 2021), <https://www.bloomberg.com/news/articles/2021-07-21/bankruptcy-friendly-u-s-extends-lead-as-haven-of-foreign-filers?embedded-checkout=true>, archived at <https://perma.cc/H8KG-SQEA> (discussing major filings of foreign corporations and noting that it is commonly agreed that America has company-friendly bankruptcy rules).

²⁰⁷ See 11 U.S.C. §362.

²⁰⁸ See Companies (Winding Up Amendment) Act, § 192, 2011 (Act No. 53/2011) (Bah.), Official Gazette of the Bahamas, Section 192 (requiring parties to file a motion to stay proceedings).

²⁰⁹ As noted elsewhere, the Examiner has seen both WRS and WRSS referred to as "FTX.US."

²¹⁰ Dkt. No. 530 at ¶¶ 33-37 (stating that Ryne Miller insisted on filing in the United States so that S&C could do the work but that FTX.US should not have been included in the bankruptcy filing).

²¹¹ *Garrison v. Sullivan & Cromwell, LLP*, No. 24-cv-20630 (S. D. Fla.) (KMM), Dkt. No. 1 at ¶¶ 9, 33 (alleging that funds were moved to LedgerX in order to secure receipt of a retainer to S&C); Dkt. No. 530 at ¶ 36 (stating that FTX.US was included in the bankruptcy because it had the cash to pay S&C its retainer).

preparing the bankruptcy filings to determine if there was a sound basis for the advice to exclude LedgerX and to include FTX.US in the bankruptcy cases.

At the time of filing, Ray believed that LedgerX was solvent and a noteworthy exception to the Debtors' general lack of corporate controls.²¹² As for FTX.US, the Examiner has seen evidence that, before the Petition Date, the Debtors' employees could not produce a reliable account of FTX.US' assets or customer balances, that certain employees believed there was a significant "hole" in the FTX.US balance sheet, and that those financial discrepancies were reported to regulators.²¹³ The Examiner has seen no evidence that calls into question the decision to leave LedgerX out of the bankruptcy filings but to include FTX.US.

e. Representations to Regulatory Authorities

The Supplemental Dieterich Declaration discloses that S&C had advised the Debtors prepetition on responses to certain information requests from U.S. regulatory authorities, including the CFTC.²¹⁴ But the Additional S&C Materials contain allegations that S&C made misrepresentations in these submissions and, moreover, that in working on the responses S&C became aware of the fraud at the FTX Group. For example, S&C advised LedgerX concerning a submission LedgerX made to the CFTC, stating that Alameda "has no . . . special or unique

²¹² See The First Interim Report of John J. Ray III to the Independent Directors on Control Failures at the FTX Exchanges ("First Ray Report"), Dkt. No. 1242-1, at 11 (noting that LedgerX was an isolated exception to the Debtors' overall lack of independent or experienced finance, accounting, human resources, information security or cybersecurity personnel or leadership); Dkt. No. 24 ("Ray First Day Declaration"), at ¶ 13 ("Based on the information that I have reviewed at this time, LedgerX is solvent.").

²¹³ S&C, *Memorandum re: Interview of Ryne Miller*, Nov. 17, 2022 ("Miller Interview Memo") (discussing realization that there might be a hole in the FTX.US balance sheet); S&C, *12.9.2022: Tim Wilson Interview Notes*, Dec. 9, 2022, at 12-13 (recounting conversation with Bankman-Fried regarding \$45 million hole in FTX.US balance sheet identified by other employees); S&C, *12.8.2022 Adrienne During Interview Notes*, Dec. 8, 2022 (the "During Interview Notes"), at 7-8 (recounting discussion of a \$40 million hole); emails from Ryne Miller to various regulators, Nov. 9, 2022, Quinn Emanuel Interview Documents, F10705-E035453307; see also *infra*, at Part 6, Section V.

²¹⁴ Dkt. No. 510 at ¶ 50.

access to the exchange, to exchange data, or to any other feature of the exchange.”²¹⁵ This statement by LedgerX was ultimately determined to be false, and thus it has been alleged that S&C’s work in advising on this submission exposed it to the fraud at the FTX Group.²¹⁶ Prior investigations have concluded otherwise.

As previously discussed, Quinn Emanuel thoroughly investigated S&C’s prepetition work to determine whether S&C either knew of or was willfully blind to the fraud at the FTX Group. This comprehensive investigation reviewed the legal advice and services S&C provided in connection with information requests from regulatory authorities, including the CFTC.²¹⁷ As part of this investigation, Quinn Emanuel analyzed communications and documents where S&C attorneys helped prepare responses to CFTC inquiries for the Debtors.²¹⁸ Quinn Emanuel found no evidence to suggest that S&C attorneys knew that any of the Debtors’ submissions to regulators contained false or misleading statements. Beyond that, Quinn Emanuel found that S&C was not made aware of any facts that would have revealed to it the fraud at the FTX Group. Quinn Emanuel also asked S&C partners about their regulatory advice, and the latter confirmed that (1) the work they performed did not entail verifying the factual accuracy of statements made by the FTX Group; (2) at the time, they had no reason to question the veracity of the information they received from the Debtors; and (3) they relied upon the accuracy of these representations in rendering their legal advice.²¹⁹ From the investigations and source documents reviewed, the

²¹⁵ Quinn Emanuel, *FTX Responses to Clearing Policy Questions*, Aug. 16, 2022, F10705-E016384266.

²¹⁶ See e.g., Jonathan C. Lipson & David A. Skeel, *FTX’d: Conflicting Public and Private Interests in Chapter 11* (Mar. 13, 2024), U of Penn, Inst. for Law & Econ Research Paper No. 24-08, at 27, <https://ssrn.com/abstract=4760736>, archived at <https://perma.cc/CGQ6-CUY5>.

²¹⁷ Quinn Report on S&C, at 2-3.

²¹⁸ *Id.* at 3, 6.

²¹⁹ *Id.*

Examiner has seen no evidence to suggest that S&C knew about the fraud at the FTX Group prepetition or that S&C ignored red flags that would have required the firm to investigate statements made by the Debtors.

Because neither Quinn Emanuel nor the Examiner have found any evidence that S&C knew that the FTX Group's representations to authorities were false, the disclosures contained in the Supplemental Dieterich Declaration were sufficient for the Court to rule on S&C's disinterestedness. This is so even though the Court may not have known that S&C helped prepare client statements to regulatory authorities that, unbeknownst to S&C, were false.²²⁰ Accordingly, the Examiner is not recommending any further investigation into S&C's representation of the Debtors in connection with information requests from regulatory authorities.

f. Representations to Voyager Digital's Counsel

It is undeniable that the Debtors' descent into bankruptcy happened rapidly. As disclosed in the Supplemental Dieterich Declaration, in July 2022, S&C advised the Debtors on their contemplated purchase of the assets of Voyager Digital—a company operating a cryptocurrency trading platform—in connection with Voyager Digital's bankruptcy filing. On September 26, 2022, Voyager Digital announced that WRS had won a hard-fought auction to purchase all of Voyager Digital's assets.²²¹ An asset purchase agreement was executed the next day, and on

²²⁰ ABA Model Rule of Professional Conduct 4.1 (truthfulness) provides that “[i]n the course of representing a client, a lawyer shall not knowingly make a false statement of material fact or law to a third person.” ABA Model R. Prof'l Conduct 4.1, https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_4_1_truthfulness_in_statements_to_others/, archived at <https://perma.cc/MDW7-UGHP>. The Model Rules have been adopted by most states, including Delaware and New York. *See* Del. Lawyers' R. Prof'l Conduct 4.1; N.Y. Lawyers' R. Prof'l Conduct 4.1 (emphasis added). The commentary to Rule 4.1 notes that “[a] misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer *knows is false*.” *See* Comments to Del. Lawyers' R. Prof'l Conduct 4.1 (emphasis added).

²²¹ *See In re Voyager Digital Holdings, Inc.*, No. 22-bk-10943 (Bankr. S.D.N.Y.) (MEW), Dkt. No. 457.

October 20, 2022, the sale was approved by court order in Voyager Digital’s bankruptcy case.²²²

As the winning bidder, the FTX Group was considered financially sound at this time.

But less than two weeks later, on November 2, 2022, a Coindesk article revealed Alameda’s significant holdings of FTT, the exchange token for the FTX exchange.²²³ On November 6, 2022, Changpeng Zhao (“CZ”), the founder of cryptocurrency exchange Binance Holdings Ltd. (together with its affiliates, “Binance”), announced that Binance would be liquidating its sizeable FTT holdings, which caused a rapid sell off of FTT.²²⁴ Early the next day, Bankman-Fried tweeted reassuringly that “FTX is fine,” while Dietderich assured Voyager Digital’s counsel via email that questions being raised about the FTX Group’s liquidity was just “Binance silliness” because the FTX Group was “rock solid.”²²⁵ However, later that same day, the FTX Group was trying to obtain emergency funding.

The email sent by Dietderich to Voyager Digital’s counsel on the morning of November 7 has garnered a lot of public attention. Significantly, however, Dietderich states in his Supplemental Declaration that he did not learn about the FTX Group’s financial problems until

²²² See *id.* at 581.

²²³ Ian Allison, *Divisions in Sam Bankman-Fried’s Crypto Empire Blur on His Trading Titan Alameda’s Balance Sheet*, CoinDesk (Nov. 2, 2022), <https://www.coindesk.com/business/2022/11/02/divisions-in-sam-bankman-frieds-crypto-empire-blur-on-his-trading-titan-alamedas-balance-sheet/>, archived at <https://perma.cc/8AQ4-RMXJ>.

²²⁴ CZ BNB (@cz_binance), X (formerly Twitter) (Nov. 6, 2022), https://twitter.com/cz_binance/status/1589283421704290306?lang=en, archived at <https://perma.cc/68PH-SE3P> (“As part of Binance’s exit from FTX equity last year, Binance received roughly \$2.1 billion USD equivalent in cash (BUSD and FTT). Due to recent revelations that have come to light, we have decided to liquidate any remaining FTT on our books.”). Binance has since been sued for its part in the Debtors’ collapse. See *Lahav v. Binance Holdings Ltd.*, No. 23-cv-05038 (N.D. Cal.) (TLT), Dkt. No. 1.

²²⁵ See email from A. Dietderich to D. Azman, dated Nov. 7, 2022, Quinn Emanuel Interview Documents, F10705-E005618689; Jody Godoy, *‘FTX is fine’ - tweets Sam Bankman-Fried may regret on the stand*, Reuters (Oct. 26, 2023), <https://www.reuters.com/world/us/ftx-is-fine-tweets-sam-bankman-fried-may-regret-stand-2023-10-26/>, archived at <https://perma.cc/PWR5-QN9N>.

the morning of November 8—a day after sending his email to Voyager Digital’s counsel.²²⁶ The Examiner has reviewed no evidence to the contrary.

When asked about his November 7 “rock solid” email in an interview conducted by Quinn Emanuel, Dietderich stated that, after the Voyager Digital auction closed, there was concern that Binance and CZ were putting out negative press statements in order to derail the FTX Group’s purchase of Voyager Digital’s assets.²²⁷ Dietderich’s statement appears to be supported by the fact that (1) Binance was also a bidder in the Voyager Digital auction,²²⁸ and (2) Binance and the FTX Group were not only competitors in the crypto market, but their respective founders had a well-documented, contentious relationship.²²⁹ For these reasons, the Examiner is not recommending that he conduct any further investigation into Dietderich’s representations to Voyager Digital’s counsel.

VI. Recommendations for Additional Investigations

In sum, following a detailed review of the Quinn Emanuel investigation and the Additional S&C Materials, the Examiner believes that further inquiry is warranted regarding two aspects of the allegations surrounding S&C’s potential conflicts as Debtors’ counsel.

The Examiner recommends that he be authorized to conduct an investigation into S&C’s representation of Bankman-Fried in connection with his purchase of the Robinhood Shares. The investigation would focus on (1) the contours of that representation, and (2) what, if anything, S&C knew or should have known about the FTX Group’s fraud based on that representation.

²²⁶ Dkt. No. 510 at ¶ 10.

²²⁷ Quinn Emanuel, *Memorandum re: Interview of Andrew Dietderich*, July 27, 2023, at 5.

²²⁸ *Id.*

²²⁹ See e.g., David Yaffe-Bellany, *How Sam Bankman-Fried’s Crypto Empire Collapsed*, N.Y. Times (Nov. 14, 2022), <https://www.nytimes.com/2022/11/14/technology/ftx-sam-bankman-fried-crypto-bankruptcy.html>, archived at <https://perma.cc/U5KV-YRCP> (describing CZ as Bankman-Fried’s “biggest rival”).

Dietderich has stated that S&C's representation in connection with the Robinhood Transaction was limited to advising on Hart-Scott-Rodino compliance and public reporting obligations.²³⁰ On the other hand, there are allegations in the Additional S&C Materials that S&C (1) advised on the structuring of the Robinhood Transaction itself; (2) had access to and received inside information regarding the transaction as a result of its representation; and (3) advised Emergent in connection with that transaction. (*See supra*, at Section V(a)). Further investigation into this transaction would be important to help determine whether there was a potentially disqualifying conflict that the Court should have been aware of when ruling on S&C's retention application. In addition, the investigation would discern more generally if S&C advised on, possessed knowledge of, or had been made aware of critical facts relating to the FTX Group's misconduct as a consequence of this representation. (*See infra*, at Part 8).

The Examiner also recommends that an investigation be conducted into the Debtors' potential claims against the former shareholders of LHI that sold their interests to WRS prepetition to the extent those claims were not released in the postpetition transaction. This investigation would determine whether an avoidance action is warranted with respect to these shareholders, which would be beneficial for the estates. Such an investigation would also be in the interest of the public and the Court as, in carrying out the investigation, the Examiner would gain additional insight into and report on how these transactions unfolded. (*See supra*, at Section V(b); *see also infra*, at Part 8).

²³⁰ Dkt. No. 510 at ¶ 52.

PART 3: FRAUD BY CURRENT AND FORMER EMPLOYEES OF THE DEBTORS

As described in the Second Ray Report, “from the inception of the FTX.com exchange, the FTX Group commingled customer deposits and corporate funds, and misused them with abandon.”²³¹ In its Scope Order, the Bankruptcy Court directed the Examiner to inquire into “whether the Investigations adequately addressed fraud by the Debtors’ employees and whether employees involved in such fraud are still working for the Debtors.”²³² This portion of the Examiner’s Report answers these questions. For the reasons set forth below, the Examiner has determined that the completed and ongoing investigations by the Debtors, the Debtors’ counsel, and government agencies into whether the Debtors’ former and current employees were involved in fraud have been robust, thorough, and competently conducted. The Examiner does not believe that any further investigation into current or former employees by the Examiner is warranted at this time.

I. Overview of Investigative Work

As discussed further below, several government agencies—including the USAO-SDNY—investigated the fraud perpetrated by individuals affiliated with the FTX Group. These government investigations have principally focused on the fraudulent conduct of Bankman-Fried and other executives, including co-conspirators Ellison, Singh, and Wang, perpetrated on FTX Group customers, investors, and lenders. Ellison served as co-CEO and then sole CEO of Alameda, Singh served as Head of Engineering at FTX.com, and Wang co-founded FTX.com and Alameda and served as Chief Technical Officer of FTX.com. On November 2, 2023, following a month-long jury trial, Bankman-Fried was convicted of wire fraud and conspiracy to

²³¹ See The Second Interim Report of John J. Ray III to the Independent Directors: The Commingling and Misuse of Customer Deposits at FTX.com (“Second Ray Report”), Dkt. No. 1704-1, at 5.

²³² See Scope Order at ¶ 3(b).

commit wire fraud on FTX.com’s customers; wire fraud and conspiracy to commit wire fraud on Alameda’s lenders; conspiracy to commit securities fraud; conspiracy to commit commodities fraud; and conspiracy to commit money laundering.²³³ Bankman-Fried was sentenced on March 28, 2024, to 25 years’ imprisonment.²³⁴

Pursuant to cooperation agreements, Wang, Singh, and Ellison pleaded guilty to various crimes, including wire fraud and conspiracy to commit the same, conspiracy to commit commodities fraud, and conspiracy to commit securities fraud.²³⁵ Ellison and Singh also pleaded guilty to conspiracy to commit money laundering, and Singh pleaded guilty to conspiracy to make unlawful political contributions and to defraud the Federal Election Commission (“FEC”).²³⁶ All three testified as cooperating witnesses at Bankman-Fried’s trial.²³⁷ Another former senior FTX Group executive, Ryan Salame, separately pleaded guilty to conspiracy to make unlawful political contributions and to defraud the FEC, and conspiracy to operate an unlicensed money transmitting business.²³⁸ All four are awaiting sentencing.

Additionally, and as discussed further below, the Debtors’ counsel extensively investigated the fraudulent activities of the FTX Group executives, particularly Bankman-Fried and his co-conspirators. The Debtors’ counsel also thoroughly investigated the possible involvement of other former and current employees in fraudulent conduct at the FTX Group.

²³³ See Transcript at 3252:3-24, SBF Criminal Case, Dkt. No. 384; see also Press Release, U.S. Dep’t of Just., *Statement of U.S. Attorney Damian Williams on the Conviction of Samuel Bankman-Fried*, U.S. Dep’t of Just. (Nov. 2, 2023), <https://www.justice.gov/usao-sdny/pr/statement-us-attorney-damian-williams-conviction-samuel-bankman-fried>, archived at <https://perma.cc/YL6Z-HEG3>.

²³⁴ See SBF Criminal Case, Dkt. No. 424.

²³⁵ See SBF Criminal Case, Dkt. Nos. 6-9, 19, 21.

²³⁶ See SBF Criminal Case, Dkt. Nos. 8-9, 19, 90-91, 102.

²³⁷ See SBF Criminal Case, Dkt. Nos. 352, 356, 358, 360, 362, 366, 368.

²³⁸ See SBF Criminal Case, Dkt. Nos. 262, 265, 283.

They were assisted in these efforts by several outside investigatory and advisory firms, including Nardello & Co. (“Nardello”) and Alvarez & Marsal Holdings, LLC (“Alvarez & Marsal”).

Investigative efforts included the following steps, among others. The Debtors’ counsel reviewed millions of pages of documents collected from the FTX Group.²³⁹ They comprehensively reviewed these documents to assess whether other FTX Group employees were involved in the core fraudulent conduct at the FTX Group. The Debtors’ counsel also conducted numerous interviews with FTX Group employees, including in-house legal and compliance employees and members of the FTX Group’s senior management.²⁴⁰ With limited exceptions for limited purposes, the Debtors’ counsel did not speak with Wang, Singh, or Ellison, all of whom were actively cooperating with the USAO-SDNY at the time of the investigation. The Debtors’ counsel likewise did not speak with Bankman-Fried, who was under indictment during their investigations. In addition, the Debtors’ counsel served Bankruptcy Rule 2004 requests on certain individuals.²⁴¹

The Debtors, with assistance from S&C, responded to more than 400 requests for documents and information from the USAO-SDNY, and, on behalf of the Debtors, S&C produced almost 4.5 million pages of documents and the Amazon Web Services FTX Group database to the USAO-SDNY.²⁴² The Debtors’ counsel also responded to over 300 requests

²³⁹ See, e.g., S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 10.

²⁴⁰ See S&C, *FTX Trading Ltd. / Chapter 11 Interview Memos & Notes*; Quinn Emanuel, *Presentation Regarding FTX Professionals, Legal Insiders, and Venture Investments to Chapter 11 Examiner Robert J. Cleary, Esq.*, Mar. 22, 2024, at 46. The Debtors’ counsel sought to interview other employees throughout their investigations, but some declined to cooperate and others were unavailable for interviews due to resource or other constraints.

²⁴¹ See, e.g., S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 112, 192.

²⁴² *Id.* at 10.

from other federal government and law enforcement agencies, as well as over 100 requests from state and local government and law enforcement agencies.²⁴³

As noted, the Examiner believes that the investigations by the Debtors, the Debtors' counsel, and the government were comprehensive, thorough, and competently conducted. The Debtors' and the Debtors' counsel's investigative work led to the prompt resolution of criminal charges against the FTX Group executives and the filing of numerous avoidance actions.

II. Identification of Former and Current Employees of the FTX Group

The Debtors' investigation into current and former FTX Group employees required, as a threshold matter, an effort to compile a comprehensive list of FTX Group employees before and after the Petition Date. That is because, as described in the First Ray Report, the FTX Group lacked a current and complete list of employees at the time of the bankruptcy filing.²⁴⁴ Further complicating matters, FTX Group employees resigned informally, including orally and over Signal.²⁴⁵

To understand who had departed and who remained at the companies, the Debtors' legal and human resources employees attempted to create a list of employees and their roles and contact information.²⁴⁶ Additionally, the Debtors' human resources personnel emailed employees in the period immediately following the Petition Date to gather names, work statuses, locations, job titles, supervisor names, and other related information.²⁴⁷ The Debtors now maintain a list of current Debtor employees.²⁴⁸ S&C provided that list of employees to the

²⁴³ *Id.* at 35.

²⁴⁴ *See* First Ray Report, at 13.

²⁴⁵ *See* S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 5.

²⁴⁶ *See id.*

²⁴⁷ *See* Email from the Debtors verifying employment status, Dec. 1, 2022, F10705-E005808688.

²⁴⁸ *See* Spreadsheet of the Debtors' employees, Mar. 1, 2024.

Examiner, as well as a list of FTX Group employees' statuses as of November 2022 generated by an attorney employed by FTX.US, a spreadsheet showing FTX.US employees as of November 13, 2022, and employee compensation information for 2021 and the first half of 2022.²⁴⁹

III. Investigations into Former Employees

a. *Samuel Bankman-Fried, Caroline Ellison, Nishad Singh, and Gary Wang*

1. USAO-SDNY

Soon after the collapse of the FTX Group and its related bankruptcy filing, the USAO-SDNY brought charges against the FTX Group's executives. Bankman-Fried was first indicted by the USAO-SDNY on December 9, 2022.²⁵⁰ On December 19, 2022, Wang and Ellison pleaded guilty pursuant to cooperation agreements, and on February 28, 2023, Singh pleaded guilty pursuant to a cooperation agreement.²⁵¹ Each testified at the trial of Bankman-Fried in October and November 2023, at which Bankman-Fried was convicted of all counts.²⁵²

The trial against Bankman-Fried principally focused on his fraud on FTX.com's customers and investors and Alameda's lenders.²⁵³ With regard to FTX.com customers, the evidence established that contrary to Bankman-Fried's and the FTX Group's public representations that customer funds would not and could not be used by FTX Group entities, Bankman-Fried and certain co-conspirators acting at his direction misappropriated massive amounts of FTX.com customer funds.²⁵⁴ They accomplished this primarily by directing

²⁴⁹ See *id.*; Spreadsheet of FTX Group employee status, Nov. 2022, F10705-E015112017; Spreadsheet of FTX.US employees, Nov. 13, 2022; Spreadsheet of FTX Group employee compensation information, 2021-2022, F10705-E000595511.

²⁵⁰ See SBF Criminal Case, Dkt. No. 1.

²⁵¹ See SBF Criminal Case, Dkt. Nos. 19, 21, 102.

²⁵² See Transcript at 3252:3-24, SBF Criminal Case, Dkt. No. 384.

²⁵³ See SBF Criminal Case, Dkt. No. 410, at 8-21.

²⁵⁴ See *id.* at 8-9.

customers to deposit money into bank accounts controlled by Alameda, which Alameda then withdrew for its use, and by creating special privileges for Alameda in FTX.com's software, which allowed Alameda to maintain a negative balance, gave Alameda a \$65 billion line of credit, and exempted Alameda from the automatic liquidation feature.²⁵⁵ Customer funds were used for, among other things, venture investments, stock repurchases, real estate, political and charitable donations, and loan repayments.²⁵⁶ With respect to the FTX Group's investors, the evidence proved that Bankman-Fried and certain co-conspirators acting at his direction defrauded them by, among other means, misrepresenting Alameda's privileges on FTX.com and misleading investors about an "insurance fund" for the FTX Group and about the FTX Group's revenue.²⁵⁷ Moreover, the evidence established that Bankman-Fried, along with certain co-conspirators acting at his behest, defrauded Alameda's lenders, including by sending them a false balance sheet for Alameda.²⁵⁸ The USAO-SDNY also presented evidence during trial regarding several schemes that were charged in superseding indictments against Bankman-Fried but which were ultimately severed from trial, including payments to Chinese government officials, unlawful political donations, and operation of an unlicensed money transmitting business.²⁵⁹

As noted above, Bankman-Fried was sentenced to 25 years' imprisonment. The sentencing court found a loss to investors of \$1.7 billion, a loss to Alameda's lenders of \$1.3 billion, and a loss to FTX.com's customers of approximately \$8 billion.²⁶⁰

²⁵⁵ *See id.* at 10.

²⁵⁶ *See id.* at 11-12, 98.

²⁵⁷ *See id.* at 18-20.

²⁵⁸ *See id.* at 20-21.

²⁵⁹ *See* SBF Criminal Case, Dkt. No. 410, at 21-30. The USAO-SDNY subsequently declined to proceed to a second trial on the severed counts, including the charged violation of the Foreign Corrupt Practices Act and the charge of conspiracy to operate an unlicensed money transmitting business. *See* SBF Criminal Case, Dkt. No. 388.

²⁶⁰ *See* Transcript at 6:3-8, SBF Criminal Case, Dkt. No. 426 ("Bankman-Fried Sentencing Transcript").

2. SEC

Other federal government agencies brought parallel civil cases against the four FTX Group executives as well. The SEC filed civil actions against Bankman-Fried, Ellison, Wang, and Singh for violations of Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a), and Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.²⁶¹ In its complaint against Bankman-Fried, the SEC alleges that he raised at least \$1.8 billion from investors, including approximately \$1.1 billion from United States-based investors, while misleading investors about the FTX Group's misuse of customer funds, Alameda's privileges on FTX.com, and FTX.com's exposure to Alameda and its illiquid collateral.²⁶² In its complaints against Ellison, Wang, and Singh, the SEC brings allegations regarding their roles in the investor fraud scheme set forth in Bankman-Fried's complaint.²⁶³ The SEC entered into consent judgments with Ellison, Wang, and Singh.²⁶⁴ The SEC's case against Bankman-Fried was stayed pending resolution of the parallel criminal proceedings.²⁶⁵

3. CFTC

The CFTC also brought civil actions against Bankman-Fried, Ellison, Wang, and Singh for violations of Section 6(c)(1) of the Commodity Exchange Act, 7 U.S.C. § 9(1), and

²⁶¹ See *Sec. & Exch. Comm'n v. Bankman-Fried*, No. 22-cv-10501 (S.D.N.Y.) (PKC), Dkt. No. 1; *Sec. & Exch. Comm'n v. Ellison*, No. 22-cv-10794 (S.D.N.Y.) (PKC), Dkt. No. 1; *Sec. & Exch. Comm'n v. Singh*, No. 23-cv-1691 (S.D.N.Y.) (PKC), Dkt. No. 1.

²⁶² See *Sec. & Exch. Comm'n v. Bankman-Fried*, No. 22-cv-10501 (S.D.N.Y.) (PKC), Dkt. No. 1 at ¶¶ 27-29.

²⁶³ See *Sec. & Exch. Comm'n v. Ellison*, No. 22-cv-10794 (S.D.N.Y.) (PKC), Dkt. No. 1; *Sec. & Exch. Comm'n v. Singh*, No. 23-cv-1691 (S.D.N.Y.) (PKC), Dkt. No. 1.

²⁶⁴ *Sec. & Exch. Comm'n v. Ellison*, No. 22-cv-10794 (S.D.N.Y.) (PKC), Dkt. Nos. 15-16; *Sec. & Exch. Comm'n v. Singh*, No. 23-cv-1691 (S.D.N.Y.) (PKC), Dkt. No. 7.

²⁶⁵ See *Sec. & Exch. Comm'n v. Bankman-Fried*, No. 22-cv-10501 (S.D.N.Y.), Dkt. No. 16.

Regulation 180.1(a) thereunder, 17 C.F.R. § 180.1(a).²⁶⁶ As alleged in the CFTC's complaints, Bankman-Fried, Ellison, Wang, and Singh engaged in fraud in connection with the sale of commodities.²⁶⁷ The CFTC entered into consent judgments with Ellison, Wang, and Singh.²⁶⁸ The CFTC's case against Bankman-Fried was stayed pending resolution of the parallel criminal proceedings.²⁶⁹

4. Debtors' Investigation

As noted above, the Debtors cooperated extensively with the USAO-SDNY in the government's investigation into FTX Group executives Bankman-Fried, Ellison, Singh, and Wang. The Debtors, with assistance from their counsel and other professionals, also conducted their own investigations to further understand the fraudulent conduct of the executives at the FTX Group and to determine whether avoidance actions could be pursued.

The Debtors' investigation into the FTX Group executives spanned a wide array of misconduct at the FTX Group, including investigations into the core scheme of misappropriation of customer funds as well as other criminal activities. Among other things, S&C investigated several schemes that were presented at Bankman-Fried's criminal trial, such as the use of the North Dimension entities; the backdated payment agent agreement between Alameda and FTX Trading generated to "expla[in] why Alameda held FTX cash for the benefit of [] FTX

²⁶⁶ See *Commodity Futures Exch. Comm'n v. Bankman-Fried*, No. 22-cv-10503 (S.D.N.Y.), Dkt. Nos. 1, 13; *Commodity Futures Exch. Comm'n v. Singh*, No. 23-cv-1684 (S.D.N.Y.), Dkt. No. 1.

²⁶⁷ See *Commodity Futures Exch. Comm'n v. Bankman-Fried*, No. 22-cv-10503 (S.D.N.Y.), Dkt. Nos. 1, 13; *Commodity Futures Exch. Comm'n v. Singh*, No. 23-cv-1684 (S.D.N.Y.), Dkt. No. 1.

²⁶⁸ See *Commodity Futures Exch. Comm'n v. Bankman-Fried*, No. 22-cv-10503 (S.D.N.Y.), Dkt. Nos. 25-26; *Commodity Futures Exch. Comm'n v. Singh*, No. 23-cv-1684 (S.D.N.Y.), Dkt. No. 17.

²⁶⁹ See *Commodity Futures Exch. Comm'n v. Bankman-Fried*, No. 22-cv-10503 (S.D.N.Y.), Dkt. No. 38.

customers”;²⁷⁰ bribes to Chinese government officials;²⁷¹ the FTX Group’s operation of an unlicensed money transmitting business; and Alameda’s fraudulent balance sheets.²⁷²

The Debtors have filed an avoidance action against Bankman-Fried, Ellison, Wang, and Singh, bringing 48 claims against the four former FTX Group executives, including for breach of fiduciary duty, fraudulent transfer, waste of corporate assets, and conversion.²⁷³ That case remains pending.²⁷⁴

b. Ryan Salame

1. USAO-SDNY

Ryan Salame was the CEO and Chairman of FDM and a close associate of the other FTX Group executives. At trial, Ellison testified that Bankman-Fried “said that he really valued [Salame] for his loyalty.”²⁷⁵

On September 7, 2023, Salame pleaded guilty to conspiracy to make unlawful political contributions and to defraud the FEC, and conspiracy to operate an unlicensed money transmitting business.²⁷⁶ Pursuant to his plea agreement, Salame is required to pay restitution to the Debtors of more than \$5.59 million, which captures a \$5 million withdrawal that Salame made from FTX.com in November 2022.²⁷⁷ The Debtors and Salame recently agreed that

²⁷⁰ See Second Ray Report, at 24 (alterations and internal quotation marks omitted).

²⁷¹ As discussed further below, S&C investigated possible payments to current and former Bahamian government officials as well.

²⁷² See S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 12-19.

²⁷³ See *FTX Trading Ltd. v. Bankman-Fried*, No. 23-ap-50448 (Bankr. D. Del.) (JTD), Dkt. No. 1.

²⁷⁴ See *FTX Trading Ltd. v. Bankman-Fried*, No. 23-ap-50448 (Bankr. D. Del.) (JTD).

²⁷⁵ Transcript at 689:22-24, SBF Criminal Case, Dkt. No. 358.

²⁷⁶ See SBF Criminal Case, Dkt. Nos. 262, 265, 283.

²⁷⁷ See Salame Plea Transcript at 16:9-21, SBF Criminal Case, Dkt. No. 283; see also S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 109.

Salame will satisfy that restitution by transferring his Bahamian apartment, which was appraised at \$5.9 million, “to [FDM], acting by the JOLs, as nominee for the Debtors.”²⁷⁸

2. Debtors’ Investigation

As with the other FTX Group executives, the Debtors investigated Salame’s role at the FTX Group and his involvement in misconduct there. Among other things, S&C reviewed Salame’s relevant communications, as well as his transfer activity and trading on the FTX exchanges and assets he owned.²⁷⁹ Through its investigation, S&C found that, among other things, Salame assisted with the creation of the backdated payment agent agreement; made or directed other FTX Group employees to make misrepresentations to banks about the purpose of FTX Group bank accounts; misappropriated FTX Group assets to buy real estate, restaurants, and food service companies, and to make other purchases and investments, including a private jet; and withdrew millions of dollars from his FTX.com account shortly before FTX.com halted customer withdrawals. The Debtors also identified millions of dollars of FTX Group-funded political contributions made by Salame.²⁸⁰

In addition, S&C investigated the circumstances surrounding two \$50 million loans involving Salame, Alameda, and two other companies, Deltec International Group (“Deltec”) and Norton Hall Ltd. (“Norton Hall”).²⁸¹ The investigation concluded that the loans were intended to ameliorate Deltec’s capital issues while ensuring that Deltec would “owe” the FTX Group as a result, and the related promissory notes were structured to conceal Alameda’s role in

²⁷⁸ See Dkt. No. 13631 at ¶ 3.

²⁷⁹ S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 109.

²⁸⁰ A more detailed account of the investigations into the FTX Group’s political and charitable contributions is provided below. See *infra*, at Part 6, Sections III and VII.

²⁸¹ See S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 101.

the loans.²⁸² The investigation further determined that Salame executed one note as a “director” of Norton Hall, despite not being a director of Norton Hall and despite Norton Hall’s director being unaware of the note.²⁸³ Following the investigation, the Debtors reached a settlement regarding the loans, with Deltec agreeing to pay the value of the loan with interest and the remaining obligations extinguished.²⁸⁴

The Debtors continue to assess next steps with regard to Salame.

c. Other FTX Group Employees

S&C also investigated whether other employees were involved in the core fraudulent conduct at the FTX Group and the misappropriation of customer assets. In furtherance of that effort, S&C conducted an exhaustive review of communications and documents that included those collected from senior FTX Group executives to identify any lower-level employees who communicated with them and may have been involved in criminal conduct. In addition, S&C conducted a preference review of exchange accounts, including accounts of current and former employees. Moreover, and as described in further detail below, S&C reviewed whether employees who would be retained after the Petition Date may have been implicated in wrongdoing at the FTX Group. Finally, in its work responding to government investigations and its own review of FTX Group materials, S&C identified certain employees for further investigation for a range of potential malfeasance.

As S&C represented to the Examiner and based on the record developed at Bankman-Fried’s trial, the Examiner understands that the investigative work performed by the Debtors, their professionals, and various government agencies determined that the core fraudulent conduct

²⁸² See *Alameda Research LLC v. Friedberg*, No. 23-ap-50419 (Bankr. D. Del.) (JTD), Dkt. No. 32 at ¶ 149.

²⁸³ See Dkt. No. 1195 at ¶¶ 5, 10.

²⁸⁴ See Dkt. No. 1267 at ¶¶ 3-4.

at the FTX Group (namely, the commingling and misuse of customer funds) was limited to a small group of FTX Group executives. However, S&C separately identified other employees involved in conduct that formed the basis for contemplated or filed adversary proceedings.

For example, S&C's investigation identified John Samuel Trabucco, the former co-CEO of Alameda, as a possible subject of interest.²⁸⁵ S&C reviewed Trabucco's communications and other documents and served Bankruptcy Rule 2004 requests on Trabucco.²⁸⁶ With the assistance of Nardello, Alvarez & Marsal, and AlixPartners, S&C also investigated Trabucco's assets, his activity on the FTX exchanges, and his transactions with the FTX Group.²⁸⁷ Based on those investigations, S&C and their professionals determined that the FTX Group spent over \$15 million for real estate, a yacht, and a marina slip for Trabucco during the preference period and found that Trabucco made substantial withdrawals from the FTX.com exchange in September 2022.²⁸⁸ The Debtors are continuing to assess next steps with regard to Trabucco.

As another example, S&C identified one former FTX Group director as a possible subject of investigation due to high trading volume on his FTX.com account.²⁸⁹ S&C also investigated a former FTX Group employee who managed token investments for Alameda and, working with Alvarez & Marsal, uncovered certain sales related to those investments that were not properly documented.²⁹⁰ S&C also found that this employee made substantial withdrawals from his exchange account close to the Petition Date.²⁹¹ And S&C also investigated a former FTX Group

²⁸⁵ S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 112.

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ *Id.*; see also Nardello, *Report Prepared for Sullivan & Cromwell LLP re: John Samuel Trabucco*, Jan. 29, 2023, at 7-8.

²⁸⁹ S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 144.

²⁹⁰ *Id.* at 141.

²⁹¹ *Id.* at 142.

employee who was the subject of media reports regarding his transfer of \$600,000 of FTT to a charity that he co-founded.²⁹² Due to the need to prioritize other litigation and potential challenges with any claims against these individuals, the Debtors have not yet elected to proceed with actions against them.

In addition, S&C investigated withdrawals during the preference period by four former FTX Group employees and their affiliates, which resulted in approximately \$157 million of transfers from FTX.com and FTX.US during the preference period.²⁹³ S&C, with the assistance of Alvarez & Marsal and Nardello, reviewed relevant accounts and trading activity, as well as communications related to these withdrawals.²⁹⁴ Based on that investigation, certain Debtor entities filed an avoidance action against Matthew and Michael Burgess, Huy Xuan Nguyen, Jing Yu Wong, and their affiliates.²⁹⁵ As alleged, the Debtors' investigation identified approximately \$73 million in withdrawals in November 2022, by an account registered to Michael Burgess, a former Business Development Manager and Head of Partnerships at FTX.com and the brother of Matthew Burgess, a former customer service employee for FTX.com and FTX.US.²⁹⁶ Matthew Burgess was still employed by the FTX Group at the time of the withdrawals.²⁹⁷ As further alleged, Matthew Burgess misled FTX Group employees about the ownership of Michael

²⁹² *Id.* at 137.

²⁹³ *Id.* at 82-84; *see also* *FTX Trading Ltd. v. Burgess*, 22-ap-50585 (Bankr. D. Del.) (JTD), Dkt. No. 1 at ¶ 13. The Debtors "selected August 31, 2023," for "indicative spot pricing of a present day judgment in th[e c]omplaint." *FTX Trading Ltd. v. Burgess*, 22-ap-50585 (Bankr. D. Del.) (JTD), Dkt. No. 1 at ¶ 13 n.3.

²⁹⁴ S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 82.

²⁹⁵ *FTX Trading Ltd. v. Burgess*, 22-ap-50585 (Bankr. D. Del.) (JTD), Dkt. No. 1.

²⁹⁶ *See id.* at ¶¶ 14, 26, 29. Both Michael and Matthew Burgess were formally employed by Salameda Ltd., a non-Debtor affiliate of the FTX Group. *See id.* at ¶¶ 4, 26, 29.

²⁹⁷ *See id.* at ¶ 11.

Burgess's account in an attempt to prioritize those withdrawals over other customers.²⁹⁸ In addition, the Debtors allege that the other named former employees, Nguyen and Wong, also withdrew funds from their FTX.com and FTX.US accounts during the preference period.²⁹⁹ That adversary proceeding was recently stayed pending its resolution.³⁰⁰

d. FTX Group In-house Legal and Compliance Employees

In addition to the above-mentioned investigative work into FTX Group employees, Quinn Emanuel specifically examined whether FTX Group in-house legal and compliance employees had knowledge of fraud or other misconduct at the FTX Group.³⁰¹ In connection with that effort, Quinn Emanuel interviewed nine employees from the legal and compliance departments, the majority of whom were attorneys.³⁰² Quinn Emanuel also reviewed FTX Group communications, including Signal messages where available, transaction records, legal documents, and accounting records, as well as other reports and materials produced by Alvarez & Marsal and Nardello.³⁰³ Lastly, Quinn Emanuel served Bankruptcy Rule 2004 requests on Daniel Friedberg and Can Sun, and received an attorney proffer from Sun.

Quinn Emanuel attempted to interview other in-house legal and compliance employees living outside of the United States, but those employees were unresponsive to those requests.³⁰⁴

²⁹⁸ See, e.g., *id.* at ¶¶ 11, 52; see also S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 83.

²⁹⁹ See *FTX Trading Ltd. v. Burgess*, 22-ap-50585 (Bankr. D. Del.) (JTD), Dkt. No. 1 at ¶¶ 11-14. Like Matthew and Michael Burgess, Nguyen and Wong, although formally employed by Salameda Ltd., worked for other entities. See *id.* at ¶¶ 27-28.

³⁰⁰ See *FTX Trading Ltd. v. Burgess*, 23-ap-50585 (Bankr. D. Del.) (JTD), Dkt. No. 45.

³⁰¹ Quinn Emanuel, *Presentation Regarding FTX Professionals, Legal Insiders, and Venture Investments to Chapter 11 Examiner Robert J. Cleary, Esq.*, Mar. 22, 2024, at 45.

³⁰² See *id.* at 46.

³⁰³ *Id.* at 45-46.

³⁰⁴ *Id.* at 45.

Because of the difficulties in ensuring those individuals' compliance with the requests, Quinn Emanuel did not further attempt to interview them.³⁰⁵

Based on its investigation, Quinn Emanuel concluded that the nine in-house legal and compliance employees it interviewed were generally isolated from the scope of misconduct at the FTX Group.³⁰⁶ Quinn Emanuel further investigated three senior in-house counsel at the FTX Group: Daniel Friedberg, former General Counsel of Alameda and former Chief Compliance Officer of FTX.US;³⁰⁷ Can Sun, former General Counsel of FTX Trading; and Ryne Miller, former General Counsel of FTX.US. Those three attorneys were interviewed by S&C in the months immediately following the Petition Date.

1. Daniel Friedberg

Friedberg previously served as a partner at Law Firm-1,³⁰⁸ a law firm frequently used by the FTX Group, where he worked with the FTX Group on “general corporate and tax matters.”³⁰⁹ He joined the FTX Group in January 2020 as General Counsel of Alameda and Chief Compliance Officer of FTX.US, and subsequently served in several other positions during his time at the FTX Group.³¹⁰

Following Quinn Emanuel's investigation into Friedberg, in June 2023, the Debtors filed a complaint against him asserting claims of breach of fiduciary duties and legal malpractice,

³⁰⁵ *Id.*

³⁰⁶ *Id.* at 47.

³⁰⁷ As described in the Debtors' amended complaint against him, Friedberg held numerous titles during his time at the FTX Group. *See Alameda Research LLC v. Friedberg*, No. 23-ap-50419 (Bankr. D. Del.) (JTD), Dkt. No. 32 at ¶ 31.

³⁰⁸ *See infra*, at Part 5, Section I(e)(1).

³⁰⁹ *See id.* at ¶ 29.

³¹⁰ *See id.* at ¶¶ 30-32.

among others, and seeking to recover transfers and damages.³¹¹ After discovering that Friedberg had deleted files from his work laptop, including the Signal application, S&C, with the assistance of FTI, recovered deleted Signal messages as well as other materials from the laptop.³¹² Based on information from those Signal messages, among other sources, the Debtors filed an amended complaint against Friedberg in January 2024.

The amended complaint alleges, among other things, that Friedberg assisted in diverting funds to FTX Group executives, including by assisting in the creation of North Dimension and its bank account, drafting the backdated payment agent agreement, and creating purported loans from the FTX Group to its executives; avoided regulatory requirements and misled regulatory bodies; misrepresented the nature of the Serum Foundation and SRM token; facilitated multi-million dollar payments to acquaintances, including millions of dollars spent on inadequate and often nonexistent marketing services; failed to implement required oversight and controls as Chief Compliance Officer and General Counsel, including by failing to maintain proper know-your-customer protocols; and received token, equity, and other compensation from the FTX Group in exchange for his loyalty.³¹³ As further alleged in the amended complaint, Friedberg also facilitated the resolution of multiple whistleblower complaints asserting improprieties at the FTX Group, making payments of vast sums of money to the complainants without properly investigating the underlying conduct.³¹⁴ *See infra*, at Part 3, Section III(e). The Debtors' action against Friedberg remains pending.³¹⁵

³¹¹ *See Alameda Research LLC v. Friedberg*, No. 23-ap-50419 (Bankr. D. Del.) (JTD), Dkt. No. 1.

³¹² S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 29.

³¹³ *See Alameda Research LLC v. Friedberg*, No. 23-ap-50419 (Bankr. D. Del.) (JTD), Dkt. No. 32 at ¶¶ 41-158, 185-209.

³¹⁴ *See id.* at ¶¶ 159-84.

³¹⁵ *See Alameda Research LLC v. Friedberg*, No. 23-ap-50419 (Bankr. D. Del.) (JTD).

2. Can Sun

Can Sun joined the FTX Group in August 2021 from Law Firm-1. He served as General Counsel of FTX Trading.³¹⁶ Sun was called as a witness by the government at Bankman-Fried’s trial pursuant to a non-prosecution agreement. At Bankman-Fried’s trial, Sun testified that his responsibilities included “licensing[,], regulatory strategy, [and] internal corporate work.”³¹⁷

Quinn Emanuel investigated Sun’s work for the FTX Group while at Law Firm-1 and while at the FTX Group. Quinn Emanuel learned that, as part of Sun’s work at Law Firm-1, he drafted and circulated intercompany agreements for the FTX Group, and continued that work after joining the FTX Group.³¹⁸ Quinn Emanuel’s investigation also found that, consistent with his testimony at trial, Sun was aware of company loans to FTX Group executives during his time at the FTX Group; Quinn Emanuel further determined that Sun intentionally structured some of these loans to avoid scrutiny regarding the relationship between WRS and Alameda.³¹⁹ Quinn Emanuel also concluded that Sun, in coordination with Friedberg, worked to avoid CFTC scrutiny by concealing information about entities with an interest in FTX Trading.³²⁰ Quinn Emanuel’s investigation also found that, again consistent with Sun’s testimony at trial, Sun purchased a residence in the Bahamas with FTX Group-funded loans.³²¹ And Quinn Emanuel

³¹⁶ See Transcript at 1896:14-1897:7, SBF Criminal Case, Dkt. No. 372. Although Sun had formal employment contracts with Salameda Ltd. and FDM, he described his role at the FTX Group at Bankman-Fried’s trial as “general counsel” to FTX and the “head[.]” of “legal at FTX International.” See *id.* at 1897:6-10; see also Quinn Emanuel, *Memorandum re: FTX Investigations—Can Sun*, May 14, 2024 (“Quinn Sun Memo”), at 2-5.

³¹⁷ See Transcript at 1897:6-14, SBF Criminal Case, Dkt. No. 372.

³¹⁸ Quinn Sun Memo, at 6.

³¹⁹ *Id.* at 7-11; see also Transcript at 1946:14-1948:18, SBF Criminal Case, Dkt. No. 372.

³²⁰ Quinn Sun Memo, at 16-19.

³²¹ *Id.* at 13-15; see also Transcript at 1953:24-1954:9, SBF Criminal Case, Dkt. No. 372.

investigated Sun’s involvement in resolving whistleblower complaints at the FTX Group, but ultimately concluded that Friedberg took a more active role in negotiating those settlements.³²²

Also consistent with Sun’s testimony at trial, Quinn Emanuel determined that while Sun was aware of the existence of the North Dimension entities, there was no evidence that he was aware of their use in unlawfully diverting customer funds.³²³ And as Sun further testified at trial, he learned about Alameda’s exemption from automatic liquidation in August or September of 2022, but he was unaware that the exemption enabled Alameda to withdraw customer funds from the exchange until Singh told him that on November 7, 2022.³²⁴

The Debtors continue to assess next steps with respect to Sun.

3. Ryne Miller

Ryne Miller had been a partner at S&C prior to joining the FTX Group. His role as counsel to the FTX Group while at S&C is discussed above, *see supra*, at Part 2. Miller joined the FTX Group in August 2021 as the General Counsel of FTX.US, and he remained employed at FTX.US until March 2023.³²⁵ Miller, unlike Friedberg or Sun, focused primarily on United States-based matters rather than both domestic and international issues.³²⁶ His work included regulatory compliance, corporate acquisitions, lobbying, and employee-related actions.³²⁷

Quinn Emanuel identified several items of interest with respect to Miller’s work at the FTX Group. First, Miller was involved in the resolution of several whistleblower claims

³²² See Quinn Emanuel, *Summary of Investigation of FTX Group Pre-Petition Professionals*, Mar. 29, 2024 (“Professionals Report”), at 53.

³²³ See Quinn Sun Memo, at 11; *see also* Transcript at 1905:13-1906:3, SBF Criminal Case, Dkt. No. 372.

³²⁴ See Transcript at 1923:6-11, 1964:8-21, SBF Criminal Case, Dkt. No. 372.

³²⁵ Quinn Emanuel, *Memorandum re: FTX Investigations—Ryne Miller*, May 10, 2024 (“Quinn Miller Memo”), at 1-3.

³²⁶ *Id.* at 3.

³²⁷ *Id.* at 3-4.

explained in further detail below, including claims raised by Whistleblower-1, Whistleblower-3, and Whistleblower-5.³²⁸ Quinn Emanuel determined that Miller's involvement in resolving whistleblower claims was more limited than Friedberg's.³²⁹ Quinn Emanuel's investigation also found that Miller identified corporate governance concerns shortly after he joined the FTX Group.³³⁰ And while Miller learned about Alameda's exemption from automatic liquidation during the summer of 2022, Quinn Emanuel found no evidence that he was aware that Alameda was used as a vehicle to spend customer funds or that he believed that this could lead to the downfall of the FTX Group.³³¹ Ultimately, Quinn Emanuel did not find any evidence that Miller knew of or participated in the fraud at the FTX Group and did not find any evidence that Miller knew about the commingling of customer and FTX Group assets.³³²

e. FTX Group Whistleblowers

As part of its review of the FTX Group's in-house compliance and legal employees, Quinn Emanuel investigated the FTX Group's resolution of several whistleblower complaints that alleged systemic misconduct at the FTX Group, primarily those brought by then-active or recently terminated employees.³³³ Because the FTX Group did not track whistleblower or employee complaints, in order to identify the universe of complaints to assess, Quinn Emanuel reviewed all severance agreements with FTX Group employees and the circumstances

³²⁸ *Id.* at 4.

³²⁹ See Professionals Report, at 53; see also Quinn Miller Memo, at 12.

³³⁰ See Quinn Emanuel, *Presentation Regarding FTX Professionals, Legal Insiders, and Venture Investments to Chapter 11 Examiner Robert J. Cleary, Esq.*, Mar. 22, 2024, at 55; Quinn Miller Memo, at 9-10.

³³¹ See Quinn Miller Memo, at 8, 12.

³³² See Quinn Miller Memo, at 12. Further discussion of Miller's identification of a shortfall at FTX.US may be found *infra*, in Part 6, Section V.

³³³ Professionals Report, at 45-46.

surrounding those agreements.³³⁴ Quinn Emanuel ultimately identified settlement agreements totaling more than \$25 million with seven whistleblowers who alleged various improprieties at the FTX Group, with most of that money going to five of those whistleblowers who raised allegations of systemic improprieties.³³⁵

To investigate these payments, Quinn Emanuel reviewed memoranda of interviews conducted by S&C and FTX Group documents related to the whistleblower complaints, issued Bankruptcy Rule 2004 requests to law firms that advised the FTX Group on these complaints, and interviewed several former in-house legal and compliance employees and two whistleblowers.³³⁶ Quinn Emanuel concluded that FTX Group counsel did not properly investigate the substance of these whistleblower complaints but rather settled them for considerable amounts, and that these resolutions were principally handled by Friedberg, with the assistance of Sun, Miller, and Joseph Bankman, Bankman-Fried's father and senior advisor to the FTX Group.³³⁷ A summary of significant whistleblower settlements investigated by Quinn Emanuel is provided below.

First, Whistleblower-1, a former FTX.US employee, alleged, among other things, market manipulation and insider trading.³³⁸ Quinn Emanuel determined that the FTX Group settled Whistleblower-1's claims—without investigating the merits—for \$1.8 million, despite Whistleblower-1 having worked at FTX.US for less than two months at a salary of \$200,000 per

³³⁴ *Id.* at 46.

³³⁵ *Id.* at 46.

³³⁶ *Id.* at 47-48.

³³⁷ *See id.* at 48-51; *see also* Quinn Emanuel, *Presentation Regarding FTX Professionals, Legal Insiders, and Venture Investments to Chapter 11 Examiner Robert J. Cleary, Esq.*, Mar. 22, 2024, at 57.

³³⁸ *See Alameda Research LLC v. Friedberg*, No. 23-ap-50419 (Bankr. D. Del.) (JTD), Dkt. No. 32 at ¶ 172.

year.³³⁹ After resolving Whistleblower-1’s claims, the FTX Group retained Whistleblower-1’s counsel to provide “general client counseling” at a rate of more than \$200,000 per month for five years.³⁴⁰ Until the Petition Date, that law firm produced only one three-page memorandum pursuant to that retention agreement.³⁴¹ The memorandum was drafted and signed by a non-lawyer—again, consistent with the pattern Quinn Emanuel uncovered regarding the FTX Group’s retention and use of counsel.³⁴² Friedberg’s alleged involvement in Whistleblower-1’s claims is detailed in the pending action against him.³⁴³

Second, as reported in the Second Ray Report, Whistleblower-2, an attorney at Alameda, raised concerns about regulatory and governance issues at Alameda and Alameda’s handling of customer funds without a money transmitting license.³⁴⁴ Quinn Emanuel’s investigation into this complaint determined that Whistleblower-2 was terminated by Friedberg after raising these concerns, and received a \$2 million settlement despite having worked at Alameda for less than three months.³⁴⁵ Friedberg did not investigate or address the issues raised by Whistleblower-2.³⁴⁶ Friedberg’s alleged involvement in resolving Whistleblower-2’s claims is detailed in the pending action against him.³⁴⁷

³³⁹ See *id.* at ¶¶ 174-76; see also Professionals Report, at 49-50.

³⁴⁰ See *Alameda Research LLC v. Friedberg*, No. 23-ap-50419 (Bankr. D. Del.) (JTD), Dkt. No. 32 at ¶ 179.

³⁴¹ See *id.* at ¶ 180.

³⁴² See *id.*

³⁴³ See *id.* at ¶¶ 172-80.

³⁴⁴ See Second Ray Report, at 22-23.

³⁴⁵ See *Alameda Research LLC v. Friedberg*, No. 23-ap-50419 (Bankr. D. Del.) (JTD), Dkt. No. 32 at ¶¶ 183; see also Professionals Report, at 49.

³⁴⁶ See *Alameda Research LLC v. Friedberg*, No. 23-ap-50419 (Bankr. D. Del.) (JTD), Dkt. No. 32 at ¶ 184.

³⁴⁷ See *id.* at ¶¶ 181-84.

Third, Whistleblower-3, a compliance employee at FTX.US, claimed that FTX.US lacked sufficient anti-money laundering controls and compliance measures.³⁴⁸ Whistleblower-3, who was hired to work on anti-money laundering compliance, was subsequently terminated three months after being hired.³⁴⁹ The FTX Group settled Whistleblower-3's claims without investigation, and Friedberg, Miller, and two other in-house attorneys negotiated a settlement payment that was approximately three times Whistleblower-3's annual salary.³⁵⁰

Fourth, Whistleblower-4, an executive at FTX.US, claimed that the FTX Group misled regulators and investors and lacked adequate corporate structure.³⁵¹ Whistleblower-4 wrote a letter to Bankman-Fried, Singh, and Friedberg outlining those concerns.³⁵² Shortly after, Friedberg told Whistleblower-4 that he should not have written the letter and, in particular, should not have suggested that the FTX Group may not satisfy investor expectations. Friedberg further suggested that Whistleblower-4 apologize to Bankman-Fried.³⁵³ Whistleblower-4 resigned from FTX.US in September 2022, and agreed to a settlement worth more than \$16 million.³⁵⁴ The FTX Group resolved Whistleblower-4's claims without investigation.³⁵⁵

Fifth, Whistleblower-5 alleged commingling of customer funds, inadequate corporate separation among FTX Group entities, market manipulation, and violation of CFTC

³⁴⁸ Professionals Report, at 49; Quinn Emanuel, *Presentation Regarding FTX Professionals, Legal Insiders, and Venture Investments to Chapter 11 Examiner Robert J. Cleary, Esq.*, Mar. 22, 2024, at 63.

³⁴⁹ Quinn Emanuel, *Presentation Regarding FTX Professionals, Legal Insiders, and Venture Investments to Chapter 11 Examiner Robert J. Cleary, Esq.*, Mar. 22, 2024, at 63.

³⁵⁰ *Id.*

³⁵¹ *Id.* at 65.

³⁵² *See id.*

³⁵³ S&C, *Memorandum re: Interview of Whistleblower-4*, Dec. 22, 2022, at 10-11.

³⁵⁴ Professionals Report, at 49.

³⁵⁵ Quinn Emanuel, *Presentation Regarding FTX Professionals, Legal Insiders, and Venture Investments to Chapter 11 Examiner Robert J. Cleary, Esq.*, Mar. 22, 2024, at 65.

regulations.³⁵⁶ Friedberg and Miller attempted to settle these claims prior to litigation; Quinn Emanuel did not find any evidence that they otherwise attempted to investigate or remediate the misconduct alleged by Whistleblower-5.³⁵⁷ After the bankruptcy filing, Whistleblower-5's claims were resolved by settlement.³⁵⁸

Sixth, Whistleblower-6 alleged market manipulation and concealment of a relationship with Alameda.³⁵⁹ He received a settlement offer of \$200,000, although the claims were not settled prior to the Petition Date. As with the other whistleblower complaints, Quinn Emanuel found no evidence that the FTX Group investigated Whistleblower-6's claims.³⁶⁰

Finally, in 2019, an outside attorney, Pavel Pogodin (now deceased),³⁶¹ filed a complaint on behalf of Bitcoin Manipulation Abatement LLC against certain FTX Group entities and several high-ranking employees, alleging money laundering, the operation of an unlicensed money transmitting business, market manipulation, violations of the Commodity Exchange Act, and other unlawful conduct.³⁶² Friedberg, who was then serving as the FTX Group's outside counsel at Law Firm-1, advised the FTX Group on the complaint. Friedberg ultimately arranged for the FTX Group to pay more than \$3 million for two purposes: (1) to resolve those claims, and (2) to retain Pogodin as an attorney for the FTX Group.³⁶³ However, in its investigation, Quinn

³⁵⁶ Professionals Report, at 50. S&C and Paul Hastings subsequently determined that Whistleblower-5 was terminated for cause for inappropriate conduct. *See* S&C, Whistleblower-5 and Ledger X—FTX Debtors Mediation Statement, Feb. 15, 2023, at 5; Paul Hastings, *FTX—LedgerX Investigation Memorandum*, Nov. 13, 2023, at 2.

³⁵⁷ Professionals Report, at 50-51.

³⁵⁸ *Id.*

³⁵⁹ Professionals Report, at 50.

³⁶⁰ *See id.*

³⁶¹ Pogodin was identified in the Debtors' action against Friedberg. *See Alameda Research LLC v. Friedberg*, No. 23-ap-50419 (Bankr. D. Del.) (JTD), Dkt. No. 32 at ¶¶ 161-71.

³⁶² *See Bitcoin Manipulation Abatement LLC v. FTX Trading LTD*, No. 4:19-cv-7245 (N.D. Cal.), Dkt. No. 1.

³⁶³ *See Alameda Research LLC v. Friedberg*, No. 23-ap-50419 (Bankr. D. Del.) (JTD), Dkt. No. 32 at ¶¶ 161-71.

Emanuel found no evidence that Pogodin provided any legal services to the FTX Group—a consistent pattern with the FTX Group’s retention of counsel, as described in detail below.³⁶⁴ *See infra*, at Part 5, Section I(e). The Debtors’ pending action against Friedberg alleges his relevant conduct in resolving Pogodin’s claims.³⁶⁵

f. Other Payments to FTX Group Employees

Quinn Emanuel also reviewed payments to other employees who were terminated by the FTX Group but did not raise known whistleblower complaints.³⁶⁶ Quinn Emanuel found that about half of those terminations occurred during June and July of 2022, and about 73 percent of the termination agreements were for payments of less than \$100,000.³⁶⁷ Quinn Emanuel focused in particular on six large employee payments ranging in size from \$885,000 to nearly \$12 million.³⁶⁸ Although Quinn Emanuel’s investigation did not fully resolve the circumstances behind each of these large payments, it appears that those settlements did not involve similar allegations of impropriety as the whistleblower complaints described above. The Examiner does not believe that additional investigation is warranted beyond Quinn Emanuel’s work.

IV. Current Employees

After the Petition Date, the Debtors considered which of their remaining employees may be necessary to provide assistance to the Debtors moving forward. As part of that review, the Debtors consulted with S&C to determine whether the identified employees engaged in misconduct at the FTX Group. Based on that inquiry, and with the assistance of S&C, the

³⁶⁴ *See id.* at ¶ 170.

³⁶⁵ *See id.* at ¶¶ 161-71.

³⁶⁶ Quinn Emanuel, *Presentation Regarding FTX Professionals, Legal Insiders, and Venture Investments to Chapter 11 Examiner Robert J. Cleary, Esq.*, Mar. 22, 2024, at 68-69.

³⁶⁷ *Id.* at 68.

³⁶⁸ *Id.* at 69.

Debtors retained certain employees who were employed by the FTX Group prior to the Petition Date and who were deemed to have not engaged in any criminal activities. Those employees then provided assistance in recovery efforts.

V. Conclusion

In sum, the Debtors and the Debtors' counsel, along with several government agencies, conducted a broad investigation into possible fraudulent conduct that took place at the FTX Group prior to the bankruptcy filing. That investigation facilitated the resolution of criminal charges against top executives at the FTX Group, including Bankman-Fried, led to many avoidance actions, and prompted the voluntary resolution of other claims. Based on his review of the investigations conducted to date, and given his understanding that the fraudulent activity at the FTX Group was largely perpetrated by a limited and tight-knit group of executives, the Examiner does not believe that any further investigation by him into former employees of FTX Group is warranted.

In addition, the Debtors and the Debtors' counsel have examined whether any employees who remained employed engaged in fraudulent conduct at the FTX Group. Based on discussions with Debtors' counsel, the Examiner understands that the Debtors retained only those employees who they viewed as having no complicity. The Examiner therefore believes that the ongoing and concluded investigations into fraud committed by the Debtors' employees, both current and former, have been adequate to address those issues.

PART 4: MANIPULATION OF FTT AND OTHER TOKENS

The Scope Order directs the Examiner to conduct “[a]n examination of whether the Investigations adequately addressed the Debtors’ use of its cryptocurrency, FTT, to inflate the value of FTX and Alameda Research.”³⁶⁹ This Part addresses the investigations into that issue. In addition, individuals associated with the FTX Group were involved in the development of at least three other cryptocurrency tokens also held by Alameda as of the Petition Date. Given certain similarities to FTT and the potential that those other cryptocurrency tokens could have also been used to inflate the value of the FTX Group, this part of the Report also addresses investigations into those other tokens. For the reasons explained below, the Examiner concludes that prior investigations adequately addressed whether the FTX Group used these cryptocurrency tokens to inflate its value, such that no further investigation is necessary.

Section I below provides background on each of the four tokens addressed in this Part, as context for the discussion that follows. Sections II and III then summarize investigations conducted to date into allegations that individuals at or associated with the FTX Group manipulated one or more of these tokens, based on public reports as well as information made available to the Examiner through these bankruptcy cases. Finally, Section IV explains the bases for the Examiner’s conclusion that, at this time, further investigation into these issues by the Examiner is not warranted.

I. Cryptocurrency Tokens Associated with the Debtors

This section provides a brief overview of the four cryptocurrency tokens addressed in this Part: FTT, SRM, OXY, and MAPS. As detailed further below, while FTT has been the subject

³⁶⁹ Scope Order at ¶ 3.

of extensive public discourse and investigation, the other three tokens discussed below have received relatively less attention but could present similar issues.

a. FTT Token

Many cryptocurrency exchanges have native “exchange tokens” that offer benefits when used on the exchange.³⁷⁰ The FTT token was the exchange token of the FTX.com exchange. According to the FTX Token white paper,³⁷¹ FTT could “be used as collateral” on the trading platform, and customers who held a certain amount of FTT received discounts on trading fees as well as “rebates from all OTC trading on FTX.”³⁷² FTT was designed as a deflationary token, with FTX Trading committing to use a portion of its fee revenue to buy and burn FTT tokens “until at least half of all FTT is burned.”³⁷³ Generally speaking, a “buy and burn” occurs when an entity associated with a token buys some of the tokens currently circulating in the market and permanently takes them out of circulation.³⁷⁴ Overall, this design of FTT incentivized users of the FTX.com exchange to buy and hold FTT, and purported to tie the value of the FTT token to

³⁷⁰ See Robert Stevens, *What Is an Exchange Token?*, CoinDesk (Nov. 9, 2022), <https://www.coindesk.com/learn/what-is-an-exchange-token/>, archived at <https://perma.cc/57D3-P4PC>.

³⁷¹ “A cryptocurrency whitepaper is a comprehensive document outlining the technical and economic aspects of a specific cryptocurrency. It is typically written by the cryptocurrency’s development team or core members and serves as a guide for potential investors, miners and users.” CoinMarketCap, *Whitepaper*, <https://coinmarketcap.com/academy/glossary/whitepaper>, archived at <https://perma.cc/2FJ3-YBBA>.

³⁷² FTX Trading, *FTX Token Whitepaper*, 7, <https://whitepaper.io/document/502/ftx-token-whitepaper>, archived at <https://perma.cc/3XJ9-K3JH>.

³⁷³ *Id.*

³⁷⁴ See CoinMarketCap, *Burn/Burned*, <https://coinmarketcap.com/academy/glossary/burned>, archived at <https://perma.cc/R3AP-R3R6>.

the success of the FTX.com exchange.³⁷⁵ As described by FTX Trading at the time, “FTT is the token powering the FTX ecosystem.”³⁷⁶

FTX Trading created the FTT token in or around May 2019.³⁷⁷ A few months later, following a period in which investors and FTX.com users were able to purchase FTT in advance of the listing, FTX Trading officially listed FTT on the FTX.com exchange. According to FTX Trading, it issued a total of 350 million FTT tokens, of which 175 million were designated as “company tokens.” All FTT tokens, including the company tokens, were purportedly “locked” (i.e., unable to be sold)³⁷⁸ as of the initial listing, but were meant to “unlock” over periods of time depending in part on how and when the FTT token at issue was acquired.³⁷⁹ According to the FTT white paper, FTX Trading used the sale of these tokens in part to generate capital for the development of the exchange.³⁸⁰ FTX Trading reported that, as of July 21, 2019, it had sold roughly 73 million FTT tokens prior to the listing, at prices between \$0.10 and \$0.80 per token.³⁸¹ Once FTT was listed, the tokens sold prior to the listing would start to “unlock” and

³⁷⁵ This design was not entirely novel, in that other “exchange tokens” available at the time also offered discounts to holders and touted a “buy and burn” program. *See, e.g.*, Binance, *BNB (BNB)* (Sept. 3, 2020), <https://www.binance.com/en/research/projects/bnb> (discussing similar features of BNB), *archived at* <https://perma.cc/L3CP-J73B>.

³⁷⁶ FTX Trading, *FTT Transparency Page*, (via the Wayback Machine), *archived at* <https://web.archive.org/web/20200806161131/https://help.ftx.com/hc/en-us/articles/360029638552-FTT-Transparency-Page>.

³⁷⁷ *See, e.g.*, FTX Token, CoinDesk, <https://www.coindesk.com/price/ftx-token/>, *archived at* <https://perma.cc/CJ28-ADBR>.

³⁷⁸ *See, e.g.*, CoinMarketCap, *Token Lockup*, <https://coinmarketcap.com/academy/glossary/token-lockup>, *archived at* <https://perma.cc/CG62-U3UG>.

³⁷⁹ FTX Trading, *FTT Transparency Page*, *supra* note 376.

³⁸⁰ FTX Trading, *FTX Token Whitepaper*, *supra* note 372, at 1 (“We want to scale up as quickly as possible and build a community of strong supporters, and so we are conducting a token raise for people who want to help grow FTX.”).

³⁸¹ FTX Trading, *FTT Transparency Page*, *supra* note 372.

could be resold.³⁸² FTX Trading planned to list FTT at an initial price of \$1 per token.³⁸³ FTT experienced various price fluctuations after its initial listing; according to some public sources, FTT at one point traded as high as approximately \$85 per token.³⁸⁴

FTX Trading also used FTT as payment and collateral in various business transactions. For example, Binance's initial investment into FTX Trading in late 2019 included both an equity stake in FTX Trading as well as "a long-term position in the FTX Token (FTT)."³⁸⁵ In 2021, when FTX Trading decided to buy out Binance's equity stake for a reported \$2.3 billion, FTX Trading satisfied the buyout price in part with a transfer to Binance of additional FTT valued at nearly \$555 million.³⁸⁶

As set forth below, subsequent investigations into the FTX Group have revealed instances in which individuals at the FTX Group engaged in efforts to artificially prop up the market price of FTT. Moreover, Alameda held a significant portion of all outstanding FTT, which it included on its balance sheet and used as collateral for other obligations. The revelation of this information in early November 2022 precipitated a series of events that contributed to the collapse of the FTX Group and the institution of these bankruptcy cases.

³⁸² *Id.*

³⁸³ *Id.*

³⁸⁴ See, e.g., FTX Token overview page, CoinMarketCap, <https://coinmarketcap.com/currencies/ftx-token/>, archived at <https://perma.cc/3L2D-FQZB> (reflecting FTT price of \$85.02 on September 9, 2021); see also FTX overview page, CoinGecko, <https://www.coingecko.com/en/coins/ftx-token>, archived at <https://perma.cc/YJ49-985T> (reflecting FTT price of \$84.18 on September 9, 2021). For the avoidance of doubt, this Report takes no position as to the actual value or trading price of FTT, or any other cryptocurrency, at any point in time.

³⁸⁵ Binance, *Binance Announces Strategic Investment in Cryptocurrency Derivatives Exchange FTX*, Binance Blog (Dec. 20, 2019), <https://www.binance.com/en/blog/all/binance-announces-strategic-investment-in-cryptocurrency-derivatives-exchange-ftx-414610870200725504>, archived at <https://perma.cc/5ES6-BP2Z>.

³⁸⁶ See GX-213 (July 15, 2021, Share Transfer Agreement), at 1, SBF Criminal Case.

b. *Other Tokens Associated with the Debtors*

While FTT garnered significant public attention in the wake of the FTX Group’s collapse and bankruptcy, certain other cryptocurrency tokens also had a close connection to Bankman-Fried and the FTX Group. This Report addresses three such tokens: SRM, MAPS, and OXY. These tokens, along with FTT, at times have been referred to as “Sam Coins” given their close association with Bankman-Fried.³⁸⁷

SRM is the exchange token for the Serum exchange. According to the Serum Foundation’s July 2020 white paper, the Serum exchange was built on the Solana blockchain and created with the goal of facilitating decentralized trading of cryptocurrencies at high speeds and low costs.³⁸⁸ Contemporaneous reports disclosed that the Serum Foundation was initially created by FTX Trading and Alameda,³⁸⁹ and that the Serum exchange was championed by Bankman-Fried.³⁹⁰ However, the Serum Foundation’s white paper represented that “[Project Serum] is permissionless—*we do not hold special power anymore*. It is up to you, the crypto community, to use it as you will.”³⁹¹ The Serum white paper touted various benefits of SRM, including that holders of SRM would incur lower trading fees when trading on SRM’s native exchange

³⁸⁷ See Emily Flitter & David Yaffe-Bellany, *FTX Founder Gamed Markets, Crypto Rivals Say*, N.Y. Times (Jan. 18, 2023), <https://www.nytimes.com/2023/01/18/business/ftx-sbf-crypto-markets.html>, archived at <https://perma.cc/C648-VDDU>.

³⁸⁸ Serum Foundation, *Serum—White Paper*, 3-4 (July 2020), <https://whitepaper.io/document/626/serum-whitepaper>, archived at <https://perma.cc/GWZ4-EQTC>.

³⁸⁹ Solana Foundation, *FTX Chooses Solana for Serum: A High-Speed, Non-Custodial Decentralized Derivatives Exchange* (July 26, 2020), <https://solana.com/news/ftx-chooses-solana-for-serum--a-high-speed--non-custodial-decentralized-derivatives-exchange>, archived at <https://perma.cc/DRR4-262A>.

³⁹⁰ See, e.g., Samuel Bankman-Fried (@SBF_FTX), X (formerly Twitter) (July 27, 2020, 4:08 AM), https://twitter.com/SBF_FTX/status/1287661223043928064, archived at <https://perma.cc/NR6P-4XXU> (Bankman-Fried tweet about Project Serum).

³⁹¹ Serum Foundation, *Serum—White Paper*, 11 (July 2020) (emphasis added), <https://whitepaper.io/document/626/serum-whitepaper>, archived at <https://perma.cc/GWZ4-EQTC>.

(Serum).³⁹² The Serum white paper likewise claimed that net fees generated by the Serum exchange would be used to buy and burn SRM tokens, thereby reducing overall supply.³⁹³ The white paper stated that a total of 10 billion tokens would be minted (i.e., created) with a limited percentage circulated at launch and periodic unlocking of tokens over time.³⁹⁴

MAPS is the token for Maps.me. Maps.me began as an offline mapping application, but relaunched in late-2020/early-2021 with new decentralized finance features built on Serum and Solana.³⁹⁵ A January 2021 white paper for MAPS stated that MAPS “[t]oken holders will benefit from 100% of net-revenues that Maps.me generates” and have the ability to vote on governance issues.³⁹⁶ Similar to SRM, the MAPS white paper states that a total of 10 billion tokens would be minted, with a limited supply circulated at launch and additional tokens unlocked over a series of years.³⁹⁷ MAPS also claimed to use 100% of net revenue towards a buy and burn program that would reduce supply and benefit holders.³⁹⁸ As with SRM, public disclosures at the time revealed a certain degree of connection between Maps.me and individuals associated with the FTX Group. The Maps.me white paper listed Bankman-Fried and Ramnik

³⁹² *Id.* at 6.

³⁹³ *Id.* at 6.

³⁹⁴ *Id.* at 7.

³⁹⁵ See Maps Token, *MAPS and Maps.me—FAQ*, Medium (Feb. 2, 2021), <https://mapstoken.medium.com/maps-and-maps-me-faq-a204bfd976aa>, archived at <https://perma.cc/LCV2-Y6Q9> (Maps 2.0 launched in December 2020); see also Maps.me, *Maps – White Paper*, 3-5 (Jan. 2021), <https://maps.me/token/MAPS.pdf>, archived at <https://perma.cc/GRM4-HKWH> (January 2021 white paper states that the financial suite would be launched in the coming month).

³⁹⁶ Maps.me, *Maps—White Paper*, 7-8 (Jan. 2021), <https://maps.me/token/MAPS.pdf>, archived at <https://perma.cc/GRM4-HKWH>.

³⁹⁷ *Id.* at 11.

³⁹⁸ Maps Token, *MAPS and Maps.me—FAQ*, Medium (Feb. 2, 2021), <https://mapstoken.medium.com/maps-and-maps-me-faq-a204bfd976aa>, archived at <https://perma.cc/LCV2-Y6Q9>.

Arora (at the time, Head of Product within the FTX Group) as advisors to the project,³⁹⁹ and public reporting disclosed that Bankman-Fried led a \$50 million round of funding for “Maps.me 2.0.”⁴⁰⁰

Finally, OXY is the token for the Oxygen Protocol. According to Oxygen’s December 2020 white paper, Oxygen launched as a decentralized borrowing and lending protocol built on Serum and Solana, and was co-founded by the same individuals who co-founded MAPS.⁴⁰¹ Oxygen sought to leverage the user base of Maps.me by integrating into the platform.⁴⁰² Oxygen claimed to offer OXY holders discounts on fees when using the Oxygen Protocol, participation in the governance model, and other benefits through a buy and burn program.⁴⁰³ The Oxygen white paper stated that a total of 10 billion OXY tokens would be minted, with a small percentage unlocked at launch and additional tokens unlocked over the course of several years.⁴⁰⁴

³⁹⁹ Maps.me, *Maps—White Paper*, 9 (Jan. 2021), <https://maps.me/token/MAPS.pdf>, archived at <https://perma.cc/GRM4-HKWH>.

⁴⁰⁰ Samuel Haig, *SBF leads \$50M funding round to bring DeFi to Maps.me’s 140M users*, Cointelegraph (Jan. 18, 2021), <https://cointelegraph.com/news/sbf-leads-50m-funding-round-to-bring-defi-to-maps-me-s-140m-users>, archived at <https://perma.cc/5J8R-P4JC>.

⁴⁰¹ Oxygen, *Oxygen: The Prime Brokerage Protocol White Paper*, 4-5, 8-10 (Dec. 2020), <https://www.oxygen.org/Oxygen.pdf>, archived at <https://perma.cc/H894-8EJE> (listing Alex Grebnev and Viktor Mangazeev as co-founders); see also, Maps.me, *Maps—White Paper*, 9 (Jan. 2021), <https://maps.me/token/MAPS.pdf>, archived at <https://perma.cc/GRM4-HKWH> (listing Alex Grebnev and Viktor Mangazeev as co-founders).

⁴⁰² Oxygen, *Oxygen: The Prime Brokerage Protocol White Paper*, 8-9 (Dec. 2020), <https://www.oxygen.org/Oxygen.pdf>, archived at <https://perma.cc/H894-8EJE>.

⁴⁰³ Oxygen, *Oxygen: The Prime Brokerage Protocol White Paper*, 9 (Dec. 2020), <https://www.oxygen.org/Oxygen.pdf>, archived at <https://perma.cc/H894-8EJE>; see also Oxygen, *Token*, <https://www.oxygen.org/token.html>, archived at <https://perma.cc/HU53-NG37>.

⁴⁰⁴ Oxygen, *Oxygen: The Prime Brokerage Protocol White Paper*, 11 (Dec. 2020), <https://www.oxygen.org/Oxygen.pdf>, archived at <https://perma.cc/H894-8EJE>.

Bankman-Fried was listed as an advisor to the Oxygen Protocol,⁴⁰⁵ and Alameda led a \$40 million round of funding into Oxygen.⁴⁰⁶

c. Role of FTT in the FTX Group's Collapse

On November 2, 2022, CoinDesk published an article on a leaked Alameda balance sheet.⁴⁰⁷ CoinDesk reported that Alameda's balance sheet listed \$14.6 billion in assets, with "unlocked FTT" as the biggest asset at \$3.66 billion, and "FTT collateral" as the third largest asset at \$2.16 billion.⁴⁰⁸ The CoinDesk article observed that, according to FTX.com's website at the time, "[t]here [were] about 197 million FTT tokens worth \$5.1 billion in circulation."⁴⁰⁹ According to the CoinDesk article, Alameda's balance sheet also included a generic line item for "\$3.37 billion of 'crypto held.'" Separately, it listed "large amounts of the Solana blockchain's native token [SOL]" and holdings of other tokens including SRM, MAPS, and OXY.⁴¹⁰

Prior to this leak, the crypto industry was already experiencing a downturn, with cryptocurrency values declining and multiple firms shuttering in the summer of 2022.⁴¹¹ Although the price of FTT reportedly had reached a high of approximately \$85 in early

⁴⁰⁵ *Id.* at 10.

⁴⁰⁶ Andrew Thurman, *Alameda Research doubles down on Maps.me, invests \$40 million in Oxygen*, Cointelegraph (Feb. 24, 2021), <https://cointelegraph.com/news/alameda-research-doubles-down-on-maps-me-invests-40-million-in-oxygen>, archived at <https://perma.cc/Q6YT-5NW9>.

⁴⁰⁷ Ian Allison, *Divisions in Sam Bankman-Fried's Crypto Empire Blur on His Trading Titan Alameda's Balance Sheet*, CoinDesk (Nov. 2, 2022), <https://www.coindesk.com/business/2022/11/02/divisions-in-sam-bankman-frieds-crypto-empire-blur-on-his-trading-titan-alamedas-balance-sheet/>, archived at <https://perma.cc/8AQ4-RMXJ>. This CoinDesk article, and its role in the collapse of the FTX Group, is also discussed *supra*, at Part 2, Section V(f).

⁴⁰⁸ *Id.* The numbers reported by CoinDesk generally correspond with those in a balance sheet that the USAO-SDNY introduced during Bankman-Fried's trial, which purported to reflect Alameda's holdings as of June 30, 2022. GX-419 (Consolidated Balance Sheet 2022 Q2), SBF Criminal Case.

⁴⁰⁹ Ian Allison, *Divisions in Sam Bankman-Fried's Crypto Empire Blur on His Trading Titan Alameda's Balance Sheet*, CoinDesk (Nov. 2, 2022), <https://www.coindesk.com/business/2022/11/02/divisions-in-sam-bankman-frieds-crypto-empire-blur-on-his-trading-titan-alamedas-balance-sheet/>, archived at <https://perma.cc/8AQ4-RMXJ>.

⁴¹⁰ *Id.*

⁴¹¹ *See, e.g.*, David Gura, *Crypto Billionaire says Fed is driving current downturn*, NPR (June 19, 2022), <https://www.npr.org/2022/06/19/1105853170/crypto-billionaire-says-fed-is-driving-current-downturn>, archived at <https://perma.cc/GM2L-MWQ7>.

September 2021, it had fallen to approximately \$25 in the days before the CoinDesk report, according to public sources.⁴¹²

On November 6, Changpeng Zhao (“CZ”), then-CEO of Binance, tweeted that “[d]ue to recent revelations that have come [*sic*] to light, we have decided to liquidate any remaining FTT on our books,”⁴¹³ and that “[d]ue to market conditions and limited liquidity, we expect this will take a few months to complete.”⁴¹⁴ Caroline Ellison responded with a tweet in which Alameda offered to “happily buy it all from you today at \$22!”⁴¹⁵ While public reporting indicates that the price of FTT briefly held around \$22 following that tweet, it continued to fall—losing 44% of its value between November 1 and 7.⁴¹⁶ In the face of this downward spiral, investors tried to withdraw significant assets from FTX.com, with reports quoting claims from Bankman-Fried that \$6 billion was withdrawn from the exchange in 72 hours prior to the morning of November

⁴¹² See, e.g., *FTX Token overview page*, CoinMarketCap, <https://coinmarketcap.com/currencies/ftx-token/>, archived at <https://perma.cc/3L2D-FQZB>; see also *FTX overview page*, CoinGecko, <https://www.coingecko.com/en/coins/ftx-token>, archived at <https://perma.cc/YJ49-985T>. Once again, in conveying this information, this Report takes no position as to the actual value or trading price of FTT or any other cryptocurrency at any point in time.

⁴¹³ Changpeng Zhao (@cz_binance), X (formerly Twitter) (Nov. 6, 2022, 10:47 AM), https://twitter.com/cz_binance/status/1589283421704290306?lang=en, archived at <https://perma.cc/68PH-SE3P>.

⁴¹⁴ Changpeng Zhao (@cz_binance), X (formerly Twitter) (Nov. 6, 2022, 10:47 AM), https://twitter.com/cz_binance/status/1589283426028642305, archived at <https://perma.cc/8SGA-WEP3>.

⁴¹⁵ Caroline Ellison (@carolinecapital), X (formerly Twitter) (Nov. 6, 2022, 11:03 AM), <https://twitter.com/carolinecapital/status/1589287457975304193>, archived at <https://perma.cc/69UE-69GR> (“@cz_binance if you’re looking to minimize the market impact on your FTT sales, Alameda will happily buy it all from you today at \$22!”).

⁴¹⁶ See Tracey Wang & Oliver Knight, *Binance to Sell Reset of FTX Holdings as Alameda CEO Defends Firm’s Finance Condition*, CoinDesk (Nov. 6, 2022), <https://www.coindesk.com/business/2022/11/06/binance-sells-holdings-of-ftx-token-as-alameda-ceo-defends-firms-financial-condition/>, archived at <https://perma.cc/8NR6-WUU9> (original article published at 11:55 AM EST); see also Sam Reynolds, *FTX Token Plummets on Withdrawal Concerns as Contagion Hits Broader Crypto Markets*, CoinDesk (Nov. 7, 2022), <https://www.coindesk.com/markets/2022/11/08/ftt-plummets-as-market-fears-possible-alameda-contagion/>, archived at <https://perma.cc/8XRE-N27Z> (original article published at 10:28 PM EST).

8.⁴¹⁷ FTX.com halted crypto withdrawals that afternoon,⁴¹⁸ at which point FTT had fallen to approximately \$4.⁴¹⁹ Three days later, on November 11, the Debtors commenced their bankruptcy cases.

II. Summary of Investigations into the Use and Manipulation of FTT

As detailed below, there have been multiple investigations into facts surrounding the FTX Group's use and manipulation of FTT to inflate the value of the FTX Group, including Alameda. This Examination included a review of both public and nonpublic information concerning these investigations. The public information included complaints and indictments by government authorities, as well as transcripts and exhibits from the Bankman-Fried trial in October 2023 and sentencing in March 2024. The nonpublic information included materials created by and for counsel for the Debtors, including memoranda and other documents concerning investigations into aspects of the FTX Group's alleged use and manipulation of FTT. The Examiner's team also spoke to representatives from certain government agencies.

a. Investigative Work

1. Government Investigations and Actions

(i) USAO-SDNY

The USAO-SDNY investigated allegations that the FTX Group used and manipulated FTT to inflate its value. Prosecutors presented evidence of that manipulation during the

⁴¹⁷ Tom Willison & Angus Berwick, *Crypto exchange FTX saw \$6 bln in withdrawals in 72 hours*, Reuters (Nov. 8, 2022), <https://www.reuters.com/business/finance/crypto-exchange-ftx-saw-6-bln-withdrawals-72-hours-ceo-message-staff-2022-11-08/>, archived at <https://perma.cc/3KH9-S5YN>.

⁴¹⁸ Tracy Wang, *FTX Exchange Halts All Crypto Withdrawals*, CoinDesk (Nov. 8, 2022), <https://www.coindesk.com/business/2022/11/08/ftx-exchange-halts-all-crypto-withdrawals/>, archived at <https://perma.cc/2GLC-Z9R4> (original article published at 4:51 PM EST).

⁴¹⁹ Krisztian Sandor, *FTX Token Falls 80% Despite Binance Bailout as Alameda Contagion Spreads to Bitcoin*, CoinDesk (Nov. 8, 2022), <https://www.coindesk.com/markets/2022/11/08/ftx-token-falls-80-despite-binance-bailout-as-alameda-contagion-spreads-to-bitcoin/>, archived at <https://perma.cc/25WW-L693> (original article published at 4:14 PM EST).

Bankman-Fried trial.⁴²⁰ This evidence addressed the creation of FTT and its use to inflate the value of Alameda, as well as at least three specific instances where senior executives at the FTX Group manipulated the value of FTT. Each of these instances of manipulation is discussed in further detail in Section II(b)(2) below.

(ii) SEC

As noted above, in December of 2022, the SEC filed two cases—one against Bankman-Fried, and the other against Ellison and Wang—that in part allege misuse and manipulation of FTT. Both complaints conclude that this conduct “violat[es] the anti-fraud provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934.”⁴²¹ Ellison and Wang entered into consent judgments with the SEC shortly after the complaints were filed.⁴²² The case against Bankman-Fried was stayed pending his criminal prosecution.⁴²³

The SEC complaint against Ellison and Wang alleges widespread manipulation to artificially inflate the price of FTT. According to the SEC, this was done to increase the value of Alameda’s FTT holdings, with those holdings then used as collateral to support loans of customer assets made to Alameda by FTX Trading, as well as loans made to Alameda by third parties.⁴²⁴ The SEC complaint further alleges that Alameda inflated the price of FTT by “programm[ing] [] automated trading tools (or ‘bots’) to conduct trades and execute transactions

⁴²⁰ See *supra*, at Part 3, Section III(a)(1) for additional information concerning the Bankman-Fried trial.

⁴²¹ SEC Charges Caroline Ellison and Gary Wang with Defrauding Investors in Crypto Asset Trading Platform FTX, Sec. & Exch. Comm’n (Dec. 21, 2022), <https://www.sec.gov/news/press-release/2022-234>, archived at <https://perma.cc/8VRS-Y3DF>; see also SEC Charges Samuel Bankman-Fried with Defrauding Investors in Crypto Asset Trading Platform FTX, Sec. & Exch. Comm’n (Dec. 13, 2022), <https://www.sec.gov/news/press-release/2022-219>, archived at <https://perma.cc/BNH8-DZ45> (“The SEC’s complaint charges Bankman-Fried with violating the anti-fraud provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934”).

⁴²² *Sec. & Exch. Comm’n v. Ellison*, No. 22-cv-10794 (S.D.N.Y.) (PKC), Dkt. Nos. 15-16 (Ellison and Wang consent judgments).

⁴²³ *Sec. & Exch. Comm’n v. Bankman-Fried*, No. 22-cv-10501 (S.D.N.Y.) (PKC), Dkt. No. 16.

⁴²⁴ *Sec. & Exch. Comm’n v. Ellison*, No. 22-cv-10794 (S.D.N.Y.) (PKC), Dkt. No. 1 at ¶¶ 92-94.

to purchase FTT at specific prices” and “adjust[ing] trading parameters of its trading bots in order to support the price of FTT.”⁴²⁵ The SEC complaint also discusses instances in which Bankman-Fried and Ellison sought to artificially prop up the price of FTT in response to external events, which generally correspond to the three examples of manipulation addressed during the criminal trial of Bankman-Fried.⁴²⁶

(iii) CFTC

The CFTC filed a complaint on December 13, 2022, alleging certain violations of law related to the use of FTT by the FTX Group and associated individuals. This complaint named Bankman-Fried, FTX Trading, and Alameda, and an amended complaint filed on December 21, 2022, added claims against Ellison and Wang.⁴²⁷ The amended complaint charges all defendants except for Wang with “fraud and material misrepresentations in connection with the sale of digital asset commodities,” and charges Wang with “fraud in connection with the sale of digital asset commodities.”⁴²⁸

The amended complaint alleges that the creation and use of FTT contributed to the defendants’ artificial inflation of Alameda’s balance sheet and other frauds. According to the CFTC, Alameda’s holdings comprised “a significant portion of all FTT in circulation.”⁴²⁹ The CFTC further asserts that, although FTT was relatively illiquid and traded at volumes far below

⁴²⁵ *Id.* at ¶ 92.

⁴²⁶ *Id.* at ¶¶ 93, 106.

⁴²⁷ *Commodity Futures Trading Comm’n v. Bankman-Fried*, No. 22-cv-10503 (S.D.N.Y.) (PKC), Dkt. Nos. 1, 13 (original and amended complaints).

⁴²⁸ *CFTC Charges Alameda CEO and Alameda and FTX Co-Founder with Fraud in Action Against Sam Bankman-Fried and his Companies*, Commodity Futures Trading Comm’n (Dec. 21, 2022), <https://www.cftc.gov/PressRoom/PressReleases/8644-22>, archived at <https://perma.cc/D377-5KF6>; see also *Commodity Futures Trading Comm’n v. Bankman-Fried*, No. 22-cv-10503 (S.D.N.Y.) (PKC), Dkt. No. 13 at ¶¶ 121-137.

⁴²⁹ *Commodity Futures Trading Comm’n v. Bankman-Fried*, No. 22-cv-10503 (S.D.N.Y.) (PKC), Dkt. No. 13 at ¶ 70.

Alameda's FTT holdings, Alameda allegedly valued its FTT holdings on its balance sheet at the illiquid market prices, and then used those assets to support a number of large loans.⁴³⁰ The CFTC also alleges that the buy and burn program of FTT contributed to this inflation in that it was "intended to raise the value of the FTT tokens that remained in circulation, and thereby [raise] the value of the FTT that Alameda held."⁴³¹

As was the case for the SEC action, Ellison and Wang both entered into consent judgments with the CFTC shortly after it filed its amended complaint, and the case was otherwise stayed pending the resolution of the criminal case against Bankman-Fried.⁴³²

2. The Debtors' Investigations

Information and materials shared with the Examiner revealed that the Debtors and their counsel conducted investigatory work that touched on the use and manipulation of FTT by the FTX Group. Although the Debtors did not undertake a dedicated investigation with the specific purpose of identifying every possible instance of potential FTT manipulation, or all individuals who may have been involved therein, issues related to FTT emerged through investigations into other subjects.

For example, an investigation by Quinn Emanuel into Law Firm-1,⁴³³ a law firm used by the FTX Group prior to the Petition Date, adduced facts related to the original creation of FTT and its use by FTX Group.

S&C also investigated matters related to the buy and burn program of FTT. For example, S&C analyzed an agreement between FTX Trading and the Debtor entity Cottonwood Grove

⁴³⁰ *Id.* at ¶¶ 70-72.

⁴³¹ *Id.* at ¶ 69.

⁴³² *Commodity Futures Trading Comm'n v. Bankman-Fried*, No. 22-cv-10503 (S.D.N.Y.) (PKC), Dkt. Nos. 25-26 (Wang and Ellison consent judgments).

⁴³³ *See infra*, at Part 5, Section I(e)(1).

Limited (“Cottonwood Grove”), which purportedly was used by FTX Trading to carry out the FTT buy and burn program.⁴³⁴ S&C also investigated FTX Trading’s actual implementation of the buy and burn program for FTT, including to determine whether that activity involved any impropriety.

In addition, S&C interviewed and directed investigations into several former employees. Some of those interviews and investigations touched on conduct related to FTT, although FTT itself was not the focus of such inquiries. Through its broader investigation, S&C also reviewed preserved email and Slack communications⁴³⁵ involving senior executives of the FTX Group that occurred in the two calendar years prior to the Petition Date.

Finally, although separate from the issue of prepetition manipulation, the Debtors also investigated an allegation of unauthorized “minting” of FTT tokens that took place after the Petition Date.⁴³⁶ S&C determined that what occurred was not actually a “minting” of new FTT tokens, but rather the release of 195 million non-trading FTT tokens from an account that had held those tokens since the original minting of FTT in 2019. Those 195 million FTT tokens have since been returned to the Debtors.

b. Investigative Findings

As set forth above, both the Debtors and multiple government authorities have, to various degrees, conducted investigations into the use and manipulation of FTT by the FTX Group prior to the Petition Date. This section summarizes the collective findings of these investigations with regards to the original creation of FTT; instances of FTT manipulation; those individuals

⁴³⁴ S&C, *Cottonwood Agreement Summary*, June 20, 2023 (“Cottonwood Agreement Summary”).

⁴³⁵ As discussed *supra*, at Part 3, employees of the FTX Group frequently communicated through self-deleting Signal messages such that many communications were no longer available.

⁴³⁶ In his November 17, 2022, declaration, Ray reported the unauthorized “dilutive ‘minting’ of approximately \$300 million in FTT tokens” after the Petition Date. *See* Ray First Day Declaration at ¶ 66.

involved in the manipulation; the use of FTT to inflate Alameda's value; and potential issues related to the FTT buy and burn program.

1. Creation of FTT and its Relation to Alameda's Value

Prior investigations have addressed how Alameda obtained a significant amount of FTT, potentially at little or no cost,⁴³⁷ and then used those FTT holdings as collateral in order to obtain loans other FTX Group entities as well as from third parties. At the trial of Bankman-Fried, Ellison testified that “for a lot of 2018, [Alameda] had a lot of trouble getting loans”; however, “[i]t started to improve in the beginning of 2019, but the situation definitely got better towards the end of 2019 when we—after we created FTT.”⁴³⁸ Ellison also testified that “shortly after [the FTT tokens] were listed, [Bankman-Fried] said that we should start putting them on our balance sheet and that they would be able to get us more loans from third-party lenders.”⁴³⁹

Investigative materials provided by the Debtors reveal contemporaneous communications in which Bankman-Fried and others discussed the association between the market value of FTT and the claimed value of Alameda. One Nardello memorandum shared with the Examiner recounts a document circulated by Bankman-Fried on July 22, 2019, a week before the initial listing of FTT, in which Bankman-Fried wrote that “the difference between a \$1.5 resting price and a \$2.5 resting price is a \$200m swing in Alameda's [Net Asset Value].”⁴⁴⁰

Bankman-Fried and others also acknowledged the centrality of FTT to Alameda's value and ability to remain in business. In a document dated September 5, 2019, Bankman-Fried

⁴³⁷ *Sec. & Exch. Comm'n v. Ellison*, No. 22-cv-10794 (S.D.N.Y.), Dkt. No. 1 at ¶ 91; Transcript at 672:13-20, SBF Criminal Case, Dkt. No. 358 (Ellison testifying that Alameda received 60-70% of the initial distribution of FTT for free).

⁴³⁸ Transcript at 670:22-671:4, SBF Criminal Case, Dkt. No. 358.

⁴³⁹ *Id.* at 674:8-11.

⁴⁴⁰ Nardello, *Memorandum re: FTX/Alameda Research Links to Binance and affiliated entities*, Apr. 19, 2023 (“Binance Memo”), at 7 (quoting F10705-E000282184) (emphasis in original).

acknowledged that Alameda’s “NAV is currently extremely dependent on exactly how you count FTT; if FTT counts for anything it’s totally fine, but if it doesn’t then we aren’t able to support our current borrows/etc.”⁴⁴¹ Around that same time, another senior executive of Alameda, Trabucco, warned of an “exodus” if employees were to understand Alameda’s net asset value without FTT, and yet another senior executive, Singh, expressed concern that Alameda had a “negative-without-FTT NAV.”⁴⁴²

2. Instances of FTT Manipulation

Prior investigations have also revealed how senior FTX Group executives engaged in various acts intended to artificially inflate the value of FTT—and thus the value of Alameda. This included purchasing FTT at specific prices—even losing money on individual trades—in order to inflate or defend the value of FTT. The SEC has alleged that Alameda executed these trades at least in part through programmed bots.⁴⁴³

While the Examiner understands that certain investigations remain ongoing, these investigations have revealed at least three specific instances in which senior executives of the FTX Group sought to manipulate the price of FTT.

One such instance of manipulation involved an effort to keep the price of FTT above one dollar after it was first listed in 2019—at which point some of the pre-listing sales of FTT started to “unlock” and could be resold. Ellison testified that Bankman-Fried “thought 1 dollar was a psychologically important price, and if it went below a dollar, then people might lose confidence in it, so that [Alameda] should try to buy it if it started going below a dollar.”⁴⁴⁴ Investigations

⁴⁴¹ *Id.* at 9 (quoting F10705-E000273170).

⁴⁴² *Id.* at 10 (quoting F10705-E000273198); *id.* at 11 (quoting F10705-E001025865).

⁴⁴³ *Sec. & Exch. Comm’n v. Ellison*, No. 22-cv-10794 (S.D.N.Y.) (PKC), Dkt. No. 1 at ¶ 92.

⁴⁴⁴ Transcript at 672:25-673:5, SBF Criminal Case, Dkt. No. 358.

conducted by S&C likewise identified contemporaneous communications in which Trabucco expressed concerns regarding the price of FTT in 2019, and the potential consequences of a decline in price.⁴⁴⁵

A second example of manipulation occurred in or around July 2021, when Binance began to sell some of its significant FTT holdings. Ellison testified that she was instructed by Bankman-Fried to defend the price of FTT by “buying once the price had gone down a bit,” due to the downward pressure created by Binance “selling some of their stake in FTT.”⁴⁴⁶ Ellison understood that Bankman-Fried wanted her to defend the price of FTT to avoid unnerving the market or “put[ting] any of our loans in danger by having the price go down too much”—even if this resulted in Alameda losing money on the individual trades.⁴⁴⁷

Finally, Ellison testified concerning an effort to prop up the value of FTT on November 6, 2022, after Binance’s then-CEO announced an intention to sell all remaining FTT holdings. In response, and in an effort to counteract a reduction in FTT’s price and dispel concerns over Alameda’s liquidity, Ellison tweeted an offer to buy Binance’s holdings for \$22 per token.⁴⁴⁸ Ellison testified that, while this tweet did stabilize FTT’s price around \$22 for some time, it continued to decline and she and Bankman-Fried stopped defending FTT at \$22 in the face of “a lot of selling.”⁴⁴⁹

⁴⁴⁵ Binance Memo, at 10 (quoting F10705-E000273198).

⁴⁴⁶ Transcript at 674:18-23, SBF Criminal Case, Dkt. No. 358; *see also Sec. & Exch. Comm’n v. Ellison*, No. 22-cv-10794 (S.D.N.Y.) (PKC), Dkt. No. 1 at ¶ 93 (“In another instance in 2021, the price of FTT was again facing downward pressure from external events, this time related to substantial sales of FTT by a third party. Bankman-Fried again instructed Ellison to have Alameda purchase FTT on trading platforms to support the price.”).

⁴⁴⁷ Transcript at 676:23-677:2, SBF Criminal Case, Dkt. No. 358.

⁴⁴⁸ Transcript at 905:18-22, 906:12-17, SBF Criminal Case, Dkt. No. 360.

⁴⁴⁹ *Id.* at 907:10-25.

Additionally, Ellison testified that, in general, Bankman-Fried “gave us a lot of instructions about FTT” and that “at various points he instructed us to buy if there was a large amount of selling or if the price was going down too much.”⁴⁵⁰

3. Individuals Involved in Manipulation

The investigations into FTT manipulation have principally centered on conduct by Ellison, under the direction of Bankman-Fried, to manipulate the price of FTT for the benefit of Alameda. At the Bankman-Fried trial, Ellison testified that such information was closely held among select individuals and not widely shared.⁴⁵¹

On the other hand, testimony and exhibits introduced at the trial suggest that others at the FTX Group may have had occasion to detect efforts to manipulate FTT. For example, Ellison testified concerning an instance in which trades undertaken with the purpose of supporting the price of FTT, as opposed to maximizing value, were questioned by another Alameda trader.⁴⁵² Ellison also testified that the plan to publicly tweet the \$22 offer for FTT in November 2022 was discussed in a group chat that included not only herself and Bankman-Fried but also other individuals associated with Alameda.⁴⁵³ Moreover, the SEC complaint alleges that the manipulation was carried out in part through bots that were programmed to trade at certain prices. But the SEC complaint does not identify those involved in the programming. However, while the above individuals and others may have questioned certain trading activity of Alameda and even had reason to suspect ulterior motives, this alone does not indicate actual knowledge as to the manipulative intent of such transactions, nor knowing participation in such conduct.

⁴⁵⁰ Transcript at 674:12-17, SBF Criminal Case, Dkt. No. 358.

⁴⁵¹ *Id.* at 674:24-675:7.

⁴⁵² *Id.* at 676:4-22.

⁴⁵³ Transcript at 904:22-906:17, SBF Criminal Case, Dkt. No. 360.

Based on materials reviewed in this Examination and discussions with counsel for the Debtors, it does not appear that the Debtors conducted an investigation with the specific objective of identifying all employees or agents of the FTX Group who had actual knowledge of or contributed to the manipulation of FTT. However, as set forth above, S&C reviewed numerous communications of the FTX Group's senior executives, including Bankman-Fried and Ellison, and investigated other subjects that likely would have identified any others centrally involved in FTT manipulation. Based on information provided by S&C, that work did not reveal any such other individuals.

4. Use of FTT to Inflate Alameda's Value

Apart from the attempts to manipulate the market price of FTT discussed above, prior investigations have concluded that Alameda's valuation of its FTT holdings using open market prices was itself unreasonable given the relatively illiquid market for FTT and the fact that FTT made up a significant portion of Alameda's balance sheet.

Based on these investigations, Alameda executives understood that if Alameda had sought to liquidate its outsized holdings, it could not have obtained the same prices reflected in the market for much smaller transactions. Ellison testified at Bankman-Fried's trial that she initially did not put Alameda's FTT holdings on Alameda's balance sheet, since it would have been "somewhat misleading because we wouldn't have been able to sell all the FTT for that much and it was much larger than the rest of the items on our balance sheet at the time."⁴⁵⁴ She similarly testified that, given that Alameda owned most of the FTT in circulation, "if Alameda

⁴⁵⁴ Transcript at 678:20-679:3, SBF Criminal Case, Dkt. No. 358.

had actually tried to sell the FTT that we owned, it would have ended up kind of making up way less than” the mark-to-market value reflected on the balance sheet.⁴⁵⁵

Wang similarly testified that if Alameda had sold all of its FTT in 2019 or 2020, “it would cause the price of FTT to drop by large amounts.”⁴⁵⁶ That was “[b]ecause there is not enough people who would want to buy all of the FTT that is being sold all at once at the price it was currently trading at.”⁴⁵⁷

In addition, prior investigations suggest that certain agents of the FTX Group may also have been aware of these risks. For example, in its investigation of Law Firm-1, Quinn Emanuel identified a December 2019 communication from Bankman-Fried to members of that firm in which Bankman-Fried acknowledged that “Alameda holds lots of FTT, which has a high market value but that market value could not be realized without crashing the market.”⁴⁵⁸ Quinn Emanuel concluded that the firm would have understood at the time that the FTX Group’s holdings in FTT were illiquid and thus posed a significant risk to the FTX Group’s solvency.⁴⁵⁹

5. The Buy and Burn Program

Bankman-Fried testified at trial that the buy and burn program was a key feature of FTT and functioned “similar to a share buyback. So if, for instance, FTX had \$3 million of revenue in a week, it would take 1 million of those dollars and use that to buy FTT tokens in the market, effectively giving value to FTT token holders.”⁴⁶⁰ While this program was touted as providing

⁴⁵⁵ *Id.* at 679:4-12.

⁴⁵⁶ Transcript at 378:9-14, SBF Criminal Case, Dkt. No. 352.

⁴⁵⁷ *Id.* at 378:15-19.

⁴⁵⁸ Document produced by Law Firm-1 to Quinn Emanuel.

⁴⁵⁹ Quinn Emanuel’s investigation has not, however, identified any evidence that this firm was aware of the efforts by the FTX Group to manipulate the market price of FTT.

⁴⁶⁰ Transcript at 2374:5-15, SBF Criminal Case, Dkt. No. 376.

value to ordinary holders of FTT, the CFTC has alleged that this program existed to inflate the value of the FTT that remained in circulation—the vast majority of which was held by Alameda.⁴⁶¹ Through post-Petition Date investigations, S&C similarly concluded that the program created upward pricing pressure on FTT.⁴⁶² S&C determined that the FTX Group spent approximately \$462 million of its approximately \$1.5 billion in gross revenue on this FTT buy and burn program in order to purchase FTT from existing token holders, including Alameda.⁴⁶³

S&C has also investigated certain aspects of FTT's buy and burn program. FTX Trading had represented that the FTT buy and burn program was conducted by Cottonwood Grove, a wholly owned subsidiary of Alameda, through the terms of a licensing agreement with FTX Trading.⁴⁶⁴ Pursuant to this agreement, dated April 15, 2019, Cottonwood Grove was to receive certain licensing fees from FTX Trading that it could use to repurchase tokens for burning. Bankman-Fried served as the signatory for both Cottonwood Grove and FTX Trading on this agreement.⁴⁶⁵ However, through its investigation, S&C concluded that the Cottonwood-FTX agreement was “likely illegitimate” and “likely an attempt to shield revenues from tax authorities.”⁴⁶⁶ Among other things, forensic experts retained by S&C did not identify any payments between FTX Trading and Cottonwood, which one would have expected to see if there was a legitimate licensing agreement between the companies.⁴⁶⁷

⁴⁶¹ *Commodity Futures Trading Comm'n v. Bankman-Fried*, No. 1:22-cv-10503 (S.D.N.Y.) (PKC), Dkt. No. 13 at ¶¶ 69-70.

⁴⁶² S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 175.

⁴⁶³ *Id.*

⁴⁶⁴ Cottonwood Agreement Summary, at 1,3.

⁴⁶⁵ Software License, Tokenization, and Co-Marketing Agreement, at 11, F10705-E000004616.

⁴⁶⁶ Cottonwood Agreement Summary, at 5, 10.

⁴⁶⁷ *Id.* at 6-8.

S&C also conducted an investigation into the actual mechanics of the FTT buy and burn program. S&C, with assistance from Alvarez & Marsal, determined that the buy and burn program was conducted through an FTX Trading account that bought FTT on the open market. A detailed review of data for the buy and burn transactions conducted by Alvarez & Marsal did not reveal any improper preferential trading, non-market price trading, or other potential manipulation conducted through this program.

III. Summary of Investigations into Other FTX-Affiliated Tokens

Compared to FTT, there has been more limited investigation into three other cryptocurrency tokens associated with the FTX Group: SRM, OXY, and MAPS (the “Other FTX-Affiliated Tokens”). As discussed in Section I(b) above, each of these tokens was in part created by, or otherwise associated with, Bankman-Fried. In addition, based on public reporting and exhibits introduced during the trial of Bankman-Fried, Alameda listed holdings of each of these tokens on its balance sheet.

Given this context, this Examination also considered prior investigatory work concerning these tokens, and whether the FTX Group may have also manipulated one or more of these tokens or otherwise used holdings of such tokens to inflate its value.

As set forth below, although the Other FTX-Affiliated Tokens do not appear to have been the principal focus of any investigation to date, certain information regarding these tokens has emerged from investigations into other subjects.

a. Investigative Work

1. Government Investigations and Actions

The complaints filed by the SEC and testimony elicited during the Bankman-Fried criminal trial focused principally on FTT as the subject of token manipulation. However, the complaints also allude to potential misconduct related to Other FTX-Affiliated Tokens.

The SEC complaints allege that “Bankman-Fried . . . misrepresented the risk profile of investing in FTX . . . by failing to disclose FTX’s exposure to Alameda and, relatedly, that the collateral Alameda deposited on FTX consisted largely of illiquid, FTX-affiliated tokens, including FTT.”⁴⁶⁸

During the Bankman-Fried trial, Ellison testified that Alameda had large holdings of SRM, MAPS, and OXY, and that these illiquid coins, along with FTT, were placed on Alameda’s balance sheet.⁴⁶⁹ Ellison also testified that Alameda had programmed models to support not only the price of FTT, but also SRM.⁴⁷⁰ This testimony is detailed further in the following section.

2. The Debtors’ Investigations

The Debtors do not appear to have conducted a dedicated investigation with the specific purpose of identifying manipulation of the Other FTX-Affiliated Tokens. However, these tokens are briefly addressed in certain materials shared with the Examiner.

Specifically, Quinn Emanuel’s investigation into Law Firm-1 also addressed certain issues concerning the creation and control of SRM by the FTX Group. The findings of this investigation are detailed below. In addition, in the Motion of Debtors to Estimate Claims Based on Digital Assets, the Debtors asserted that “Alameda’s balance sheet holdings of MAPS, OXY and SRM played a large role in Mr. Bankman-Fried’s fraud.”⁴⁷¹ Additionally, an expert proffered by the Debtors in support of that motion opined that the SRM, MAPS, and OXY tokens appeared “consistent with [a] strategy” to “artificially inflate the trading price of the

⁴⁶⁸ *Sec. & Exch. Comm’n v. Bankman-Fried*, No. 22-cv-10501 (S.D.N.Y.), Dkt. No. 1 at ¶ 29; *see also Sec. & Exch. Comm’n v. Ellison*, No. 22-cv-10794 (S.D.N.Y.), Dkt. No. 1 at ¶ 33 (substantially similar language).

⁴⁶⁹ Transcript at 681:17-683:7, SBF Criminal Case, Dkt. No. 358.

⁴⁷⁰ *Id.* at 719:22-720:16.

⁴⁷¹ Dkt. No. 9566 at ¶ 4.

token” through a restriction of free-float.⁴⁷² The Examiner understands that S&C has also investigated certain matters related to MAPS and OXY.

b. Investigative Findings

As set forth above, there has been relatively limited investigation concerning SRM, MAPS, and OXY. This section summarizes the current findings of these investigations based on information reviewed in this Examination.

1. Alameda’s Holdings of Illiquid Other FTX-Affiliated Tokens on Its Balance Sheet

At the trial of Bankman-Fried, Ellison testified that, as with FTT, the overall liquidity of these coins “was not very high.”⁴⁷³ Nevertheless, Alameda ultimately included each of these coins on its balance sheet.

At trial, the government introduced a consolidated balance sheet for Alameda for Q2 of 2022 that attributed roughly \$1 billion of Alameda’s \$14.6 billion in total reported assets to holdings of SRM, MAPS, and OXY.⁴⁷⁴ This included line items for \$182 million in unlocked SRM, \$160 million in unlocked MAPS, and \$37 million in unlocked OXY, as well as entries for roughly \$300 million in locked SRM, \$347 million in locked MAPS, and \$38 million in locked OXY.⁴⁷⁵ By comparison, the same balance sheet reported over \$5.8 billion in FTT assets (between “Unlocked FTT” and “FTT collateral”).⁴⁷⁶

As with FTT, Ellison testified that if Alameda attempted to sell all of its holdings in the Other FTX-Affiliated Tokens, “we would end up getting a lot less” than the value on the balance

⁴⁷² Dkt. No. 9566-2 at ¶ 10.

⁴⁷³ Transcript at 682:6-17, SBF Criminal Case, Dkt. No. 358.

⁴⁷⁴ GX-419 (Consolidated Balance Sheet 2022 Q2), SBF Criminal Case; *see also* Transcript at 811:2-14, SBF Criminal Case, Dkt. No. 360 (USAO-SDNY introducing balance sheets that Ellison prepared, including GX-419).

⁴⁷⁵ GX-419 (Consolidated Balance Sheet 2022 Q2), SBF Criminal Case.

⁴⁷⁶ *Id.*

sheet.⁴⁷⁷ Wang similarly testified that SRM and FTT were cryptocurrencies “that were illiquid” and so Alameda “wouldn’t be able to get the full value.”⁴⁷⁸ This is notable since, based on information provided by S&C, Alameda may have used its SRM holdings to collateralize certain loan obligations—although to a much lesser degree than with FTT.

2. Potential Manipulation of Other FTX-Affiliated Tokens

At the Bankman-Fried trial, Ellison testified that the low liquidity of a given token made it easier to move the price of that token through trades. She gave the following example:

So liquidity is a measure of how much market trading activity there is in something and how easy it is to buy and sell it without moving the price too much. So for some of these coins, like MAPS, if you tried to buy a little bit of MAPS, the price would go up a lot, and, conversely, if you tried to sell it, the price would go down a lot.⁴⁷⁹

Similarly, in postpetition litigation over the value of SRM, MAPS, and OXY, an expert retained by the Debtors opined that market prices for the tokens were based on amounts of tokens available for trading (free float), which were “*less than three percent* of the tokens’ maximum supply.”⁴⁸⁰ The Debtors’ expert observed that others, including Bankman-Fried, had acknowledged that restricting the free float of tokens could allow for the creators of those tokens to inflate the market values; they could then use those inflated market values to inflate the values of the tokens on their balance sheets.⁴⁸¹ The Debtors’ expert opined that “[t]he at-issue tokens appear to be consistent with this strategy.”⁴⁸² However, the Debtors’ expert did not investigate these tokens to determine if manipulation had actually occurred.

⁴⁷⁷ Transcript at 683:3-7, SBF Criminal Case, Dkt. No. 358.

⁴⁷⁸ *Id.* at 526:12-19.

⁴⁷⁹ *Id.* at 682:10-17.

⁴⁸⁰ Dkt. No. 9566-2 at ¶ 10 (emphasis in original).

⁴⁸¹ *Id.* at ¶ 10.

⁴⁸² Dkt. No. 9566-2 at ¶ 10.

At trial, Ellison testified that Alameda had trading models that “were generally set up to buy FTT and Serum as they went down,” in order to “support them, provide liquidity”—and that this was done in part to keep the price up.⁴⁸³ Based on information provided in this Examination, it does not appear that the Debtors specifically investigated these models.

3. Debtors’ Control of Serum

At the time SRM was launched, FTX Trading and Alameda disclosed that they had created the Serum Foundation, which built the Serum protocol.⁴⁸⁴ The Serum white paper represented, however, that “[w]hile we have built the Serum protocol, it is permissionless—*we do not hold special power anymore*. It is up to you, the crypto community, to use it as you will.”⁴⁸⁵ Contrary to such representations, Quinn Emanuel determined that the FTX Group in fact maintained the ability to exercise at least a certain degree of control over Serum.

Quinn Emanuel’s investigations further found that, at the instruction of the FTX Group’s employees, Law Firm-1 created the Serum Foundation with systems that would allow certain employees of the FTX Group to continue to exercise control over the Serum Foundation and the SRM token. Quinn Emanuel also found that individuals associated with the FTX Group used Law Firm-1 to create an entity called the Incentive Ecosystem Foundation in order to provide incentives for the SRM ecosystem and bolster SRM’s market price, while concealing that entity’s connection to the FTX Group.⁴⁸⁶ In addition, Quinn Emanuel found that, unbeknownst

⁴⁸³ Transcript at 719:20-720:16, SBF Criminal Case, Dkt. No. 358.

⁴⁸⁴ Anatoly Yakovenko, *FTX Chooses Solana for Serum: A High-Speed, Non-Custodial Decentralized Derivatives Exchange*, Medium (July 27, 2020), <https://medium.com/solana-labs/ftx-chooses-solana-for-serum-a-high-speed-non-custodial-decentralized-derivatives-exchange-c346a27c1f2b>, archived at <https://perma.cc/672K-GZJU>.

⁴⁸⁵ Serum Foundation, *Serum—White Paper*, 11 (July 2020) (emphasis added), <https://whitepaper.io/document/626/serum-whitepaper>, archived at <https://perma.cc/GWZ4-EQTC>.

⁴⁸⁶ See Andrew Thurman, *Solana DeFi Major Serum’s ‘Incentive Ecosystem Foundation’ Is Raising \$100M*, CoinDesk (Jan. 7, 2022), <https://www.coindesk.com/business/2022/01/07/solana-defi-major-serums-incentive-ecosystem-foundation-is-raising-100m/>, archived at <https://perma.cc/7XS8-AS8A> (article quotes an “pseudonymous Serum core contributor JHL” who framed the foundation as a part of Serum separating itself from the FTX Group).

to the public, the FTX Group and certain affiliated individuals could control the burn of SRM tokens during a transition period. However, Quinn Emanuel has not identified any evidence that Law Firm-1 was aware of any actual manipulation of the buy and burn program.

S&C directed an investigation into Solana, the blockchain platform used for Serum. Although this investigation identified a “significant level of collaboration between the FTX and Solana teams,”⁴⁸⁷ the investigation did not find that Solana was aware of any improper control or manipulation by the FTX Group in connection with the Serum Foundation or the SRM token.

4. The Debtors’ Involvement with MAPS and OXY

As discussed above, contemporaneous public reports disclosed that Bankman-Fried and/or Alameda had invested in MAPS and OXY, and that Bankman-Fried served as an advisor to both MAPS and OXY. Investigatory work by the Debtors during the bankruptcy cases has revealed additional connections.

First, in a filing in the bankruptcy cases, the Debtors reported that Friedberg—the former General Counsel of Alameda—“commissioned the White Paper for Maps and drafted significant portions of it in October 2020.”⁴⁸⁸

Second, S&C requested that Nardello investigate certain matters concerning MAPS Vault, an entity owned by Alexander Grebnev and Victor Mangazeev.⁴⁸⁹ Grebnev and Mangazeev are listed as the co-founders of MAPS and OXY in the respective white papers.⁴⁹⁰ The January 31, 2024 Nardello investigation memorandum does not address any potential

⁴⁸⁷ Nardello, *Memorandum re: Solana*, Sept. 19, 2023, at 18.

⁴⁸⁸ Dkt. No. 9566 at ¶ 25.

⁴⁸⁹ Nardello, *Memorandum re: Potential Claimant—MAPS Vault Limited*, Jan. 31, 2024 (“MAPS Vault Memo”), at 2.

⁴⁹⁰ See Maps.me, *Maps—White Paper*, 9 (Jan. 2021), <https://maps.me/token/MAPS.pdf>, archived at <https://perma.cc/GRM4-HKWH>; Oxygen, *Oxygen: The Prime Brokerage Protocol White Paper*, 9-10 (Dec. 2020), <https://www.oxygen.org/Oxygen.pdf>, archived at <https://perma.cc/H894-8EJE>.

manipulation of MAPS or OXY. However, the investigation found that companies associated with both MAPS and OXY had signed agreements with Cottonwood Grove—a subsidiary of Alameda.⁴⁹¹

IV. Conclusion

As set forth above, the Bankruptcy Court charged the Examiner with determining “whether the Investigations adequately addressed the Debtors’ use of its cryptocurrency, FTT, to inflate the value of FTX and Alameda Research.”⁴⁹² This Examination also considered the same question with respect to the Other FTX-Affiliated Tokens, three other cryptocurrency tokens closely associated with the FTX Group.

Based on the information and materials reviewed in the course of this Examination, and given the objectives of the bankruptcy process and this Examination, the Examiner concludes that prior investigations have adequately addressed whether the FTX Group used these cryptocurrency tokens to inflate its value.

To be sure, the investigations to date may not have identified every instance in which FTT or other cryptocurrency tokens may have been manipulated by the FTX Group or otherwise used to inflate the value of the FTX Group, including Alameda, prior to the Petition Date. In particular, the investigations into the Other FTX-Affiliated Tokens have been relatively limited to date, despite indications that those tokens had the potential to be manipulated in a similar manner as FTT. On the other hand, the Other FTX-Affiliated Tokens were less prominent and comprised a significantly smaller portion of Alameda’s balance sheet. Moreover, the Examiner

⁴⁹¹ MAPS Vault Memo, at 5 (finding that Cottonwood Grove signed a \$15 million revolving loan agreement with MAPS Vault, and that Cottonwood Grove signed an agreement with Oxygen to coordinate any private sales of tokens over \$1 million).

⁴⁹² Scope Order at ¶ 3.

understands that certain investigations related to the Other FTX-Affiliated Tokens remain ongoing.

Overall, the Examiner concludes that further investigation into these subjects is unlikely to confer significant additional benefit on the estates or the public at this juncture. As set forth above, questions concerning token manipulation and inflation of assets by the FTX Group have been investigated by multiple government agencies, as well as multiple professionals retained by the Debtors. The findings across these investigations are largely consistent and have already identified several methods of manipulation as well as the individuals primarily involved in such conduct. Although further investigation by the Examiner into token manipulation might reveal additional instances of manipulation or other individuals who facilitated such conduct, such an investigation would require significant time and resources that is likely to outweigh any marginal benefit conferred on the estates or the public.

PART 5: MISCONDUCT BY PROFESSIONALS ENGAGED BY THE FTX GROUP

In addition to reporting on the three enumerated issues in the Scope Order, the Examiner was charged with “summariz[ing] the investigations of the Debtors” and “mak[ing] recommendations for additional investigations.”⁴⁹³ Pursuant to that obligation, this Part examines and summarizes investigations into professional service firms used by the FTX Group. A summary of investigations into other issues involving the FTX Group—beyond the three issues enumerated in the Scope Order and the FTX Group’s professional service firms—follows in Part Six.

After the FTX Group filed its Chapter 11 petitions, Quinn Emanuel was retained as conflicts counsel and directed to undertake a comprehensive investigation of any professionals the FTX Group engaged prior to the Petition Date. In total, Quinn Emanuel identified 195 different law firms, auditors, accountants, financial consultants, and other professionals engaged by the FTX Group between 2017 and 2022 (collectively, “Professionals”).⁴⁹⁴ The vast majority of Professionals investigated were law firms.⁴⁹⁵ Quinn Emanuel, with Alvarez & Marsal and S&C, used the FTX Group’s books and records to identify these firms by locating engagement letters, payments for “Legal Services” or “Professional Services” as reflected in the general ledgers, bank statements, and FTX Exchanges.⁴⁹⁶ Additionally, as Quinn Emanuel’s parallel investigations into the FTX Group’s venture investments and the FTX leadership progressed, it identified several other entities the FTX Group had engaged.⁴⁹⁷

⁴⁹³ Scope Order at ¶ 2.

⁴⁹⁴ Professionals Report, at 1.

⁴⁹⁵ *Id.* at 5.

⁴⁹⁶ *Id.* at 6-7.

⁴⁹⁷ *Id.* at 3, 7.

For the purposes of determining the type of investigation to be undertaken, Quinn Emanuel assigned each Professional to a group depending on the nature and extent of the professional services provided, as well as Quinn Emanuel's determination of the total fees paid to the Professional based on its analysis of the FTX Group's books and records.⁴⁹⁸ Each engagement was first reviewed to determine whether it potentially related to, or touched on, the subject of FTX leadership misconduct, including: (1) the treatment of FTX.com customer deposits and funds; (2) the use of the FTX exchanges' customer funds; (3) the sources of assets available to Alameda and other FTX Group entities; (4) the use of FTX Group assets to make venture investments; (5) statements and representations to the FTX exchanges' customers, Alameda's lenders and creditors, regulators, and the investing public generally; (6) interactions with foreign government officials in connection with regulations, licensure, and the disposition of FTX Group cryptocurrency; and (7) legal and internal controls within the FTX Group (collectively, the "Investigative Topics").⁴⁹⁹

Section I discusses the law firms that provided prepetition legal services to the FTX Group; Section II discusses the FTX Group's auditors; Section III discusses the FTX Group's accountants; Section IV discusses the FTX Group's valuation firms; Section V discusses the consultants that provided the FTX Group regulatory, compliance, and licensing services; Section VI discusses the FTX Group's government and community relations consultants; Section VII discusses the FTX Group's lobbyists; Section VIII discusses other professional vendors hired by

⁴⁹⁸ *Id.* at 6-7; *see also id.* at Appendix A.

⁴⁹⁹ Quinn Emanuel developed these investigative topics after reviewing several publicly filed documents—including the Fifth Superseding Indictment returned on March 27, 2023 against Bankman-Fried; the proceedings leading up to and including the criminal trial of Bankman-Fried; and the findings presented in the First and Second Interim Reports regarding FTX Group's control failures—as well as the Debtors' investigations into FTX leadership, investment and venture acquisitions, and the facts developed through the Debtors' prosecution of civil actions. *Id.* at 4-5.

the FTX Group; and Section IX discusses the FTX Group's banks and financial institutions. Finally, Section X explains the bases for the Examiner's conclusion that, at this time, none of these prepetition professionals warrant further investigation by him.

I. Law Firms

Quinn Emanuel identified 145 law firms that provided prepetition legal services to the FTX Group.⁵⁰⁰ Quinn Emanuel categorized each firm into one of three tiers based on criteria reflected below:

Table 1			
	Tier One	Tier Two	Tier Three
Primary Criteria	Services significantly intersected with the Investigative Topics OR fees over \$1 million	> \$100k Fees AND intersection between services and Investigative Topics	< \$100k Fees AND no apparent intersection between services and Investigative Topics
Depth of Investigation	<ul style="list-style-type: none"> • Scope of engagement • Invoices • Review internal documents • Rule 2004 Requests • Investigatory memoranda 	<ul style="list-style-type: none"> • Scope of engagement • Invoices • Review relevant internal documents 	<ul style="list-style-type: none"> • Scope of engagement • Invoices

Initially, Tier One comprised 29 law firms, Tier Two comprised 17 firms, and Tier Three included 99 firms.⁵⁰¹ Twenty-three of the Tier Two and Tier Three law firms were later reclassified to Tier One after Quinn Emanuel determined that the scope of these engagements potentially intersected with certain Investigative Topics.⁵⁰²

⁵⁰⁰ *Id.* at 7; *see also id.* at Appendix B.

⁵⁰¹ *Id.* at 9.

⁵⁰² *See id.* at Appendix B; *see also id.* at 13.

a. Tier One Law Firms

The law firms subject to Tier One investigation received more than \$1 million in fees or provided services that touched on the Investigative Topics. Tier One was subject to the most rigorous investigation. The process included Bankruptcy Rule 2004 requests, a review of the FTX Group's internal documents, and preparation of investigatory memoranda.⁵⁰³ In response to its Bankruptcy Rule 2004 requests, Quinn Emanuel received and reviewed approximately 222,500 documents. Simultaneously, Quinn Emanuel reviewed approximately 226,000 documents in the FTX Group's possession that were specifically tied to known Professionals' names and email addresses.⁵⁰⁴ The investigation concluded that the Tier One law firms were paid approximately \$54.7 million in fees.

b. Tier Two Law Firms

Seventeen law firms were initially categorized as Tier Two (i.e., the firm was paid more than \$100,000 and had some engagements related to the Investigative Topics).⁵⁰⁵ Quinn Emanuel analyzed their: (1) scope of engagement; (2) invoices; and (3) other relevant documents and communications maintained by the FTX Group.⁵⁰⁶ In the course of the Tier Two investigation, Quinn Emanuel escalated 10 firms to Tier One investigatory scrutiny.⁵⁰⁷ For the remaining seven law firms, Quinn Emanuel found that they provided general corporate, general

⁵⁰³ Professionals Report, at 3, 9.

⁵⁰⁴ *Id.* at 11.

⁵⁰⁵ *Id.* at 12-13.

⁵⁰⁶ *Id.* at 13.

⁵⁰⁷ *Id.*; *see also id.* at Appendix B.

employment, or immigration services not relevant to the Investigative Topics.⁵⁰⁸ Accordingly, Quinn Emanuel determined that these seven law firms did not warrant further scrutiny.⁵⁰⁹

c. Tier Three Law Firms

The remaining 99 law firms, all of whom invoiced the FTX Group less than \$100,000, were investigated as Tier Three firms.⁵¹⁰ Quinn Emanuel reviewed these firms' invoices and engagement letters to assess whether any warranted further investigation.⁵¹¹ Ultimately, Quinn Emanuel concluded that 13 of these firms should be escalated to Tier One scrutiny, as the firms provided legal services significantly related to the Investigative Topics.⁵¹² The remaining 86 Tier Three firms were not subject to further investigation.⁵¹³

d. Witnesses Interviewed in Connection with Law Firm Investigations

In addition to reviewing documents, Quinn Emanuel and S&C interviewed former FTX Group in-house attorneys and compliance officers.⁵¹⁴ These individuals were interviewed to provide additional background on the prepetition law firms and their work for the FTX Group, as well as to provide more detail on issues such as whistleblower complaints and how they were addressed.

e. Summary of Notable Findings Concerning Law Firms⁵¹⁵

This Section discusses Quinn Emanuel's investigation into certain Tier One law firms, the law firms subject to the most rigorous investigation. In general, Quinn Emanuel determined

⁵⁰⁸ *Id.* at 13.

⁵⁰⁹ *Id.*

⁵¹⁰ *Id.*

⁵¹¹ *Id.*

⁵¹² *Id.* at Appendix B.

⁵¹³ *Id.* at 13.

⁵¹⁴ *Id.* at 14.

⁵¹⁵ An analysis of notable findings concerning S&C is included in Part 2, *supra*.

that the FTX Group selected law firms in a disorganized and haphazard manner. Only Law Firm-1 was entrusted with a bird's-eye view. Otherwise, law firms were generally given discrete tasks on an ad hoc basis and work was often duplicated among law firms. As a result, at times, law firms received fees without providing meaningful services. However, Quinn Emanuel's investigation also determined that most law firms' work did not intersect with misconduct at the FTX Group.

1. Law Firm-1

Quinn Emanuel's investigation established that Law Firm-1 was perhaps the law firm most intertwined with the FTX leadership and, unlike other Professionals, had unique access to a vast range of matters and information on behalf of the FTX Group. As of February 2024, Quinn Emanuel reviewed approximately 68,000 documents through strategic searches of the FTX Group's internal database and documents produced by non-law firm third parties (together, the "Database").⁵¹⁶ Quinn Emanuel also obtained more than 183,136 documents from Law Firm-1 through its Bankruptcy Rule 2004 requests.⁵¹⁷ Notably, however, Law Firm-1 frequently used ephemeral messaging platforms such as Signal⁵¹⁸ to communicate with individuals at the FTX Group and, to date, has only produced 144 individual or group chats between Law Firm-1 and FTX Group employees.⁵¹⁹ Only 18 of those chats still contained messages; the remainder only showed that a group message had once existed, but did not contain any content. As of May 2024, Law Firm-1's production and Quinn Emanuel's investigation remain ongoing.⁵²⁰

⁵¹⁶ Quinn Emanuel, *Presentation Regarding FTX Professionals, Legal Insiders, and Venture Investments to Chapter 11 Examiner Robert J. Cleary, Esq.*, Mar. 22, 2024, at 12.

⁵¹⁷ Professionals Report, at 19.

⁵¹⁸ Ephemeral messaging applications are programs that allow messages to be automatically deleted at some point following receipt of a message. *See supra* note 151.

⁵¹⁹ Professionals Report, at 21.

⁵²⁰ *Id.* at 19 n.32.

Joseph Bankman selected Law Firm-1 as Alameda's outside counsel in October 2017.⁵²¹ Law Firm-1 then served as the FTX Group's primary U.S. outside counsel and advised the company on issues of employment, tax, lending agreements, acquisitions, regulatory matters, government investigations, compliance and risk mitigation, equity incentives, partnership agreements, trademark enforcement, intercompany services agreements, purchase agreements, and financing.⁵²² Between 2018 and 2022, Law Firm-1 received more than \$22 million in legal fees from the FTX Group.⁵²³

In 2018, while Friedberg was a partner at Law Firm-1, Joseph Bankman encouraged Bankman-Fried to employ Friedberg in a central role at Alameda.⁵²⁴ Friedberg and Can Sun left Law Firm-1 to join the FTX Group, in January 2020 and August 2021, respectively.⁵²⁵ Friedberg served as both the Chief Compliance Officer for FTX.US and General Counsel of Alameda, and Sun was the General Counsel for FTX Trading.⁵²⁶ However, the relationship between Law Firm-1 and the FTX Group went beyond Friedberg and Sun. Joseph Bankman maintained unusually close personal relationships with various other Law Firm-1 lawyers, which sometimes translated into subsidizing perks for certain Law Firm-1 attorneys, such as paying for travel and admittance to sporting events.⁵²⁷

Quinn Emanuel found that Law Firm-1 was involved in an expansive range of matters, including those that closely intersected with core aspects of the FTX Group's improper

⁵²¹ *Id.* at 18-19.

⁵²² *Id.* at 19.

⁵²³ *Id.* at 19; *see also id.* at Appendix A.

⁵²⁴ *Id.* at 19.

⁵²⁵ *Id.* at 19-20.

⁵²⁶ *Id.* at 20.

⁵²⁷ *Id.*

operations and management. For example, Law Firm-1 attorneys were directly involved in the following:

- The FTX Group’s issuance of “founder loans,” which were used to move at least \$2 billion in cash and assets among FTX Group entities, as well as directly into the personal accounts of FTX Group leadership;
- Friedberg’s creation of a backdated payment agent agreement between FTX Trading and Alameda;
- FTX Group leadership’s efforts to obfuscate from government regulators and investors the close relationship between FTX Trading and Alameda;
- FTX Group leadership’s efforts to use unconventional settlements to silence credible whistleblowers; and
- FTX Group’s efforts to downplay its involvement with, and control over, the Serum Foundation.⁵²⁸

Given Law Firm-1’s role and retention concerning several matters related to the misconduct of the FTX Group leadership, Quinn Emanuel continues to assess these facts and evaluate what additional steps it might advise the Debtors to take.⁵²⁹

2. Law Firm-2

Quinn Emanuel reviewed all 15,742 documents produced by Law Firm-2 in response to Bankruptcy Rule 2004 requests and approximately 15,950 of the FTX Group’s own documents relating to Law Firm-2 identified using various search terms.⁵³⁰

Quinn Emanuel’s review revealed that Ryne Miller selected Law Firm-2 as counsel for the FTX Group in December 2021.⁵³¹ Law Firm-2 was then formally engaged by the FTX

⁵²⁸ *Id.* at 21.

⁵²⁹ *Id.* at 21-22.

⁵³⁰ *Id.* at 29.

⁵³¹ *Id.*

Group and worked continuously on FTX Group matters, primarily on issues related to the FTX Group's venture investments, until November 2022.⁵³²

Many of the venture investments on which Law Firm-2 advised the FTX Group or a counterparty failed, came under regulatory scrutiny, or both.⁵³³ The FTX Group's in-house counsel typically instructed Law Firm-2 to perform little to no diligence on pending venture investments, and Law Firm-2 complied with this client directive.⁵³⁴ Law Firm-2 itself internally flagged the FTX Group's "light" approach to due diligence on several occasions.⁵³⁵

Additionally, Quinn Emanuel's investigation raised questions about the extent to which Law Firm-2 consistently conveyed the full extent of legal risks to the FTX Group, in particular regarding the risks of performing minimal or no diligence prior to executing transactions. The investigation also identified transactions where Law Firm-2 represented a counterparty to the FTX Group during the same period of time that Law Firm-2 represented FTX Group entities in separate transactions.⁵³⁶ Many of these transactions did not include conflicts waivers.⁵³⁷

3. Law Firm-3

Quinn Emanuel reviewed approximately 2,755 documents produced by Law Firm-3 in response to FTX Group's Bankruptcy Rule 2004 requests, and 5,845 documents maintained by the FTX Group.⁵³⁸ Quinn Emanuel concluded that FTX Trading engaged Law Firm-3 from November 2021 until November 2022 for services related to its venture investments. However,

⁵³² *Id.*

⁵³³ *Id.* at 30.

⁵³⁴ *Id.* at 33.

⁵³⁵ Quinn Emanuel, *Memorandum re: FTX Investigations Review of Law Firm-2*, Apr. 29, 2024, ("Law Firm-2 Report"), at 11.

⁵³⁶ Law Firm-2 Report, at 35.

⁵³⁷ *See id.* at 36-37.

⁵³⁸ Professionals Report, at 33-34.

Law Firm-3 also provided services to other FTX Group entities, including Alameda Ventures, FTX Ventures, Alameda Research Ltd., and Alameda Research Ventures LLC.⁵³⁹ As he did with Law Firm-2, FTX Group’s in-house counsel routinely instructed Law Firm-3 to perform little to no due diligence on multiple investments and Law Firm-3 complied with these directives.⁵⁴⁰

4. Law Firm-4

Quinn Emanuel sent Rule 2004 requests to Law Firm-4, a Swiss law firm.⁵⁴¹ However, Law Firm-4 refused to produce documents without the approval of FTX Europe AG’s sole remaining board member, Dr. Marcel Lötscher, who did not grant his approval.⁵⁴² Accordingly, Quinn Emanuel’s investigation of Law Firm-4 was limited to an analysis of approximately 1,770 documents from the Database.⁵⁴³ The review revealed that from October 2021 through November 2022, Law Firm-4 provided services to various FTX Group entities, including FTX Trading, FTX Europe AG, and Alameda Ventures. This work was done in support of the FTX Group’s strategy to enter the European cryptocurrency market by acquiring or investing in European entities, including Digital Assets DA AG (“DAAG”).⁵⁴⁴ Additionally, Law Firm-4 provided tax, regulatory, and general corporate advice in connection with the FTX Group’s European expansion.⁵⁴⁵ Consistent with their instructions to Law Firm-2 and Law Firm-3, the

⁵³⁹ *Id.* at 34.

⁵⁴⁰ *Id.*

⁵⁴¹ *Id.* at 35.

⁵⁴² *Id.* Dr. Lötscher moved to dismiss FTX Europe AG’s Chapter 11 filing on November 17, 2023, arguing that the filing was not authorized under Swiss law. *See* Dkt. No. 4037. That motion was withdrawn on April 3, 2024. Dkt. No. 11028.

⁵⁴³ Professionals Report, at 35.

⁵⁴⁴ *Id.* The DAAG acquisition is discussed in greater detail in Part 6 *infra*.

⁵⁴⁵ *Id.*

FTX Group’s in-house counsel repeatedly instructed Law Firm-4 to provide minimal or no due diligence on potential acquisitions and Law Firm-4 complied with these instructions.⁵⁴⁶

5. Law Firm-5

Quinn Emanuel served Bankruptcy Rule 2004 requests on Law Firm-5, an Australian law firm, but the firm refused to produce documents.⁵⁴⁷ Accordingly, Quinn Emanuel’s investigation drew on a review of over 10,000 documents from the Database.⁵⁴⁸ Quinn Emanuel concluded that Law Firm-5 provided services to the FTX Group in Australia from March 2020 to November 2022.⁵⁴⁹ The majority of this work related to the FTX Group’s acquisition of fintech businesses Hive Empire Trading Pty Ltd. (“HiveEx”), IFS Markets Pty Ltd., and TigerWit Holdings Ltd. (together with TigerWit Limited (UK), “TigerWit”).⁵⁵⁰ The FTX Group used HiveEx and IFS Markets Pty Ltd. to form the basis of FTX Australia.⁵⁵¹

Eventually, Law Firm-5’s role grew to include negotiating settlements to avoid negative publicity for the FTX Group.⁵⁵² For example, in July 2021, Law Firm-5 arranged for the incorporation of a Cayman Islands company, 707,016 Ltd., to pay off the creditors of Alex Saunders, an Australian crypto-influencer.⁵⁵³ Saunders was alleged to have used borrowed funds to trade on FTX.com, but lost the funds that he traded.⁵⁵⁴ To mitigate any reputational harm and

⁵⁴⁶ Professionals Report, at 35.

⁵⁴⁷ *Id.* at 36.

⁵⁴⁸ *Id.*

⁵⁴⁹ *Id.* at 36-37.

⁵⁵⁰ *Id.* at 37.

⁵⁵¹ *Id.*

⁵⁵² *Id.*

⁵⁵³ *Id.*

⁵⁵⁴ *Id.*

avoid potential litigation, FTX Trading loaned Saunders \$13.2 million through 707,016 Ltd. to enable Saunders to pay off his debts.⁵⁵⁵ Saunders has not repaid this loan.⁵⁵⁶

A partner at Law Firm-5, who was the FTX Group's primary contact at the firm, personally received at least \$727,402 in "finder's fees" for certain acquisitions that he suggested.⁵⁵⁷ Law Firm-5 notified Quinn Emanuel in December 2023 that it holds AUD \$578,836.82 in trust for FTX Trading, and that it has claims in the amount of AUD \$252,787.54 (excluding interest) for unpaid fees.⁵⁵⁸

6. Paul Hastings

FTX.US engaged Paul Hastings in May 2022 to provide regulatory advice on certain compliance matters.⁵⁵⁹ Paul Hastings invoiced FTX.US \$49,628, but received just \$17,678 for its services.⁵⁶⁰ Despite the receipt of comparatively modest fees from the FTX Group, Quinn Emanuel subjected Paul Hastings to a more fulsome review due to its role in the bankruptcy cases as counsel to the Unsecured Creditors' Committee. Quinn Emanuel did not serve Bankruptcy Rule 2004 requests on Paul Hastings.⁵⁶¹ Quinn Emanuel's investigation did not uncover any evidence that Paul Hastings engaged in any misconduct or knew of any improprieties by the FTX leadership.⁵⁶²

⁵⁵⁵ *Id.*

⁵⁵⁶ *Id.*

⁵⁵⁷ Quinn Emanuel, *FTX Investigative Review: Law Firm-5*, May 12, 2024, at 1.

⁵⁵⁸ *Id.*

⁵⁵⁹ Professionals Report, at 40.

⁵⁶⁰ *Id.*

⁵⁶¹ *Id.* at Appendix B.

⁵⁶² *Id.* at 40-41.

7. Anderson Mōri & Tomotsune

Anderson Mōri & Tomotsune (“AMT”) advised Alameda Research K.K. in connection with the FTX Group’s expansion into Japan and Japanese operations. This included providing sporadic regulatory and corporate advice.⁵⁶³ Quinn Emanuel did not serve Bankruptcy Rule 2004 requests on AMT.⁵⁶⁴ AMT was paid approximately \$1 million in legal fees over the course of its representation.⁵⁶⁵ Quinn Emanuel did not identify evidence that AMT engaged in any wrongdoing or had knowledge of the FTX insiders’ misconduct.⁵⁶⁶

8. Law Firm-6

Quinn Emanuel served Bankruptcy Rule 2004 requests on Law Firm-6, and Law Firm-6 produced 3,599 documents in response.⁵⁶⁷ Alameda and Alameda Research Ltd. retained Law Firm-6 in connection with responses to SEC and CFTC document requests related to the entities’ relationship with Tether/Bitfinex.⁵⁶⁸ Through its investigation, Quinn Emanuel found that Friedberg engaged Law Firm-6 because Law Firm-1—which would have been his first choice—was conflicted. Law Firm-1 represented FTX.US before the SEC regarding the Tether/Bitfinex matter.⁵⁶⁹ Quinn Emanuel discovered that, in responding to the SEC, Law Firm-6 did not produce a document that, according to a Law Firm-6 attorney’s notes, raises “[w]orry about market manipulation issues.”⁵⁷⁰ Quinn Emanuel did not locate this document in either the

⁵⁶³ *Id.* at 42.

⁵⁶⁴ *Id.* at Appendix B.

⁵⁶⁵ *Id.* at 42.

⁵⁶⁶ Quinn Emanuel, *Memorandum re: FTX Investigations Review of Anderson, Mori & Tomotsune*, Mar. 14, 2024, at 13.

⁵⁶⁷ Professionals Report, at Appendix B.

⁵⁶⁸ *Id.* at 42-43.

⁵⁶⁹ *Id.* at 42.

⁵⁷⁰ *Id.* at 43.

documents produced by Law Firm-6 or in the FTX Group’s own records.⁵⁷¹ Relatedly, some Law Firm-6 attorneys used Signal to communicate with the FTX Group’s in-house counsel, which, due to the ability for the messages to auto-delete, also raised questions as to whether all communications were retained.⁵⁷²

9. Law Firm-7

Quinn Emanuel did not issue Bankruptcy Rule 2004 requests to Law Firm-7.⁵⁷³ Law Firm-7 was engaged by FTX.US to assist with its application to the New York State Department of Financial Services for a Limited Purpose Trust Company Charter (“LPTCC”), a necessary license to engage in a virtual currency business in New York.⁵⁷⁴ Quinn Emanuel located documents in which Law Firm-7 voiced its concerns that, in preparing the LPTCC application, FTX.US marked its policies concerning risk assessments and other internal controls as “final” without sufficient review.⁵⁷⁵ Nonetheless, at the FTX Group’s direction, Law Firm-7 filed the LPTCC application on March 18, 2022.⁵⁷⁶ No license was granted as of the Petition Date.⁵⁷⁷ Law Firm-7 also provided employment advice to Alameda regarding candidate employees’ noncompete agreements with their prior employers. Quinn Emanuel did not identify any issues with this engagement.⁵⁷⁸ Quinn Emanuel determined that Law Firm-7 did not appear to have engaged in any actionable misconduct. While Law Firm-7 may have had some knowledge of

⁵⁷¹ *Id.*

⁵⁷² *Id.*

⁵⁷³ *Id.* at Appendix B.

⁵⁷⁴ *Id.* at 43-44.

⁵⁷⁵ *Id.* at 44.

⁵⁷⁶ *Id.*

⁵⁷⁷ *Id.*

⁵⁷⁸ Quinn Emanuel, *Memorandum of FTX Investigations Review of Law Firm-6*, Nov. 21, 2023, at 1.

FTX.US's deficiencies in policy formation and implementation, the firm attempted to improve those policies.⁵⁷⁹

10. Skadden Arps Slate Meagher & Flom LLP

Quinn Emanuel served a Bankruptcy Rule 2004 request, and Skadden Arps Slate Meagher & Flom LLP ("Skadden") produced 874 documents in response.⁵⁸⁰ Skadden advised FTX.US concerning its political donations and lobbying activities.⁵⁸¹ Quinn Emanuel found that, shortly before the Petition Date, Skadden raised numerous concerns regarding undisclosed political contributions by FTX.US.⁵⁸² Skadden was paid \$370,931 for its legal services.⁵⁸³

11. Simmons & Simmons

FTX Trading retained Simmons & Simmons JWS Pte. Ltd ("Simmons & Simmons"), which produced over 100 memoranda on whether certain tokens available on the FTX exchange qualified as regulated assets under Singaporean law.⁵⁸⁴ Quinn Emanuel has not located a formal engagement letter with Simmons & Simmons, and it has not served Simmons & Simmons with a Bankruptcy Rule 2004 request.⁵⁸⁵ Simmons & Simmons received \$544,364 in legal fees.⁵⁸⁶

12. Willkie Farr & Gallagher LLP

Quinn Emanuel served Bankruptcy Rule 2004 requests on Willkie Farr & Gallagher LLP ("Willkie"), which produced 1,277 documents in response.⁵⁸⁷ FTX.US retained Willkie to

⁵⁷⁹ *Id.* at 8.

⁵⁸⁰ Professionals Report, at Appendix B.

⁵⁸¹ *Id.* at 44.

⁵⁸² *Id.*

⁵⁸³ *Id.*

⁵⁸⁴ *Id.* at Appendix B.

⁵⁸⁵ *Id.* at 45, Appendix B.

⁵⁸⁶ *Id.* at 44, Appendix A.

⁵⁸⁷ *Id.* at Appendix B.

advise on legal and regulatory options available to allow LedgerX to operate a derivatives exchange without collateral requirements on retail customers' derivatives, and on registration requirements for certain licenses.⁵⁸⁸ Eventually, Willkie assisted FTX.US with its lobbying efforts to change the relevant regulations, as the only available options to obtain such licenses risked opening up Alameda's trading activity to regulators.⁵⁸⁹ Willkie received \$293,632 for its legal services.⁵⁹⁰ Quinn Emanuel did not uncover any evidence suggesting that Willkie knew of any misconduct by the FTX leadership.

13. Orrick, Herrington & Sutcliffe LLP

Quinn Emanuel served Bankruptcy Rule 2004 requests on Orrick Herrington & Sutcliffe LLP ("Orrick"), which produced 219 documents in response.⁵⁹¹ FTX Trading retained Orrick in connection with Whistleblower-5's allegations, described *supra*, at Part 3, Section III(e).⁵⁹² Specifically, Orrick's role was limited to drafting Whistleblower-5's separation agreement, preparing talking points, and conducting legal research. Quinn Emanuel concluded that Orrick's role in this matter was limited, and did not find any evidence suggesting that Orrick knew of any misconduct by the FTX leadership outside the context of Whistleblower-5's allegations. Orrick was not asked to investigate those allegations.⁵⁹³ Orrick received \$20,762 in legal fees.⁵⁹⁴

⁵⁸⁸ *Id.* at 45.

⁵⁸⁹ *Id.*

⁵⁹⁰ *Id.*

⁵⁹¹ *Id.* at Appendix B.

⁵⁹² *Id.* at 52, 55 & n.158.

⁵⁹³ *Id.* at 52.

⁵⁹⁴ *Id.*

14. Holland & Knight LLP

Quinn Emanuel served Bankruptcy Rule 2004 requests on Holland & Knight LLP (“Holland & Knight”), which provided 10,136 documents in response.⁵⁹⁵ Holland & Knight advised FTX Trading on a whistleblower’s allegations, and various immigration matters.⁵⁹⁶ Quinn Emanuel concluded that Holland & Knight’s role in advising on the whistleblower’s allegations was primarily limited to drafting a settlement agreement. Quinn Emanuel did not find any evidence suggesting that Holland & Knight knew of any misconduct by the FTX leadership outside the context of the whistleblower’s allegations. Holland & Knight was not asked to investigate those allegations.⁵⁹⁷ Holland & Knight received \$64,998 in legal fees.⁵⁹⁸

15. Silver Miller Law

Quinn Emanuel served Bankruptcy Rule 2004 requests on Silver Miller Law (“Silver Miller”), which provided 272 documents in response.⁵⁹⁹ The FTX Group retained Silver Miller to provide legal advice concerning a wide array of regulatory matters, and a whistleblower’s allegations.⁶⁰⁰ Quinn Emanuel concluded that Silver Miller’s role in advising on the whistleblower’s allegations was limited, and Quinn Emanuel did not find any evidence suggesting that Silver Miller knew of any misconduct by the FTX leadership outside the context of the whistleblower’s allegations. Silver Miller was not asked to investigate those allegations.⁶⁰¹ Silver Miller received \$760,000 in legal fees.⁶⁰²

⁵⁹⁵ *Id.* at Appendix B.

⁵⁹⁶ *Id.* at 52.

⁵⁹⁷ *Id.*

⁵⁹⁸ *Id.*

⁵⁹⁹ *Id.* at Appendix B.

⁶⁰⁰ *Id.* at 52.

⁶⁰¹ *Id.*

⁶⁰² *Id.*; *see also id.* at Appendix A.

16. Pavel Pogodin/Consensus Law

Quinn Emanuel did not receive a response to their Bankruptcy Rule 2004 requests to Pavel Pogodin or his law firms.⁶⁰³ As noted above, *supra*, at Part 3, Section III(e), Pogodin held himself out as an attorney specializing in legal issues related to cryptocurrency.⁶⁰⁴ His law firm, Consensus Law, was retained by the FTX Group after Pogodin represented an entity that had filed a whistleblower lawsuit against the FTX Group and the FTX leadership.⁶⁰⁵ Pogodin received “loans” totaling \$1 million as part of a settlement with the FTX Group for dropping these whistleblower claims. He also entered into two engagements with the FTX Group. The first totaled \$1.4 million and Pogodin received \$1.9 million for the second.⁶⁰⁶ However, Quinn Emanuel found no evidence that Pogodin ever provided any legal services to the FTX Group.⁶⁰⁷

17. Law Firm-8

Quinn Emanuel issued Bankruptcy Rule 2004 requests to Law Firm-8, which produced 66 documents in response.⁶⁰⁸ The FTX Group retained Law Firm-8 after that firm represented Whistleblower-1.⁶⁰⁹ As noted above, *see supra*, at Part 3, Section III(e), Quinn Emanuel found that after the FTX Group settled Whistleblower-1’s claims, within months, Friedberg retained Law Firm-8 to provide “general client counselling,” and paid the firm \$200,000 per month for

⁶⁰³ Pogodin operated five law firms. Professionals Report, at Appendix B.

⁶⁰⁴ Quinn Emanuel, *Memorandum re: FTX Investigations Review of Pogodin Report*, May 13, 2024 (“Pogodin Report”), at 1, 2.

⁶⁰⁵ Professionals Report, at 53.

⁶⁰⁶ Pogodin Report, at 1-2.

⁶⁰⁷ Professionals Report at 48-49, 53.

⁶⁰⁸ *Id.* at Appendix B.

⁶⁰⁹ *Id.* at 48, 53.

five years.⁶¹⁰ During the following six months until the Petition Date, the only work-product Law Firm-8 produced was a single, three-page memorandum prepared by a non-lawyer.⁶¹¹

18. Bracewell

Quinn Emanuel served Bankruptcy Rule 2004 requests on Bracewell LLP (“Bracewell”) and received 1,342 documents from the firm.⁶¹² LHI engaged Bracewell in June 2021 to provide regulatory advice and subpoena-response support.⁶¹³ In addition, Bracewell advised LHI in two employment-related disputes: for former LedgerX board member Andrew Baine, and for former LHI employee Jennifer Liu.⁶¹⁴ Bracewell was paid \$172,158 for its services.⁶¹⁵ Quinn Emanuel’s investigation did not turn up any evidence that Bracewell engaged in any misconduct or knew of any misconduct by the FTX Group leadership.⁶¹⁶

19. Morrison & Foerster

Quinn Emanuel served Bankruptcy Rule 2004 requests on Morrison & Foerster LLP (“MoFo”) and received 2,029 documents from the firm.⁶¹⁷ Quinn Emanuel’s investigation of MoFo also comprised a review of approximately 4,500 documents from the Database.⁶¹⁸ Starting in January 2018, Alameda, FTX.US, and FTX Trading engaged MoFo through its offices in Japan, the United States, and the UK.⁶¹⁹ MoFo Japan advised Alameda on banking

⁶¹⁰ *Id.* at 50.

⁶¹¹ *Id.* at 53.

⁶¹² *Id.* at Appendix B.

⁶¹³ Quinn Emanuel, *Memorandum re: FTX Investigations Review of Bracewell LLP*, Feb. 28, 2024, at 1, 2.

⁶¹⁴ *Id.* at 1.

⁶¹⁵ *Id.* at 2.

⁶¹⁶ *Id.* at 4.

⁶¹⁷ Professionals Report, at Appendix B.

⁶¹⁸ Quinn Emanuel, *Memorandum re: FTX Investigations Review of Morrison & Foerster LLP*, Mar. 14, 2024, at 2.

⁶¹⁹ *Id.* at 1.

and regulatory issues relating to its trading activities in Japan; MoFo US assisted FTX.US in setting up its consumer lending arm and in exercising FTX.US's share purchase option to acquire Digital Custody Inc.; MoFo UK provided advice in connection with FTX Trading's proposed acquisition of TigerWit Limited (UK).⁶²⁰ MoFo was paid approximately \$1.281 million for its services, but in total invoiced approximately \$1.673 million.⁶²¹ Quinn Emanuel's investigation did not reveal any evidence that MoFo engaged in any misconduct or knew of any misconduct by the FTX leadership.

20. Hogan Lovells International LLP

Quinn Emanuel reviewed approximately 2,482 documents produced by Hogan Lovells International LLP ("Hogan") in response to the FTX Group's Bankruptcy Rule 2004 requests, and 1,741 documents maintained by the FTX Group.⁶²² Through the review, Quinn Emanuel concluded that FTX Trading engaged Hogan from February 2022 until November 2022 for services related to its subsidiary FTX Europe, specifically: acquiring certain UK companies, preparing change-in-control filings with the U.K. Financial Conduct Authority ("FCA"), and addressing an FCA warning notice.⁶²³ Hogan also provided services to FTX Ventures from March to June 2022 in connection with an investment in JustWontDie Ltd.⁶²⁴ For its services, Hogan received approximately \$1,005,475 from FTX Europe and \$121,876 from FTX

⁶²⁰ *Id.*

⁶²¹ *Id.* at 2-3.

⁶²² Hogan Lovells Memo, at 2.

⁶²³ *Id.* at 1.

⁶²⁴ *Id.*

Ventures.⁶²⁵ Quinn Emanuel's investigation found no evidence that Hogan was engaged in any wrongdoing or knew about any misconduct by FTX Group executives.⁶²⁶

21. Bahamian Counsel

As reflected in Table 2, the FTX Group retained several Bahamian law firms, including Clement T. Maynard & Co, Brian Simms, and Lennox Patton.⁶²⁷ Generally, these law firms were engaged in 2021 when the FTX Group formed FDM and began moving several employees and executives to the Bahamas.⁶²⁸ Quinn Emanuel's investigation of these Bahamian law firms was complicated by the litigation among the Debtors, FDM, and the JOLs appointed by the Bahamas.⁶²⁹ This litigation was ultimately resolved through a settlement agreement.⁶³⁰ As part of that agreement, the JOLs are primarily responsible for investigating and pursuing any claims as to Bahamian professionals, as well as maximizing the value of the Debtors' real estate and other assets in the Bahamas.⁶³¹ The JOLs' investigation remains ongoing at this time.⁶³²

II. Auditors

Quinn Emanuel identified the FTX Group's auditors through an examination of the general ledgers of the FTX Group entities, other sources of payment information, and engagement letters.⁶³³ While no FTX Group entity was audited before 2019, three audit firms were engaged after 2019 to provide opinions on WRS and FTX.US, FTX Trading, and

⁶²⁵ *Id.*

⁶²⁶ *Id.*

⁶²⁷ Professionals Report, at 15.

⁶²⁸ *Id.*

⁶²⁹ *Id.* at 17-18.

⁶³⁰ *Id.* at 18.

⁶³¹ *Id.*

⁶³² *Id.*

⁶³³ *Id.* at 61.

Cottonwood Grove.⁶³⁴ These firms were Auditor-1, Auditor-2, and Moore Stephens CPA Limited (“Moore Stephens”).⁶³⁵ In February 2023, Quinn Emanuel and the Unsecured Creditors’ Committee sent Bankruptcy Rule 2004 requests to each audit firm. Quinn Emanuel reviewed 25,000 documents and 10,000 documents Auditor-1 and Auditor-2 produced in response to the Bankruptcy Rule 2004 requests, respectively.⁶³⁶ Moore Stephens did not respond to the discovery requests.⁶³⁷

Quinn Emanuel utilized Alvarez & Marsal to analyze Auditor-1’s and Auditor-2’s audit papers and the extent of their adherence to Generally Accepted Auditing Standards (“GAAS”).⁶³⁸ Quinn Emanuel’s own investigation focused on the relationship between the audits and the Investigative Topics.

a. Auditor-1

FTX.US retained Auditor-1 to audit its balance sheet for fiscal years ending December 31, 2020 and December 31, 2021, in support of FTX.US’s application for a Money Transmitter License. Auditor-1 provided FTX.US and WRS clean audit opinions for these fiscal years.⁶³⁹ Quinn Emanuel’s and Alvarez & Marsal’s investigation, however, revealed numerous instances where Auditor-1 failed to follow GAAS with respect to these FTX entities.⁶⁴⁰ For example, in its audit for 2021, Auditor-1 identified custodial funds due to customers as a class of transactions

⁶³⁴ *Id.* at 60-61.

⁶³⁵ *Id.* at 61.

⁶³⁶ *Id.*

⁶³⁷ *Id.*

⁶³⁸ *Id.* at 61-62.

⁶³⁹ *Id.* at 63-65.

⁶⁴⁰ *Id.*

with a high risk of material misstatement.⁶⁴¹ While Auditor-1 planned four substantive audits to substantiate management's assertions concerning the over \$200 million due to customers as reported on FTX.US's balance sheet, Auditor-1 completed only one such audit. Quinn Emanuel and Alvarez & Marsal also found deficiencies in Auditor-1's audit of the movement of custodial funds, as well as its treatment of related-party receivables.⁶⁴² For example, Auditor-1 investigated certain related-party transactions by simply asking Bankman-Fried to confirm the receivable, without seeking any records proving FTX.US's relationship with the related party or that the related party had sufficient funds to repay the receivable.⁶⁴³ Quinn Emanuel determined that these issues stemmed, at least in part, from a lack of auditor independence, as many Auditor-1 employees had a close relationship with FTX Group employees, including Friedberg.⁶⁴⁴

FTX.US ultimately terminated Auditor-1 in September 2022 after Auditor-1 submitted drafts of its 2021 WRS and FTX.US Communication of Material Weakness, Significant Deficiencies, and Other Findings and Observations letters. Those drafts identified the entities' lack of internal controls as "Material Weaknesses" and "Significant Deficiencies."⁶⁴⁵ In total, Auditor-1 received approximately \$470,000 for its services.⁶⁴⁶ Quinn Emanuel has concluded WRS and FTX.US may have claims against Auditor-1 for professional negligence and breach of fiduciary duty.⁶⁴⁷ Quinn Emanuel continues to assess these facts and consider any additional steps it might advise the FTX Group to take.

⁶⁴¹ *Id.* at 63.

⁶⁴² *Id.* at 63-65.

⁶⁴³ *Id.* at 64-65.

⁶⁴⁴ *Id.* at 65.

⁶⁴⁵ *Id.* at 65-66.

⁶⁴⁶ *Id.* at 63.

⁶⁴⁷ *Id.*

b. Auditor-2

FTX Trading retained Auditor-2 in early 2021 when FTX Trading considered undertaking an Initial Public Offering, which required the preparation of audited financial statements.⁶⁴⁸ Auditor-2 audited FTX Trading's financial statements for the fiscal years ending December 31, 2019, 2020, and 2021.⁶⁴⁹ Quinn Emanuel and Alvarez & Marsal's investigation indicates that Auditor-2's audit procedures did not conform to GAAS.⁶⁵⁰ Similar to Auditor-1, Auditor-2 did not perform any investigation around related-party receivables beyond merely seeking Bankman-Fried's confirmation of a related-party receivable of \$1.2 billion owed by Alameda.⁶⁵¹ And while Auditor-2 identified segregation of customer assets as a significant fraud risk, the investigations found that Auditor-2 failed to investigate many unusual transactions that would have revealed FTX Trading's failure to segregate customer funds.⁶⁵²

Quinn Emanuel concluded FTX Trading may have claims against Auditor-2 for professional negligence and breach of fiduciary duty.⁶⁵³ Quinn Emanuel continues to assess these facts and consider any additional steps it might advise the FTX Group to take.

c. Moore Stephens CPA Limited

Moore Stephens was engaged to audit the financial statements of Cottonwood Grove, a Hong Kong entity.⁶⁵⁴ Because Moore Stephens did not respond to Quinn Emanuel and the Unsecured Creditors' Committee's joint Bankruptcy Rule 2004 request, Quinn Emanuel

⁶⁴⁸ *Id.*

⁶⁴⁹ *Id.*

⁶⁵⁰ *Id.* at 68-70.

⁶⁵¹ *Id.* at 68.

⁶⁵² *Id.* 69-70.

⁶⁵³ *Id.* at 70.

⁶⁵⁴ *Id.* at 71.

conducted a targeted investigation of the FTX Group’s internal records related to Moore Stephens.⁶⁵⁵ Quinn Emanuel determined that Moore Stephens’ work was limited, and that its work did not raise any investigative concerns.⁶⁵⁶ Because of the limited nature of Moore Stephens’ work, Quinn Emanuel did not investigate it further.⁶⁵⁷

III. Accountants

Quinn Emanuel identified accountants who provided their services to the FTX Group by (1) searching for engagement letters within the FTX Group’s internal files, (2) reviewing the FTX Group’s books and records, (3) investigating other Professionals, and (4) reviewing information provided by Alvarez & Marsal.⁶⁵⁸ Quinn Emanuel divided accounting professionals into two investigative tiers: (1) accountants that provided extensive services to the FTX Group and received more than \$100,000 in fees, or provided services that addressed Investigative Topics; and (2) accountants that provided only limited services to the FTX Group or received fees of less than \$100,000.⁶⁵⁹ Five accounting firms were placed in the first tier: Robert Lee & Associates (“RLA”), Silicon Valley Accountants (“SVA”), Rivers & Moorehead (“R&M”), Pricewaterhouse Coopers LLP (“PwC LLP”), and PricewaterhouseCoopers AG (“PwC AG”).⁶⁶⁰ Two accounting firms were placed in the second tier: MicroLedgers Co. Ltd. (“MicroLedgers”) and Mazars LLP (“Mazars”).

⁶⁵⁵ *Id.*

⁶⁵⁶ *Id.*

⁶⁵⁷ *Id.*

⁶⁵⁸ Professionals Report, at 72-73.

⁶⁵⁹ *Id.* at 73.

⁶⁶⁰ *Id.*

Quinn Emanuel and the Unsecured Creditors' Committee served joint Bankruptcy Rule 2004 requests on each of the firms in the first tier.⁶⁶¹ RLA, R&M, and PwC LLP voluntarily complied with the requests.⁶⁶² PwC AG refused to produce any documents.⁶⁶³ SVA initially did not satisfactorily comply with the requests, but Quinn Emanuel and the Unsecured Creditors' Committee jointly compelled production by issuing a subpoena under Bankruptcy Rule 2004.⁶⁶⁴

RLA produced approximately 47,000 documents, R&M produced approximately 38,000 documents, SVA produced approximately 20,000 documents, and PwC LLP produced a small number of documents.⁶⁶⁵ Quinn Emanuel reviewed these documents, as well as the FTX Group's internal documents, and consulted with Alvarez & Marsal.⁶⁶⁶ Quinn Emanuel additionally interviewed Robert Lee, RLA's founder, as its investigation revealed that RLA was the FTX Group's primary accountant.⁶⁶⁷

a. Robert Lee & Associates

Alameda retained RLA in February 2018 after Bankman-Fried approached Lee.⁶⁶⁸ RLA's services, which included bookkeeping, expanded through the next four years.⁶⁶⁹ Though initially retained by Alameda, by 2021, RLA billed several FTX Group entities.⁶⁷⁰ Quinn

⁶⁶¹ *Id.*

⁶⁶² *Id.*

⁶⁶³ S&C attempted to obtain documents from PwC AG in connection with the DAAG-related litigation, but the litigation was ultimately settled. *Id.* at 74 n.229.

⁶⁶⁴ *Id.* at 73.

⁶⁶⁵ *Id.*

⁶⁶⁶ *Id.*

⁶⁶⁷ *Id.*

⁶⁶⁸ *Id.*

⁶⁶⁹ *Id.* at 74-76.

⁶⁷⁰ Professionals Report, at 74.

Emanuel identified 38 FTX-Group affiliated entities that RLA serviced.⁶⁷¹ While some of these entities were shells, several were key entities, including Alameda, Alameda Research Ventures, FTX Trading, WRS, FTX.US, and Paper Bird.⁶⁷² RLA used QuickBooks for these entities' day-to-day bookkeeping.⁶⁷³ However, QuickBooks software is designed for small businesses and is not robust enough to track the billions of dollars of fiat and cryptocurrency that the FTX Group handled.⁶⁷⁴

Quinn Emanuel's investigation found that RLA worked closely with the FTX Group. For example, RLA was given access to internal Slack channels and participated in frequent meetings with the FTX Group's accounting staff.⁶⁷⁵ RLA accountant Caroline Papadopoulos eventually became Controller of FTX.US in November 2021.⁶⁷⁶ RLA's work primarily involved routine accounting and tax services based only on information provided by the FTX Group.⁶⁷⁷ Additionally, RLA prepared personal tax returns for at least 33 FTX Group employees, including senior FTX Group executives Bankman-Fried, Wang, Ellison, and Singh.⁶⁷⁸ In total, RLA was paid \$4.58 million for its services.⁶⁷⁹

Quinn Emanuel did not discover any evidence that RLA had involvement in or knew of any misconduct or mishandling of customer funds, or that RLA rendered negligent advice.

⁶⁷¹ *Id.* at 75.

⁶⁷² *Id.*

⁶⁷³ *Id.*

⁶⁷⁴ *Id.*

⁶⁷⁵ *Id.*

⁶⁷⁶ *Id.*

⁶⁷⁷ *Id.* at 76.

⁶⁷⁸ *Id.* at 75-76.

⁶⁷⁹ *Id.* at 75, Appendix A.

b. Silicon Valley Accountants

SVA was initially retained by RLA to provide bookkeeping and document preparation services and to respond to auditor requests during FTX Trading's 2020 audit.⁶⁸⁰ FTX Trading, FTX.US, and Alameda then engaged SVA directly to provide accounting services.⁶⁸¹ Quinn Emanuel discovered that SVA's founder and CEO, Gabriel Zubizarreta, maintained a close relationship with Bankman-Fried, Salame, Wang, Jen Chan (Chief Financial Officer, FTX Group), and Caroline Papadopoulos. Zubizarreta provided extensive advice on various accounting issues and often engaged with both Auditor-2 and R&M to discuss FTX Trading's balance sheets.⁶⁸² Zubizarreta maintained a FTX.US account, and invested in both FTX Trading and WRS through stock purchases.⁶⁸³ In one instance, an FTX.US exchange account deposited \$100,000 into Zubizarreta's FTX.US account.⁶⁸⁴ Jayesh Peswani, FTX.US's Controller at the time, confirmed the payment was from FTX.US to express its appreciation to Zubizarreta for his services.⁶⁸⁵ This payment was the only one identified by Quinn Emanuel, as it does not appear SVA ever submitted invoices to the FTX Group for payment.⁶⁸⁶ Though Quinn Emanuel noted that these interactions raised questions as to Zubizarreta's and SVA's independence and objectivity, Quinn Emanuel did not identify any documentary evidence that Zubizarreta or SVA participated in or were aware of any misconduct.⁶⁸⁷

⁶⁸⁰ *Id.* at 76.

⁶⁸¹ *Id.* at 76-77.

⁶⁸² *Id.* at 77.

⁶⁸³ *Id.* at 77-78.

⁶⁸⁴ *Id.* at 77.

⁶⁸⁵ *Id.* at 77-78.

⁶⁸⁶ *Id.* at 77, Appendix A.

⁶⁸⁷ Professionals Report, at 78-79.

c. Rivers & Moorehead

FTX Trading engaged R&M in February 2021 to assist with an acquisition of Blockfolio. Rivers & Moorehead generally performed services on an *ad hoc* basis when the FTX Group required reporting in connection with audit and financial statements. In total, R&M was paid \$187,000 for its services. Quinn Emanuel did not discover evidence that R&M participated in or was aware of any misconduct.

d. PricewaterhouseCoopers Entities

The FTX Group engaged multiple entities within the PwC network to provide accounting services at different times. For example, PwC AG was engaged to provide accounting and tax advice to FTX Europe AG and PwC LLP supported a contemplated acquisition of BTC Africa SA. In total, PwC entities received approximately \$1.3 million for their services, with each individual PwC entity receiving a fraction of the total. Quinn Emanuel did not find any evidence that any PwC entity participated in or was aware of any misconduct, and given the small amount of fees paid to the individual PwC entities, Quinn Emanuel concluded further investigation would not benefit the estates.⁶⁸⁸

e. MicroLedgers and Mazars LLP

The two accounting firms in the second tier of investigative depth, MicroLedgers and Mazars, were not issued Bankruptcy Rule 2004 requests. However, Quinn Emanuel investigated the scope of their engagements and the services they performed through a review of the FTX Group's internal documents. Quinn Emanuel additionally consulted with Alvarez & Marsal, and concluded that neither firm participated in or was aware of any misconduct.⁶⁸⁹

⁶⁸⁸ *Id.* at 81-82.

⁶⁸⁹ *Id.* at 82.

IV. Valuation Firms

Quinn Emanuel identified the FTX Group’s valuation firms through a variety of means: (1) its concurrent investigations of other Professionals retained by the FTX Group,⁶⁹⁰ (2) its review of payment records and other internal documents,⁶⁹¹ and (3) its review of the relevant engagement letters. Through this methodology, Quinn Emanuel determined that two of the FTX Group’s valuation firms did work that appears to have intersected with Investigative Topics: Teknos Associates LLP (“Teknos”) and Redwood Valuation Partners (“Redwood”).⁶⁹² Accordingly, Quinn Emanuel and the Unsecured Creditors’ Committee jointly served Bankruptcy Rule 2004 requests on these firms, and Quinn Emanuel further reviewed the FTX Group’s internal documents.⁶⁹³

S&C identified a third valuation firm, BDO USA LLP (“BDO”), which it investigated in connection with the FTX Europe adversary action.⁶⁹⁴

a. Redwood Valuation Partners

Redwood was engaged from 2020 to 2022 to, among other things, provide WRS and FTX Trading an estimate of the fair market value of those entities’ common stock for the purpose of providing stock options to employees.⁶⁹⁵ The FTX Group paid Redwood \$66,000 for this work.⁶⁹⁶ Redwood’s valuations relied on documents provided by the FTX Group, though the

⁶⁹⁰ *Id.* at 83.

⁶⁹¹ *Id.*

⁶⁹² *Id.*

⁶⁹³ *Id.* at 83-84.

⁶⁹⁴ S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 121-23. The FTX Europe adversary action is discussed in greater detail below, in Part 6, Section I(b).

⁶⁹⁵ Professionals Report, at 84.

⁶⁹⁶ *Id.*

FTX Group often failed to share necessary information for Redwood to provide a valuation.⁶⁹⁷

Nonetheless, Quinn Emanuel determined that Redwood followed accepted valuation procedures in conducting both valuations.⁶⁹⁸

b. Teknos Associates LLP

Teknos was engaged in September 2022 to perform 30 valuations, including of FTX Trading common share equity, Paper Bird warrants and common share equity, and WRS class A common share equity.⁶⁹⁹ However, prior to the Petition Date, Teknos did not send any valuations to the FTX Group.⁷⁰⁰ Through its Bankruptcy Rule 2004 requests, Quinn Emanuel received copies of 18 of Teknos' evaluations. Quinn Emanuel ultimately found no documentary evidence that Teknos' valuations were improper or unduly influenced.⁷⁰¹ Quinn Emanuel demanded that Teknos return \$60,000 to the estates for Teknos' uncompleted work, but Teknos has refused.⁷⁰²

c. BDO USA LLP

S&C served a third-party subpoena on BDO, which produced its work file for its report on DAAG.⁷⁰³ S&C additionally reviewed the FTX Group's internal records, including communications and documents shared with BDO.⁷⁰⁴ S&C found that BDO was retained in early 2022 to perform purchase price allocations for WRS' acquisition of Ledger Holding Inc.

⁶⁹⁷ *Id.* at 84-85.

⁶⁹⁸ *Id.* at 85.

⁶⁹⁹ *Id.*

⁷⁰⁰ *Id.*

⁷⁰¹ *Id.* at 85-86.

⁷⁰² *Id.* at 85 & n.274.

⁷⁰³ S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 122.

⁷⁰⁴ *Id.*

(LedgerX's parent company) and FTX Trading's purchase of DAAG.⁷⁰⁵ S&C's investigation indicates that BDO valued the intangible assets of Ledger Holdings and DAAG at approximately \$206 million and \$237 million, respectively, based on the value of the operating licenses held by each entity.⁷⁰⁶ However, this valuation was likely based on projections provided by FTX Group employees.⁷⁰⁷

V. Regulatory, Licensing and Compliance Consultants

Quinn Emanuel identified four consultants that provided the FTX Group regulatory, compliance, and licensing services: MR Holdings, Varin Strategies (d/b/a Compliers Consulting), XReg Consulting Ltd. ("XReg"), and ProCo Global (d/b/a Chartwell Compliance), ("ProCo").⁷⁰⁸ Through its investigations into other Professionals, in-house professionals, and the FTX leadership, Quinn Emanuel determined that each of these consulting firms was involved in identifying acquisition targets, preparing license applications, and internal compliance matters.⁷⁰⁹ Thus, Quinn Emanuel subjected all four to investigation, though Bankruptcy Rule 2004 requests were only issued to XReg.⁷¹⁰ XReg did not respond to the requests, however, and Quinn Emanuel did not take further steps to seek these documents as XReg is a Gibraltar entity.⁷¹¹ Quinn Emanuel additionally reviewed approximately 13,000 internal FTX Group documents related to these consultants.⁷¹²

⁷⁰⁵ Professionals Report, at 84.

⁷⁰⁶ S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 122.

⁷⁰⁷ Professionals Report, at 84.

⁷⁰⁸ *Id.* at 101.

⁷⁰⁹ *Id.* at 101-02.

⁷¹⁰ *Id.* at 102.

⁷¹¹ *Id.* at 102 n.337.

⁷¹² *Id.* at 102.

a. MR Holdings & Varin Strategies

Friedberg contacted David Martin, a member of MR Holdings and Varin Strategies, to identify potential broker-dealer acquisitions.⁷¹³ Martin assisted with the acquisition of RJL Capital Group (“RJL”) by coordinating the deal between the FTX Group and the seller, drafting the purchase agreement, and submitting RJL’s application to FINRA to approve its change in ownership.⁷¹⁴ However, after the deal closed, Martin discovered that Alameda’s bank account initiated the payment of the purchase price rather than Bankman-Fried’s personal account as originally contemplated.⁷¹⁵ The transaction was unwound and re-executed, and the FINRA application was withdrawn and resubmitted, presumably to avoid regulatory scrutiny.⁷¹⁶ In total, the firms collectively received \$97,715 for their services.⁷¹⁷

b. XReg Consulting Ltd.

After the FTX Group and the FTX leadership sought to leave Hong Kong in late 2020, FTX retained XReg to provide FTX Trading options for relocation, with one of the criteria being whether a jurisdiction offered lax regulation of cryptocurrency.⁷¹⁸ XReg additionally assisted on the acquisition of required business licenses in Gibraltar, Cyprus, the United Kingdom, Singapore, and the Bahamas, among other countries.⁷¹⁹ XReg also drafted FTX Trading’s anti-money laundering policies.⁷²⁰ In total, it received approximately \$4 million for its services,

⁷¹³ *Id.* at 102.

⁷¹⁴ *Id.*

⁷¹⁵ *Id.* at 102 & n.339.

⁷¹⁶ *Id.*

⁷¹⁷ *Id.* at 102.

⁷¹⁸ *Id.* at 103.

⁷¹⁹ *Id.*

⁷²⁰ *Id.*

including a \$2.75 million bonus upon the completion of FTX Trading's business license applications in Singapore and the Bahamas.⁷²¹

c. ProCo Global (d/b/a Chartwell Compliance)

FTX.US retained ProCo from June 2021 to November 2022 to assist FTX.US with obtaining and maintaining its money transmitter licenses in 53 U.S. states and territories, as well as preparing applications under the Multistate Money Services Businesses Licensing Agreement Program.⁷²² ProCo provided additional consulting services on FTX.US's anti-money laundering services.⁷²³ It received approximately \$603,434 for its services.⁷²⁴

VI. Government and Community Relations Consultants

Through its investigation into the FTX leadership and law firms, Quinn Emanuel learned that the FTX Group hired three government and community relations consultants to assist with grassroots advocacy and fostering local goodwill.⁷²⁵ Barbara Miller (Bankman-Fried's aunt) and Alpen Sheth (a consultant doing business as Canopy Labs LLC) were both retained in the South Florida region, while Consultant-1 was engaged in the Bahamas.⁷²⁶ Quinn Emanuel reviewed the FTX Group's internal documents to investigate these individuals.⁷²⁷

a. Barbara Miller (d/b/a BGM Consultants) & Alpen Sheth (d/b/a Canopy Labs LLC)

Shortly after FTX.US obtained the naming rights to the Miami Heat arena in early 2021, Joseph Bankman retained Barbara Miller and Sheth to establish relationships with community

⁷²¹ *Id.* at 103-04.

⁷²² *Id.* at 104.

⁷²³ *Id.*

⁷²⁴ *Id.*

⁷²⁵ *Id.* at 96.

⁷²⁶ *Id.* at 97, 99.

⁷²⁷ *Id.* at 96.

figures in South Florida.⁷²⁸ These relationships ultimately led to a failed initiative by FTX.US and the FTX Foundation to donate \$500 per month for a year into 100 participants' crypto wallets.⁷²⁹ FTX.US falsely represented that the accounts would be FDIC insured.⁷³⁰ Barbara Miller additionally organized a \$2.3 million event at the FTX Arena that was attended by only 1,200 people.⁷³¹ Joseph Bankman instructed Barbara Miller to spend “whatever it [took]” on the event.⁷³²

Quinn Emanuel's investigation found that Barbara Miller received payments of \$140,000 from the FTX Group over a nine-month period. However, Quinn Emanuel has not identified any colorable claims against Barbara Miller that would meaningfully benefit the estates.⁷³³

b. Consultant-1

Quinn Emanuel served Bankruptcy Rule 2004 requests on Consultant-1's firm, but it did not respond to these requests.⁷³⁴ After the FTX Group moved its operations to the Bahamas, it retained Consultant-1 in May 2021 to facilitate its move.⁷³⁵ Consultant-1 was engaged specifically due to his connections with the Bahamian government.⁷³⁶ In September 2021, he was hired by FDM as its Vice President of Communications and Corporate Social Responsibility.⁷³⁷ Consultant-1 was successful in facilitating relationships between the FTX

⁷²⁸ *Id.* at 97.

⁷²⁹ *Id.* at 97-98.

⁷³⁰ *Id.* at 98.

⁷³¹ *Id.* at 99.

⁷³² *Id.*

⁷³³ *Id.*

⁷³⁴ *Id.* at 89-90.

⁷³⁵ *Id.* at 99-100.

⁷³⁶ *Id.*

⁷³⁷ *Id.* at 100.

leadership and the Bahamian government, and assisted with several property acquisitions in the Bahamas.⁷³⁸ As a consultant, Consultant-1 received twice the fees contemplated in his retention agreement.⁷³⁹ Though Quinn Emanuel has identified potential claims against Consultant-1, such claims would be brought by the Bahamian JOLs pursuant to the settlement agreement with FDM.⁷⁴⁰

VII. Lobbyists

Quinn Emanuel identified the FTX Group's lobbyists through reviewing engagement letters and general ledgers, which were cross-referenced against invoices, bank records, and other internal documents and communications.⁷⁴¹ It additionally identified lobbyists through its investigation of the FTX Group's in-house counsel, as well its investigation of Bankman-Fried's parents.⁷⁴² Quinn Emanuel calculated the fees each lobbyist received through its work with Alvarez & Marsal.⁷⁴³

In total, Quinn Emanuel identified 15 lobbyists and lobbying firms the FTX Group engaged: Cojo Strategies, LLC; Conaway Graves Group, LLC; Empire Consulting; Geoffrey Manne and International Center for Law & Economics; Hinman Straub Advisors LLC; John J. Donohue III; Kensington Strategies; Kevin S. Haeberle; Kimball Stroud and Associates; Law Offices of John J. Faso, P.C.; Message Global, LLC; Michelle Bond (d/b/a ADAM); Patomak Global Partners, LLC; Rich Feuer Anderson; and T Cap Solutions, LLC.⁷⁴⁴ Quinn Emanuel did

⁷³⁸ *Id.*

⁷³⁹ *Id.* at 101.

⁷⁴⁰ *Id.*

⁷⁴¹ *Id.* at 90.

⁷⁴² *Id.*

⁷⁴³ *Id.*

⁷⁴⁴ *Id.* at 90-91.

not uncover any evidence that these firms engaged in misconduct or were aware of malfeasance by the FTX Group and its executives, though some were aware of the FTX Group's concealment of its relationship with Alameda.⁷⁴⁵ The facts relating to two of the lobbyists warrant some brief comments.

a. ADAM and Michelle Bond

Michelle Bond, the CEO of the Association of Digital Asset Markets (“ADAM”), was Ryan Salame’s girlfriend during the relevant time period.⁷⁴⁶ In October 2021, Ryne Miller directed a \$1 million donation from FTX.US to ADAM to ensure it was at FTX.US’s “full disposal” for contacts, scheduling, review of drafts, ideas, and other matters.⁷⁴⁷ Quinn Emanuel found that Bond worked closely with Miller, Friedberg, Joseph Bankman, and Law Firm-1 to obscure the FTX Group’s lobbying efforts, leverage Bond’s connections to lobby for favorable crypto regulations, and connect FTX leadership to government officials.⁷⁴⁸ In total, WRS, FDM, and FTX Trading paid \$1.4 million in dues and donations to ADAM.⁷⁴⁹ Bond additionally received a \$400,000 bonus from FDM pursuant to a consulting agreement.⁷⁵⁰ Finally, Quinn Emanuel’s investigation revealed that Salame on multiple occasions directed wire transfers from FTX-related entities to Bond’s personal bank account, totaling approximately \$1 million.⁷⁵¹

⁷⁴⁵ *Id.* at 91.

⁷⁴⁶ *Id.*

⁷⁴⁷ *Id.* at 91-92.

⁷⁴⁸ *Id.* at 94.

⁷⁴⁹ *Id.*

⁷⁵⁰ *Id.* at 94 n.295.

⁷⁵¹ *Id.*

b. Rich Feuer Anderson

Rich Feuer Anderson (“RFA”) was FTX.US’s primary lobbyist in connection with FTX.US Derivatives’ application to the CFTC to amend its order of registration as a derivatives clearing organization.⁷⁵² Quinn Emanuel served a Bankruptcy Rule 2004 request on RFA, which produced over 7,000 documents in response.⁷⁵³ In its review, Quinn Emanuel located several handwritten notes by some RFA employees indicating concerns about FTX.US’s business practices. But Quinn Emanuel ultimately concluded that RFA did not participate in any wrongdoing, and was not aware of the commingling and misuse of customer funds.⁷⁵⁴

VIII. Other Professional Vendors

a. Taxbit, M Group, and Inca Digital

Quinn Emanuel investigated TaxBit Inc. (“TaxBit”), a tax and accounting firm, M Group Strategic Communications (“M Group”), a public relations firm, and Inca Digital, Inc. (“Inca”). TaxBit received \$1.2 million from FTX.US for its services, and also received a \$2 million investment by Alameda Research Ventures in its Series B offering.⁷⁵⁵ M Group received \$3,066,867 in fees,⁷⁵⁶ and Inca Digital received \$2,400,000 in fees.⁷⁵⁷ Quinn Emanuel’s review of the available documents relating to each of these vendor’s work did not support conducting any further investigation into the vendors, as there was no evidence of wrongdoing or vendor knowledge of misconduct by the FTX leadership.⁷⁵⁸

⁷⁵² *Id.* at 95.

⁷⁵³ *Id.* at 90.

⁷⁵⁴ *Id.* at 95-96.

⁷⁵⁵ Quinn Emanuel, *Memorandum of FTX Investigative Review of TaxBit Inc.*, Nov. 21, 2023 (“TaxBit Memo”), at 1.

⁷⁵⁶ Quinn Emanuel, *Memorandum re: FTX Investigative Review of M Group Strategic Communications*, Nov. 11, 2023 (“M Group Memo”), at 1.

⁷⁵⁷ Quinn Emanuel, *Memorandum re: FTX Investigations Review of Inca Digital, Inc.*, May 13, 2024, at 2.

⁷⁵⁸ TaxBit Memo, at 1; M Group Memo, at 1.

b. Vendors-1, -2, and -3

Quinn Emanuel investigated Vendors-1, -2, and -3 (together “the Consultants”), which were three sports, media, and corporate partnership consultants engaged by the FTX Group. The Consultants helped negotiate many of the FTX Group’s most visible marketing partnerships.⁷⁵⁹ Nine of these partnerships are currently the subject of consolidated class action lawsuits involving claims of civil conspiracy and violations of the Florida Securities and Investor Protection Act and the Florida Deceptive and Unfair Practices Act.⁷⁶⁰

Quinn Emanuel did not find any completed work as specified in the three production agreements with Vendor-1.⁷⁶¹ In April 2022, WRSS terminated its contracts with the Consultants and agreed to pay them \$12 million each over three years to accelerate commissions owed to them.⁷⁶² Alameda agreed to make these payments on FTX.US’s behalf. By the Petition Date, the Consultants were paid a total of \$21.3 million.⁷⁶³ Quinn Emanuel has recommended that the Debtors conduct further investigation and expert analysis regarding these three vendors.⁷⁶⁴

c. Vendor-4

Quinn Emanuel reviewed over 12,000 internal documents related to Vendor-4 and his related entities, in addition to examining numerous service deliverables and their statements of

⁷⁵⁹ Quinn Emanuel, *Memorandum re: FTX Investigations of Vendors-2, and -3*, May 5, 2024 (“The Consultants Report”), at 1.

⁷⁶⁰ *In re FTX Cryptocurrency Exchange Collapse Litigation*, No. 23-md-03076 (S.D. Fla., June 5, 2023); *Edwin Garrison v. Samuel Bankman-Fried*, No. 22-cv-23753 (S.D. Fla., Dec 16, 2022); *Podalsky v. Bankman-Fried*, No. 22-cv-23983 (S.D. Fla., Dec. 7, 2022); *Norris v. Brady*, No. 23-cv-20439 (S.D. Fla., Feb. 3, 2023); *Garrison v. Major League Baseball*, No. 23-cv-24479 (S.D. Fla., Nov. 27, 2023).

⁷⁶¹ Quinn Emanuel, *Memorandum re: FTX Investigations Review of Vendor-1*, Mar. 7, 2024, at 1.

⁷⁶² The Consultants Report, at 1.

⁷⁶³ *Id.*

⁷⁶⁴ TaxBit Memo, at 1; M Group Memo, at 1.

work.⁷⁶⁵ Alvarez & Marsal additionally performed a transaction analysis for FTX Group transfers to Vendor-4 and his related entities.⁷⁶⁶ Quinn Emanuel concluded that Vendor-4 coordinated extensively with Friedberg to execute multiple media and marketing agreements that involved duplicative services with significantly inflated fees.⁷⁶⁷ Vendor-4's entities received over \$34 million from the FTX Group, yet provided minimal-to-no services for these fees.⁷⁶⁸ Quinn Emanuel is continuing to assess these facts and any additional steps it might advise the FTX Group to take with respect to Vendor-4.

IX. Financial Institutions

Quinn Emanuel identified the FTX Group's banks and financial institutions through a review of its financial records.⁷⁶⁹ Quinn Emanuel selected Silvergate Bank ("Silvergate"), Prime Trust LLC ("Prime Trust"), and Signature Bank ("Signature") for investigation based on an analysis of the FTX Group's accounts conducted by Alvarez & Marsal.⁷⁷⁰ Additionally, Farmington State Bank d/b/a Moonstone Bank ("Moonstone Bank") was investigated by S&C after S&C was informed by the General Counsel of Moonstone Bank that it held \$50 million in an account in the name of FDM.⁷⁷¹ S&C further investigated Evolve Bank & Trust ("Evolve Bank") after identifying two bank accounts in the name of FTX Philanthropy, each of which held \$10 million.⁷⁷² Summaries of these investigations are below.

⁷⁶⁵ Quinn Emanuel, *Presentation Regarding FTX Professionals, Legal Insiders, and Venture Investments to Chapter 11 Examiner Robert J. Cleary, Esq.*, Mar. 22, 2024, at 35.

⁷⁶⁶ *Id.*

⁷⁶⁷ *Id.* at 36.

⁷⁶⁸ *Id.*

⁷⁶⁹ *Id.* at 39.

⁷⁷⁰ S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 169.

⁷⁷¹ An analysis of notable findings concerning Moonstone Bank is included *infra*, at Part 6, Section IX(c)(2)(iv).

⁷⁷² *Id.* at 169.

a. Silvergate Bank

Quinn Emanuel investigated Silvergate, as it was the bank where the FTX Group maintained accounts that received customer deposits.⁷⁷³ Quinn Emanuel and the Unsecured Creditors' Committee served joint Bankruptcy Rule 2004 requests on Silvergate, which produced approximately 35,000 documents.⁷⁷⁴ Quinn Emanuel found that the FTX Group had 30 open accounts at Silvergate, 16 of which held commingled customer and FTX Group funds.⁷⁷⁵ Funds were often moved from "for the benefit of" or "FBO" accounts into operating accounts.⁷⁷⁶ While the movement of funds from FBO accounts to an operational account could signal the misuse of customer funds, Quinn Emanuel did not find any Silvergate policy or procedure in place to detect such transfers.⁷⁷⁷ Moreover, the FTX Group failed to properly designate all FBO accounts, which would impair Silvergate's ability to detect any wrongdoing.⁷⁷⁸

b. Prime Trust LLC

Quinn Emanuel selected Prime Trust for investigation, as it was primarily associated with accounts that funded FTX Trading operations and property purchases, and it received funds from commingled accounts.⁷⁷⁹ Quinn Emanuel and the Unsecured Creditors' Committee served joint Bankruptcy Rule 2004 Requests on Prime Trust, which produced approximately 342,000 documents.⁷⁸⁰ Quinn Emanuel identified 23 total accounts, three of which held commingled

⁷⁷³ Quinn Emanuel, *Presentation Regarding FTX Professionals, Legal Insiders, and Venture Investments to Chapter 11 Examiner Robert J. Cleary, Esq.*, Mar. 22, 2024, at 39.

⁷⁷⁴ *Id.*

⁷⁷⁵ *Id.* at 40.

⁷⁷⁶ *Id.*

⁷⁷⁷ *Id.* at 41.

⁷⁷⁸ *Id.*

⁷⁷⁹ *Id.* at 39.

⁷⁸⁰ *Id.*

funds.⁷⁸¹ Prime Trust filed for bankruptcy in August 2023, and a plan of reorganization was confirmed in December 2023.⁷⁸²

c. Signature Bank

Quinn Emanuel selected Signature for investigation, as it was a bank where the FTX Group maintained accounts that funded FTX Trading operations and property purchases and received funds from commingled accounts.⁷⁸³ Quinn Emanuel and the Unsecured Creditors' Committee served joint Bankruptcy Rule 2004 requests on Signature. Signature has produced approximately 125,000 documents, and its production remains ongoing.⁷⁸⁴ Thus far, Quinn Emanuel has identified 30 total accounts, six of which held commingled funds.⁷⁸⁵ However, no account was identified as an FBO account, though Quinn Emanuel's review remains ongoing.⁷⁸⁶ Signature is currently in FDIC receivership, making any recovery unlikely should Quinn Emanuel discover identified FBO accounts.⁷⁸⁷

d. Evolve Bank & Trust and Wise

Evolve Bank held an FBO account for Wise, a payment processor used by non-Debtor FTX Philanthropy.⁷⁸⁸ S&C, in its investigation with AlixPartners, located an aggregate \$10 million in accounts held by FTX Philanthropy at Evolve Bank (as well as Signature) that were entirely funded through transfers from FTX Group entities WRSS, North Dimension, and FTX

⁷⁸¹ *Id.* at 42.

⁷⁸² *Id.*

⁷⁸³ *Id.* at 39.

⁷⁸⁴ *Id.*

⁷⁸⁵ *Id.* at 43.

⁷⁸⁶ *Id.*

⁷⁸⁷ *Id.*

⁷⁸⁸ S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 171.

Trading.⁷⁸⁹ S&C, with the assistance of Jen Chan, recovered the \$10 million held in these accounts on April 14, 2023.⁷⁹⁰

e. Deltec Bank & Trust Co. Ltd. and Deltec International Group

Deltec Bank & Trust Co. Ltd. (“Deltec Bank”) and Deltec International Group (“Deltec”) were both directed by Jean Chalopin, who also served as a director of Moonstone Bank.⁷⁹¹ Deltec Bank (as well as Chalopin and Moonstone Bank) is a defendant in a class-action MDL currently pending in the Southern District of Florida.⁷⁹² The relevant complaint alleges that the FTX Group held at least 17 accounts at Deltec Bank, and that had Deltec followed Bahamian law, then Deltec Bank would have detected the unusual transactions between Alameda and other FTX Group entities and thus been obligated to investigate such transactions.⁷⁹³ However, according to Quinn Emanuel’s investigation, Deltec Bank did not conduct any such inquiries.⁷⁹⁴

In addition, Deltec received a \$50 million loan from Norton Hall, of which Ryan Salame was purportedly a director.⁷⁹⁵ The transaction is discussed *supra*, at Part 3, Section III(b).

X. Further Investigations

At this time, the Examiner does not recommend that he undertake any independent investigation of the Professionals. It appears that Quinn Emanuel (and S&C)⁷⁹⁶ applied an effective methodology to rigorously investigate the Professionals that received substantial fees or other payments from the FTX Group, and those Professionals that performed work that had a

⁷⁸⁹ *Id.* at 169.

⁷⁹⁰ *Id.* at 170-71.

⁷⁹¹ *In re FTX Cryptocurrency Exchange Collapse Litigation*, No. 23-md-03076 (S.D. Fla.); Dkt. No. 155 at ¶ 298.

⁷⁹² *See generally id.*

⁷⁹³ *Id.* at ¶¶ 300-04.

⁷⁹⁴ *Id.* at ¶ 302.

⁷⁹⁵ Dkt. No. 1195 at ¶¶ 3-5.

⁷⁹⁶ S&C conducted investigations in connection with potential avoidance or adversary actions.

significant nexus to the Investigative Topics. Where Quinn Emanuel found evidence that a Professional engaged in, or was aware of, any of the FTX leadership's misconduct, rendered negligent advice, or received excessive or otherwise questionable fees, Quinn Emanuel continues to assess these facts and is advising the FTX Group on what, if any, additional steps to take.

Limited investigations were conducted of certain Professionals that received smaller fees and did not appear to perform work that intersected with the Investigative Topics. Though further investigation of these entities would be possible, the Examiner does not believe such investigation would be an efficient use of the estates' resources given the challenges of likely recoveries, and in many cases, the comparatively low dollar amounts at issue.

The Examiner also considered the following additional circumstances in determining that a further investigation into certain Professionals was not warranted: (i) if the Professional had filed for bankruptcy or liquidation; (ii) applicable standards that may limit liability for Professionals (in particular banks); and, (iii) if the Professional was located internationally, meaning that the cost of retaining foreign counsel and litigating potential claims (and, if successful, the costs of collection) could likely outweigh any potential recoveries for the estates.

PART 6: OTHER INVESTIGATIONS

Pursuant to the Bankruptcy Court’s instruction that the Examiner “summariz[e] the investigations of the Debtors” and “mak[e] recommendations for additional investigations,”⁷⁹⁷ this Part summarizes other ongoing and completed investigations into the FTX Group’s activities which have not been addressed in earlier Parts of the Report, and assesses whether any additional investigations are necessary.

The Examiner largely found that the Debtors’ counsel and the relevant government agencies have undertaken thoughtful, comprehensive investigations to establish the full scope of the FTX Group’s activities. These investigations have led to extensive and cost-effective recovery of assets for the estates. However, the Examiner recommends one additional investigation into FTX.US: a matter of significant public interest that has not yet been thoroughly explored by the investigations to date.

I. Acquisitions

S&C undertook several investigations into potential claims arising out of corporate acquisitions by the FTX Group. Some of these investigations resulted in litigation. These investigations are described below.

Quinn Emanuel’s investigation into the circumstances surrounding the FTX Group’s acquisition of LedgerX and the estates’ sale of LedgerX is discussed above in Part 2, Section V(b) and will not be repeated here.

⁷⁹⁷ Scope Order, at ¶ 2.

a. Embed

Embed was a small securities clearing and custody business.⁷⁹⁸ S&C's investigation revealed that the FTX Group entered into an agreement for clearing services in January 2022 and began using Embed's services in April 2022.⁷⁹⁹ Shortly after the FTX Group began using Embed's clearing services, Debtor entity WRS acquired Embed for nearly \$300 million, using funds from Alameda.⁸⁰⁰ WRS conducted minimal due diligence before the acquisition and paid an inflated price to acquire Embed.⁸⁰¹

After the Petition Date, the Debtors unsuccessfully sought to sell Embed. The highest bid was from Embed's founder, who offered a bid of \$1 million, and even the highest non-binding expression of interest was only \$78 million, well below the price that WRS had paid.⁸⁰²

On behalf of the Debtors, S&C filed an avoidance action against a lengthy list of individuals and entities that received transfers as a result of the Embed acquisition.⁸⁰³ S&C filed a separate avoidance action on behalf of the Debtors against FTX executives Bankman-Fried, Nishad Singh, and Gary Wang, who had received equity interests in Embed as part of the transaction.⁸⁰⁴ The lawsuits allege fraudulent transfer and preference claims.⁸⁰⁵ The Embed

⁷⁹⁸ *Alameda Research Ltd. v. Giles*, No. 23-ap-50380 (Bankr. D. Del) (JTD), Dkt. No. 1 at ¶ 3.

⁷⁹⁹ S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 51.

⁸⁰⁰ *Alameda Research Ltd. v. Giles*, No. 23-ap-50380 (Bankr. D. Del) (JTD), Dkt. No. 1 at ¶¶ 38, 45.

⁸⁰¹ *Id.* at ¶¶ 39-48.

⁸⁰² *Id.* at ¶¶ 58-62.

⁸⁰³ *Id.* at Ex. A.

⁸⁰⁴ *Alameda Research Ltd. v. Bankman-Fried*, No. 23-ap-50381 (Bankr. D. Del) (JTD), Dkt. No. 1.

⁸⁰⁵ *Alameda Research Ltd. v. Giles*, No. 23-ap-50380 (Bankr. D. Del) (JTD), Dkt. No. 1 at ¶¶ 69-106; *Alameda Research Ltd. v. Bankman-Fried*, No. 23-ap-50381 (Bankr. D. Del) (JTD), Dkt. No. 1, at ¶¶ 68-126.

litigation is ongoing, but S&C has settled with some of the defendants and has resolved the separate case against the FTX Group executive defendants.⁸⁰⁶

b. FTX Europe/Digital Assets AG

S&C's investigation revealed that the FTX Group purchased DAAG, a small Swiss financial technology company, for \$376 million in three tranches of stock purchases between October 2020 and November 2021.⁸⁰⁷ At the time of the acquisition, DAAG did not "have any active business."⁸⁰⁸ The FTX Group did not conduct a proper due diligence process and significantly overpaid for this company.⁸⁰⁹ The investigation further determined that, despite the high purchase price, the acquisition did not include the rights to key pieces of intellectual property, which were retained by another entity owned by one of DAAG's founders.⁸¹⁰ After the acquisition, the FTX Group renamed DAAG as "FTX Europe."⁸¹¹

The Debtors attempted to sell FTX Europe after the Petition Date, but concluded that a sale would not be possible because the company had no meaningful saleable assets and did not control key intellectual property.⁸¹² Because the Debtors were unable to monetize FTX Europe, S&C, on behalf of the Debtors, brought an avoidance action against the founders of the company. The avoidance action alleged fraudulent transfer and preferences claims, as well as

⁸⁰⁶ S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 57.

⁸⁰⁷ *Alameda Research Ltd. v. Lorem Ipsum UG*, No. 23-ap-50437 (Bankr. D. Del) (JTD), Dkt. No. 1 at ¶¶ 49-77.

⁸⁰⁸ *Id.* at ¶¶ 76-77 (citation omitted).

⁸⁰⁹ *Id.*

⁸¹⁰ *Id.* at ¶¶ 78-84.

⁸¹¹ S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 63.

⁸¹² *Alameda Research Ltd. v. Lorem Ipsum UG*, No. 23-ap-50437 (Bankr. D. Del) (JTD), Dkt. No. 1 at ¶ 104.

breach of fiduciary duty claims under the law of Antigua.⁸¹³ The Debtors have successfully settled this adversary proceeding.⁸¹⁴

c. FTX Japan/Liquid

S&C's investigation also found that the FTX Group acquired Liquid, a Japanese cryptocurrency exchange, in April 2022 for approximately \$185 million.⁸¹⁵ The acquisition came after the FTX Group had extended Liquid an emergency loan of \$120 million prompted by the fact that Liquid had been victimized by a hack.⁸¹⁶ Liquid subsequently operated as FTX Japan.

S&C investigated potential claims arising out of the FTX Japan acquisition and decided against pursuing litigation. S&C concluded that the Debtors had received substantial value from the FTX Japan acquisition, as the company was a successful cryptocurrency exchange that had a difficult-to-obtain Japanese license.⁸¹⁷

d. Genesis Block

S&C investigated the FTX Group's relationship to Genesis Block Ltd. ("Genesis Block"), an over-the-counter cryptocurrency trading firm that also operated cryptocurrency ATMs.⁸¹⁸ S&C's investigation found that the FTX Group structured a series of transactions whereby the FTX Group acquired nearly the entire economic stake in Genesis Block, but almost all of the shares of Genesis Block were transferred to an entity controlled by Genesis Block's co-

⁸¹³ *Id.* at ¶¶ 107-140.

⁸¹⁴ Dkt. No. 9587.

⁸¹⁵ S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 129.

⁸¹⁶ *Id.* at 128.

⁸¹⁷ *Id.* at 131.

⁸¹⁸ *Id.* at 114.

founder and CEO.⁸¹⁹ S&C found that, after the transactions were completed, Genesis Block became a *de facto* subsidiary of the FTX Group and the FTX Group maintained control of Genesis Block.⁸²⁰ S&C also identified and investigated a relationship between Genesis Block and the so-called “Korean friend” account on FTX.com.⁸²¹ At Bankman-Fried’s trial, Singh testified that Bankman-Fried directed him to move about \$8 billion of Alameda’s liabilities to that account in August 2022.⁸²² And Wang testified that in November 2022, Bankman-Fried identified “the special Korean accounts” as the home of Alameda’s liabilities to FTX.com.⁸²³

The Debtors continue to assess next steps with respect to Genesis Block and its affiliated entities and individuals.

II. Bankman-Fried Family Members

Quinn Emanuel thoroughly investigated four of Bankman-Fried’s family members and in particular, whether they had knowledge of or involvement in the misconduct at the FTX Group: Joseph Bankman, Barbara Fried, Gabe Bankman-Fried, and Barbara Miller.⁸²⁴

Joseph Bankman, Bankman-Fried’s father, is a tenured Stanford Law School professor who served as an officer, director, manager and/or *pro bono* counsel to a number of FTX Group entities.⁸²⁵ Barbara Fried, Bankman-Fried’s mother, is a Professor Emerita of Stanford Law School. She served as a member of the Board of Advisors of Stanford University’s Ethics

⁸¹⁹ *Id.* at 114-15; *see also* Nardello, *Report Prepared for Sullivan & Cromwell LLP re: Genesis Block Limited*, Mar. 22, 2023 (“Genesis Block Memo”), at 5.

⁸²⁰ S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 116.

⁸²¹ *Id.*; Genesis Block Memo, at 30.

⁸²² *See* Transcript at 1380:3-1382:21, SBF Criminal Case, Dkt. No. 366.

⁸²³ *See* Transcript at 453:5-457:10, SBF Criminal Case, Dkt. No. 352.

⁸²⁴ Quinn Emanuel, *Presentation Regarding FTX Professionals, Legal Insiders, and Venture Investments to Chapter 11 Examiner Robert J. Cleary, Esq.*, Mar. 22, 2024, at 71.

⁸²⁵ *Alameda Research LLC v. Bankman*, No. 23-ap-50584 (Bankr. D. Del.) (JTD), Dkt. No. 26 at ¶ 3.

Center, and was a primary advisor to Bankman-Fried and other senior FTX Group executives regarding political contributions.⁸²⁶ Gabe Bankman-Fried, Bankman-Fried's younger brother, was the Executive Director of Guarding Against Pandemics ("GAP"), a political action committee.⁸²⁷ Barbara Miller, Bankman-Fried's aunt, served as a consultant to FTX.US.⁸²⁸ Barbara Miller's involvement is discussed in Part 5, Section VI.a.

In the course of this investigation, Quinn Emanuel, assisted by Nardello and Alvarez & Marsal, reviewed documents collected from the Debtors and related entities such as GAP, as well as through Rule 2004 requests, and reviewed publicly available information including media reports and IRS filings.⁸²⁹ In addition, Alvarez & Marsal performed tracing analyses.⁸³⁰ Quinn Emanuel also considered relevant witness testimony adduced at the criminal trial of Bankman-Fried and information obtained from witness interviews.⁸³¹

Among other things, Quinn Emanuel's investigation identified payments from or traceable to the FTX Group that were made to certain of these family members. Quinn Emanuel's investigation identified two transfers to Gabe Bankman-Fried that were traceable to FTX Group assets: a "gift" of \$2 million;⁸³² and a payment of \$200,000, in connection with a December 2021 consulting agreement pursuant to which Gabe Bankman-Fried was to advise Singh on Singh's personal philanthropic donations.⁸³³ Quinn Emanuel also found that Bankman-

⁸²⁶ *Id.* at ¶¶ 86-87.

⁸²⁷ S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 147.

⁸²⁸ *Alameda Research LLC v. Bankman*, No. 23-ap-50584 (Bankr. D. Del.) (JTD), Dkt. 26 at ¶ 80.

⁸²⁹ Quinn Emanuel, *Presentation Regarding FTX Professionals, Legal Insiders, and Venture Investments to Chapter 11 Examiner Robert J. Cleary, Esq.*, Mar. 22, 2024, at 71-72.

⁸³⁰ *Id.* Tracing analysis involves using forensic accounting methods to track transfers of cash and assets.

⁸³¹ *Id.* at 72.

⁸³² *Id.* at 73.

⁸³³ *Id.*

Fried made significant donations to GAP, and that while Gabe Bankman-Fried likely knew these were funded through FTX Group, there was no evidence that Gabe Bankman-Fried knew the donations were made up of customer funds.⁸³⁴ Quinn Emanuel continues to assess next steps with regard to Gabe Bankman-Fried.

Quinn Emanuel also thoroughly investigated the roles, involvement, and knowledge of Joseph Bankman and Barbara Fried regarding wrongdoing at the FTX Group, and the extent to which they benefitted from the improper conduct. Following its investigation, the Debtors filed an avoidance action against Joseph Bankman and Barbara Fried.⁸³⁵

The complaint alleges, among other things, that Joseph Bankman “had broad authority to make decisions for” many FTX Group entities.⁸³⁶ The complaint further alleges that, rather than “insist on and implement controls and raise alarms about the misconduct” within the FTX Group entities, Joseph Bankman “instead, stayed silent and in at least one instance, helped hush a complainant whose allegations threatened to expose the fraud.”⁸³⁷ Joseph Bankman is alleged to have not only “failed to investigate” whistleblower allegations that the FTX Group “had engaged in cryptocurrency price manipulation[,] money laundering, and operat[ing] an unlicensed money transmitter business,”⁸³⁸ but also to have “applauded others for squashing [the] whistleblower complaint”⁸³⁹ through, among other things, recommending an investigation into the whistleblower’s attorney’s disciplinary history.⁸⁴⁰ The Debtors also allege that Barbara Fried

⁸³⁴ *Id.* at 73.

⁸³⁵ *Alameda Research LLC v. Bankman*, No. 23-ap-50584 (Bankr. D. Del.) (JTD), Dkt. No. 26.

⁸³⁶ *Id.* at ¶ 4.

⁸³⁷ *Id.* at ¶ 7.

⁸³⁸ *Id.* at ¶ 81.

⁸³⁹ *Id.*

⁸⁴⁰ *Id.* at ¶ 82.

“used her access and influence to benefit her own organization,” the political action committee Mind the Gap (“MTG”), with “Bankman-Fried and Singh contribut[ing] tens of millions of dollars to MTG or MTG-supported causes.”⁸⁴¹ The complaint further alleges that, “[a]s a result of her concern about public scrutiny [of political donations], [Barbara] Fried on multiple occasions suggested, and even encouraged, Bankman-Fried and Singh to falsify disclosure records and misrepresent the sources of . . . particular contribution[s],” and that Barbara Fried knew Singh’s contributions were unlawful.⁸⁴²

The Debtors also allege that Joseph Bankman and Barbara Fried “wielded their influence and status as Bankman-Fried’s parents to enrich themselves at the expense of” the Debtors,⁸⁴³ including obtaining a payment of \$10 million in funds originating from Alameda, and purchasing a Bahamas property worth \$16.4 million obtained with funds originating from FTX Trading,⁸⁴⁴ both of which the Debtors seek to recover. This action remains pending.

III. Charitable Contributions

As described in the Second Ray Report, the FTX Group channeled funds to non-profit entities and other “purportedly altruistic endeavors.”⁸⁴⁵ These donations were made by, among other entities, the FTX Foundation (later known as FTX Philanthropy), which was led by Nicholas Beckstead at the time of the FTX Group’s collapse.⁸⁴⁶ The Second Ray Report explains that the FTX Group “committed publicly to contribute at least 1% of FTX’s revenue

⁸⁴¹ *Id.* at ¶ 89.

⁸⁴² *Id.* at ¶ 130.

⁸⁴³ *Id.* at ¶ 91.

⁸⁴⁴ *Id.* at ¶ 73.

⁸⁴⁵ *See* Second Ray Report, at 28-29.

⁸⁴⁶ *See* Second Ray Report, at 28; *see also* S&C, *Memorandum re: Interview of Nicholas Beckstead*, Feb. 27, 2024, at 2-4, 7.

from fees to the FTX Foundation.”⁸⁴⁷ But, as that Report also notes, “FTX Foundation grants were” instead “funded via transfers from a variety of bank accounts,” including several that “contained commingled customer and corporate funds.”⁸⁴⁸ At Bankman-Fried’s criminal trial, the USAO-SDNY introduced evidence on the flow of funds from customer deposits to these FTX Group donations.⁸⁴⁹

As part of its investigative work into the FTX Group’s donations, S&C and Landis Rath & Cobb LLP (“Landis”) contacted over 300 non-profit entities that together received over \$200 million in purported charitable donations from the FTX Group in an effort to recover the FTX Group’s donations.⁸⁵⁰ S&C’s work included extensive negotiations with these recipients, in part to establish that the funds at issue came from the FTX Group.⁸⁵¹ For entities that were less cooperative, S&C made Bankruptcy Rule 2004 requests and, for one organization, served a motion to compel Bankruptcy Rule 2004 discovery.⁸⁵² S&C also worked with Nardello to investigate certain non-profits that received FTX Group-funded donations.⁸⁵³

Based on facts developed in their investigations, the Debtors filed adversary proceedings related to certain charitable contributions. For example, certain Debtors filed an avoidance action against Bankman-Fried, Beckstead, the FTX Foundation, former FTX Foundation employee Ross Rheingans-Yoo, and various other entities.⁸⁵⁴ Based on the Debtors’

⁸⁴⁷ See Second Ray Report, at 25-26 (citation and internal quotation marks omitted).

⁸⁴⁸ See *id.* at 26.

⁸⁴⁹ See, e.g., Transcript at 1750:13-1751:2, SBF Criminal Case, Dkt. No. 370.

⁸⁵⁰ See *id.* at 152.; see also, e.g., Dkt. No. 3329.

⁸⁵¹ See *id.*

⁸⁵² See *id.* at 152.; see also e.g., Dkt. No. 3329.

⁸⁵³ See, e.g., Nardello, *Memorandum re: Center for Applied Rationality*, Aug. 25, 2023; Nardello, *Memorandum re: The Centre for Effective Altruism and Effective Ventures*, Aug. 17, 2023.

⁸⁵⁴ *Alameda Research Ltd. v. Platform Life Sciences, Inc.*, No. 23-ap-50444 (Bankr. D. Del.) (JTD), Dkt. No. 1.

investigations, the amended complaint alleges that the FTX Foundation and Latona Biosciences Group (“Latona”), a “sham non-profit company organized in the Bahamas,” “took over \$71 million of commingled funds from Alameda and FTX accounts to make investments in and donations to life sciences companies for Bankman-Fried’s personal aggrandizement.”⁸⁵⁵ It further alleges that “although Latona purported to be a non-profit corporation, Bankman-Fried, Rheingans-Yoo, and Beckstead wanted to participate in and profit from any upside in these investments,” and therefore “intentionally obscured Latona’s role in making these investments and avoided any discussion of the equity stakes that Latona had received in connection with these investments.”⁸⁵⁶ The Debtors recently reached a resolution of this adversary proceeding, settling the entire matter with the exception of the Debtors’ claims against Bankman-Fried.⁸⁵⁷ Issues related to Latona are also addressed later in this Part, in the discussion of the Venture Book. *See infra*, at Part 5, Section IX(c)(2)(ii).

The Debtors’ pending avoidance action against Bankman-Fried’s parents, Joseph Bankman and Barbara Fried, also includes allegations regarding charitable donations made by Joseph Bankman.⁸⁵⁸ As relevant here, the Debtors allege that Joseph Bankman, a Senior Advisor to the FTX Foundation and a Stanford Law School professor, “had considerable leeway in directing charitable donations” and authorized “various FTX Group and affiliated entities”—not just the FTX Foundation—to make those donations.⁸⁵⁹ The Debtors further assert that “[s]ome

⁸⁵⁵ *See Alameda Research Ltd. v. Platform Life Sciences, Inc.*, No. 23-ap-50444 (Bankr. D. Del.) (JTD), Dkt. No. 73 at ¶ 5.

⁸⁵⁶ *Id.* at ¶ 48.

⁸⁵⁷ *See Alameda Research Ltd. v. Platform Life Sciences, Inc.*, No. 23-ap-50444 (Bankr. D. Del.) (JTD), Dkt. No. 102.

⁸⁵⁸ *Alameda Research LLC v. Bankman*, No. 23-ap-50584 (Bankr. D. Del.) (JTD), Dkt. No. 1.

⁸⁵⁹ *See Alameda Research LLC v. Bankman*, No. 23-ap-50584 (Bankr. D. Del.) (JTD), Dkt. No. 26 at ¶¶ 42, 78-79.

of Bankman’s work at the FTX Group resulted in a flagrant waste of FTX Group funds.”⁸⁶⁰ And the Debtors allege that Joseph Bankman directed “donations of more than \$5.5 million” to Stanford University in an attempt to “curry favor with and enrich his employer at the FTX Group’s expense.”⁸⁶¹ This matter remains pending.⁸⁶² Further discussion of the avoidance action against Joseph Bankman and Barbara Fried may be found *supra*, at Part 6, Section II.

S&C provided to the Examiner a list of over 1,200 charitable donations made by the FTX Group.⁸⁶³ S&C initially prioritized recovery of the largest charitable donations, before turning to the next-largest group of donations and, finally, working with Landis to recover funds from recipients of smaller donations. S&C concluded that, for recipients of the smallest value donations, any potential recoveries would likely be outweighed by the costs of further action.

Without engaging in litigation, the Debtors have collected about \$70 million from over 50 non-profits that received FTX Group-funded donations.⁸⁶⁴ The Debtors continue to assess possible steps to recover charitable contributions.

IV. FTX Tokens/Investments at Third-Party Exchanges

The FTX Group maintained accounts at cryptocurrency exchanges in multiple jurisdictions.⁸⁶⁵ By January 27, 2023, the Debtors, in conjunction with S&C and Alvarez & Marsal, identified cryptocurrency assets belonging to the Debtors, but outside of the Debtors’ custody, valued at approximately \$3.5 billion as of the Petition Date.⁸⁶⁶ Of this total, more than

⁸⁶⁰ *Id.* at ¶ 80.

⁸⁶¹ *Id.* at ¶ 115.

⁸⁶² See *Alameda Research LLC v. Bankman*, No. 23-ap-50584 (Bankr. D. Del.) (JTD).

⁸⁶³ See Spreadsheet of Charitable Contribution Transfers.

⁸⁶⁴ See S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 151.

⁸⁶⁵ *Id.* at 168.

⁸⁶⁶ S&C, *UCC Professionals Meeting*, Jan. 27, 2023, at 14.

\$1.76 billion worth of cryptocurrency was held in hot wallets,⁸⁶⁷ including in hot wallet accounts at third-party exchanges.⁸⁶⁸ The Debtors faced several challenges in recovering cryptocurrency assets from third-party exchanges. These difficulties included insufficient documentation, a dearth of knowledgeable personnel, and difficulties obtaining access to accounts at third-party exchanges because the exchanges authorized only a limited number of users to access the accounts.⁸⁶⁹

In November 2022, during her interview with S&C, Caroline Ellison provided information regarding the Debtors' third-party exchange accounts and estimates of the value of the contents.⁸⁷⁰ According to Ellison, several third-party exchanges locked access to the accounts or otherwise precluded the Debtors from accessing the assets in the days following the Petition Date.⁸⁷¹ S&C and Alvarez & Marsal contacted third-party exchanges to request that each exchange freeze the Debtor accounts and enter into discussions for transfer of control of the accounts to the Debtors.⁸⁷²

S&C and Alvarez & Marsal identified additional accounts at third-party exchanges that belonged to the Debtors by: (1) investigating more than 2,000 potential accounts or log-in credentials; and (2) pursuing on-chain tracing efforts to locate undisclosed token holdings at

⁸⁶⁷ A "hot wallet" is a means of storing cryptocurrency on a device that is connected to the Internet. *See* First Ray Report, at 23.

⁸⁶⁸ S&C, *UCC Professionals Meeting*, Jan. 27, 2023, at 14.

⁸⁶⁹ *Id.* at 15.

⁸⁷⁰ S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 168.

⁸⁷¹ *Id.*

⁸⁷² S&C, *UCC Professionals Meeting*, Jan. 27, 2023, at 17.

exchanges and at other locations.⁸⁷³ S&C worked to regain control of these accounts with the goals of: (1) recovering the assets; and (2) transferring all tokens to cold storage.⁸⁷⁴

As of January 27, 2023, S&C and Alvarez & Marsal had identified accounts at 23 exchanges. Four exchanges granted the Debtors access to the accounts or had granted access pending verification.⁸⁷⁵ Thirteen other exchanges agreed to freeze accounts and were considered to be cooperating, including having requested legal process to turn over control.⁸⁷⁶ The remaining six exchanges had not responded as of January 27, 2023, and/or the Debtors were in discussions with SDNY-USAO regarding pursuit or forfeiture.⁸⁷⁷

As of March 15, 2024, the Debtors reached agreements or had near-complete agreements with nine exchanges, including one newly identified account, to grant the Debtors access to the accounts.⁸⁷⁸ The value of the tokens in these resolved accounts was estimated to be approximately \$290 million, as of the Petition Date. Two accounts, created by Debtors at Binance and Binance US, were seized by the USAO-SDNY. Those seized accounts held assets estimated to be worth approximately \$230 million as of the Petition Date.⁸⁷⁹

Eleven exchanges have not yet agreed to resolutions allowing the transfer of control of the frozen accounts to the Debtors, but are part of ongoing efforts by the Debtors to secure

⁸⁷³ *Id.*

⁸⁷⁴ S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 168. “Cold storage,” or a “cold wallet” is a means of storing cryptocurrency on a secure device that is not connected to the Internet. *See* First Ray Report, at 23.

⁸⁷⁵ S&C, *UCC Professionals Meeting*, Jan. 27, 2023, at 17. The four exchanges are: (1) Bitfinex; (2) Deribit; (3) LMAX; and (4) Kraken.

⁸⁷⁶ *Id.* The 13 exchanges are: (1) Ascendex; (2) Bitbank; (3) Bitflyer; (4) Bitmex; (5) Bitstamp; (6) Bybit; (7) Coinbase; (8) Crypto.com; (9) Gate.io; (10) Gemini; (11) Paxos; (12) Polonex; and (13) Upbit.

⁸⁷⁷ *Id.* The six exchanges are: (1) Binance and Binance US; (2) BTCTurk; (3) Huboi; (4) KuCoin; (5) MEXC; and (6) OKCoin.

⁸⁷⁸ *Id.* The nine exchanges are: (1) Liquid (not listed among the January 23, 2023 exchanges); (2) Bitstamp; (3) Bitfinex; (4) Coinbase; (5) Deribit; (6) Gemini; (7) Kraken; (8) LMAX; and (9) OKCoin.

⁸⁷⁹ S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 168.

recovery of the assets. The aggregate value of the assets in these accounts is estimated to be approximately \$245 million as of the Petition Date.⁸⁸⁰ S&C believes that four exchanges are currently beyond the reach of the Debtors' recovery efforts.⁸⁸¹ S&C estimates that the aggregate Petition Date value of Debtor assets held in accounts at these four exchanges is approximately \$130 million.⁸⁸²

a. Exchanges For Which Recovery Is Complete or Near Complete

As of March 15, 2024, S&C considered asset recovery to be essentially complete from the following nine exchanges: (1) Liquid; (2) Bitfinex;⁸⁸³ (3) Bitstamp; (4) Coinbase; (5) Deribit⁸⁸⁴; (6) Gemini; (7) Kraken; (8) LMAX; and (9) OKCoin.⁸⁸⁵ The investigations conducted by S&C and Paul Hastings provided additional detail on two of these accounts:

1. Coinbase

This account was determined to represent the greatest value of non-FTT Debtor assets held at a third-party exchange, consisting primarily of SOL tokens estimated to be worth \$105 million as of January 30, 2024. However, at that time, this account was jointly controlled by BlockFi and the Debtors.⁸⁸⁶ Although the extent to which this joint control was resolved in favor of the Debtors was not detailed in S&C's March 15, 2024 report, the Debtors' recovery of assets held at Coinbase is considered complete or near complete.

⁸⁸⁰ *Id.*

⁸⁸¹ *Id.*

⁸⁸² *Id.*

⁸⁸³ Bitfinex was identified as a holder of FTT. Paul Hastings, *FTT Claims and Holders Summary*, July 10, 2023, at Tab "On-Chain Holders (FTI)."

⁸⁸⁴ The Debtors' Deribit account was identified as the source of a payment to Genesis to pay down a loan of 10.6 BTC (\$248,000) on July 19, 2022. However, documentation of the underlying loan has not been identified. Paul Hastings, *FTX Unsecured Creditors' Committee—FTI Analysis*, Mar. 1, 2023 ("Document Review"), at Row 4.

⁸⁸⁵ S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 168.

⁸⁸⁶ Paul Hastings, *Presentation to the Official Committee of Unsecured Creditors of FTX Trading Ltd., et al.*, Jan. 30, 2024, at 10.

2. OKCoin

As determined through an investigation conducted by Nardello on behalf of S&C, OKCoin (sometimes referred to as OKX) is a global cryptocurrency exchange with offices in the United States, Malta, Hong Kong, Singapore, and Japan.⁸⁸⁷ Nardello's investigation did not, however, reveal the nature or value of Debtor assets held at OKCoin. Nevertheless, S&C reports asset recovery from OKCoin to be complete or near complete.⁸⁸⁸

b. Exchanges At Which Debtor Accounts Were Seized by USAO-SDNY

As of January 27, 2023, S&C reported that the Debtors were aware that the USAO-SDNY was seeking forfeiture of the Debtors' accounts held at two related entities:

(1) Binance;⁸⁸⁹ and (2) Binance US.⁸⁹⁰ By March 15, 2024, the Debtors' crypto-assets in those accounts had, in fact, been seized by the USAO-SDNY.⁸⁹¹

As part of its investigation into Binance on behalf of S&C, Nardello reviewed an August 2022 study of stablecoins titled "Stablecoin Cyclones: Mint & Burn Patterns." Among other things, the study discussed unexpected aspects of TrueUSD, a U.S. dollar fiat-backed stablecoin. The study found that "FTX and Binance share a redemption address. . . . [E]ither TrueUSD made a mistake and sent the same address to these two rival exchanges or they are coordinating TrueUSD on some level."⁸⁹²

⁸⁸⁷ Nardello, *Memorandum re: OKCoin*, Dec. 2, 2022, at 1.

⁸⁸⁸ S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 168.

⁸⁸⁹ Binance was also identified as a holder of FTT. Paul Hastings, *FTT Claims and Holders Summary*, July 10, 2023, at Tab "On-Chain Holders (FTI)."

⁸⁹⁰ S&C, *UCC Professionals Meeting*, Jan. 27, 2023, at 17.

⁸⁹¹ S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 168.

⁸⁹² Nardello, *Report Prepared for Sullivan & Cromwell LLP re: Binance Supplemental Research*, Nov. 18, 2023, at 11.

Miller recounted to S&C that, after the Petition Date, he learned of approximately \$1 million in cryptocurrency that the Debtors maintained at Binance. Miller stated that he secured these crypto-assets by putting them on a physical metal ledger.⁸⁹³

c. Exchanges For Which Recovery Efforts Remain In Process

The Debtors are continuing recovery efforts with respect to 11 other third-party exchanges:⁸⁹⁴ (1) AscendEX; (2) Bitbank; (3) Bitexen; (4) bitFlyer; (5) BitMEX; (6) Bybit,⁸⁹⁵ (7) Crypto.com; (8) MEXC; (9) Paxos; (10) Poloniex; and (11) Upbit. These accounts represent assets estimated at \$245 million as of the Petition Date.⁸⁹⁶ The Debtors' investigation of these exchanges uncovered additional detail related to four of them:

1. Crypto.com

According to an investigation conducted by Nardello, Crypto.com is a cryptocurrency exchange operated by Foris DAX MT, a Malta corporation registered to operate in Hong Kong.⁸⁹⁷ Foris DAX MT held accounts at FTX.com beginning at least as early as 2019.⁸⁹⁸ The Nardello investigation report into Crypto.com did not discuss accounts held by the Debtors at Crypto.com or its parent. However, the report did include evidence that Crypto.com or its parent had more than \$33 million in assets on deposit with the Debtors as of October 2022.⁸⁹⁹ S&C investigated Crypto.com and identified accounts held by the Debtors at Crypto.com.⁹⁰⁰ It

⁸⁹³ Miller Interview Memo, at 11.

⁸⁹⁴ S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 168.

⁸⁹⁵ Bybit was identified as a holder of FTT. Paul Hastings, *FTT Claims and Holders Summary*, July 10, 2023, at Tab "On-Chain Holders (FTI)."

⁸⁹⁶ S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 168.

⁸⁹⁷ Nardello, *Memorandum re: Foris Dax*, Sept. 12, 2023, at 2.

⁸⁹⁸ *Id.* at 9.

⁸⁹⁹ *Id.* at 10.

⁹⁰⁰ S&C, *UCC Professionals Meeting*, Jan. 27, 2023, at 17.

reported that Crypto.com had frozen these accounts at the Debtors' request, and that the Debtors were in the process of securing control over these assets as of May 2024.⁹⁰¹

2. MEXC

Nardello identified documents indicating that Alameda had opened accounts on the MEXC platform and held various cryptocurrency tokens in those accounts.⁹⁰² MEXC was also identified as a holder of FTT.⁹⁰³

3. Poloniex

Poloniex is a cryptocurrency exchange that, as of October 2019, was acquired by Sun Yuchen, a high-profile individual in the cryptocurrency industry who also goes by Justin Sun.⁹⁰⁴

4. Upbit

The investigation by Paul Hastings into preferential transfers involving Alameda identified email exchanges and KYC documentation that indicate "Alameda had direct access" to an account on Upbit.⁹⁰⁵ It further identified a letter from Ray to Upbit's General Counsel stating that the Debtors have an account at Upbit, identified by account ID, and requesting that the funds in the account be transferred to the bankruptcy estate.⁹⁰⁶

d. Exchanges Over Which the Debtors Exert No Control

There are four third-party exchanges where S&C identified accounts held by the Debtors, but the accounts are outside the control of the Debtors. These exchanges are: (1) BTCTurk;

⁹⁰¹ S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 168.

⁹⁰² Nardello, *Memorandum re: MEXC*, Apr. 20, 2023, at 3.

⁹⁰³ Paul Hastings, *FTT Claims and Holders Summary*, July 10, 2023, at Tab "On-Chain Holders (FTI)."

⁹⁰⁴ Nardello, *Memorandum re: Orange Anthem*, July 6, 2023, at 1,6.

⁹⁰⁵ Paul Hastings, *FTX UCC - Summary of Alameda Privileges/Preferential Treatment*, June 7, 2023, at Tab "Detailed Analysis".

⁹⁰⁶ *Id.*

(2) GATE.io; (3) Huboi; and (4) KuCoin.⁹⁰⁷ The Debtors' accounts at these exchanges are estimated to hold assets valued at \$130 million as of the Petition Date.⁹⁰⁸ Of these, S&C's investigation and reporting offered additional notable information on two of them:

1. GATE.io⁹⁰⁹

In January 2023, S&C determined that GATE.io was willing to cooperate with the Debtors by freezing the Debtors' accounts to preserve value and transferring control of those assets to the Debtors.⁹¹⁰ S&C indicated that GATE.io had, as of January 27, 2023, frozen the account(s) related to the Debtors' holdings.⁹¹¹ However, along with 12 other third-party exchanges, GATE.io requested legal process prior to granting the Debtors access or control to the frozen assets.⁹¹² Then, in contrast to the 12 cooperating exchanges, GATE.io stopped cooperating with the Debtors.⁹¹³

2. KuCoin⁹¹⁴

Nardello identified documents indicating that Alameda listed assets equivalent to \$115 million in a KuCoin account, with \$80 million of that characterized as "currently available" as of November 7, 2022.⁹¹⁵

⁹⁰⁷ S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 168.

⁹⁰⁸ *Id.*

⁹⁰⁹ GATE.io was identified as holding positions in the FTT token. Paul Hastings, *FTT Claims and Holders Summary*, July 10, 2023, at Tab "On-Chain Holders (FTI)."

⁹¹⁰ S&C, *UCC Professionals Meeting*, Jan. 27, 2023, at 17.

⁹¹¹ *Id.*

⁹¹² *Id.*

⁹¹³ S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 168.

⁹¹⁴ KuCoin was also identified as a holder of FTT. Paul Hastings, *FTT Claims and Holders Summary*, July 10, 2023, at Tab "On-Chain Holders (FTI)."

⁹¹⁵ Nardello, *Memorandum re: KuCoin*, Apr. 20, 2023, at 20.

KuCoin has been the target of many regulatory actions, including one by the New York State Attorney General alleging improper securities trading.⁹¹⁶ Although the Debtors have identified assets in a KuCoin account, those assets are assessed by S&C to be outside the control of the Debtors and not subject to advancing recovery efforts.⁹¹⁷

V. FTX.US

Beginning in 2020, the FTX Group created and maintained FTX.US, an exchange for spot trading of cryptocurrency and other digital assets in the United States.⁹¹⁸ FTX.US was needed because FTX.com, the FTX Group's primary exchange, was not available to users in the United States.⁹¹⁹ FTX.US was a subsidiary of Debtor entity WRS, which also controlled several other businesses related to cryptocurrency trading that served U.S. customers.⁹²⁰

On November 8, 2022, after FTX.com paused customer withdrawals, Bankman-Fried tweeted that "FTX.us . . . [is] not currently impacted by this," and on November 10, he claimed that FTX.US was "100% liquid" and "[e]very user could fully withdraw" funds.⁹²¹ However, on November 9, representatives of FTX.US informed U.S. regulators and the U.S. House of Representatives that "FTX US . . . customer assets actually held are not immediately reconcilable with the customer assets reported."⁹²² FTX.US subsequently filed for Chapter 11

⁹¹⁶ *Id.* at 9.

⁹¹⁷ S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 168.

⁹¹⁸ First Ray Report, at 4.

⁹¹⁹ Ray First Day Declaration, at ¶ 33.

⁹²⁰ Examples of other WRS businesses in this category included LedgerX LLC, a CFTC-licensed cryptocurrency futures and derivatives market, and FTX Capital Markets LLC, an SEC-registered broker-dealer. *See id.* at ¶¶ 12-21.

⁹²¹ Letter from Chairman Raja Krishnamoorthi, Subcommittee on Economic and Consumer Policy, Committee on Oversight and Reform, U.S. House of Representatives, to Sam Bankman Fried and John Ray (Nov. 18, 2022), at 3, <https://oversightdemocrats.house.gov/sites/evo-subsites/democrats-oversight.house.gov/files/2022-11-18.RK%20to%20Bankman-Fried%20and%20Ray-FTX%20re%20FTX%20Crypto.pdf>, archived at <https://perma.cc/88G8-GEL8>.

⁹²² *Id.*

along with the other FTX Group entities. On January 17, 2023, Bankman-Fried contended that FTX.US should not have filed for bankruptcy, as FTX.US “was and is solvent, likely with hundreds of millions of dollars in excess of customer balances.”⁹²³

S&C has undertaken a number of investigations into issues presented by the collapse of FTX.US. These investigations included whether FTX.US was insolvent when the bankruptcy was filed, as well as an inquiry into Bankman-Fried’s various public statements that espoused the opposite position, i.e., that FTX.US was, and remained, solvent. The investigations by S&C confirmed that FTX.US was in fact insolvent on the Petition Date, with a multimillion dollar “hole” in FTX.US’s balance sheet,⁹²⁴ and that Bankman-Fried’s statements to the contrary were false. In this section, the Examiner summarizes the investigative steps taken and the findings of these investigations, and recommends that he conduct a further investigation into issues surrounding the “hole” in FTX.US’s balance sheet and its causes, and the potential commingling and misuse of customer funds involving FTX.US.

a. Investigative Steps

Immediately after the Petition Date, S&C began investigating the collapse of the FTX Group, including issues related to FTX.US.⁹²⁵ Relevant here, the initial investigation into FTX.US involved the review of documents collected from Debtor entities and interviews of

⁹²³ See Samuel Bankman-Fried, *FTX US Balance Update 2023-01-17*, Substack (Jan. 18, 2023), <https://sambf.substack.com/p/ftx-us-balance-update-2023-01-17>, archived at <https://perma.cc/M585-CCVT>; see also Samuel Bankman-Fried (@SBF_FTX), X (formerly Twitter) (Jan. 17, 2023, 7:31 pm), https://twitter.com/SBF_FTX/status/1615507065337958401, archived at <https://perma.cc/R3E9-N3ND> (“FTX US is solvent, as it always as [sic] been.”).

⁹²⁴ FTX Group executives used the term “hole” to refer to a shortfall in available assets at FTX.US relative to FTX.US’s liabilities to customers and others. The CFTC later adopted this terminology in its complaint against FTX Group executives stemming from the collapse of FTX.US. See *Commodity Futures Exch. Comm’n v. Bankman-Fried*, No. 22-cv-10503 (S.D.N.Y.), Dkt. No. 1 at ¶¶ 95-98.

⁹²⁵ S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 26.

several FTX.US executives.⁹²⁶ S&C identified evidence that, in the leadup to the Petition Date, FTX executives had discussed a \$46 million “hole” in customer assets at FTX.US.⁹²⁷

After Bankman-Fried claimed on January 17, 2023 that FTX.US was, and had always been, solvent, S&C further investigated the “hole” and the veracity of Bankman-Fried’s statements about FTX.US’s solvency.⁹²⁸ S&C reviewed additional documents and communications located on devices obtained from the Debtors and conducted a forensic accounting of FTX.US’s assets and liabilities in conjunction with AlixPartners and Alvarez & Marsal.⁹²⁹

b. S&C’s Findings Regarding the FTX.US “Hole” and Bankman-Fried’s Statements

Based on its investigation into FTX.US, S&C found the following: when concerns about FTX.com liquidity issues developed in early November 2022, certain FTX Group executives—including Bankman-Fried, Ellison, Singh, FTX.US CEO Zach Dexter, and FTX.US General Counsel Ryne Miller—discussed issues related to FTX.US.⁹³⁰ After pointed questions from Dexter and Miller, Bankman-Fried and Wang provided spreadsheets ostensibly reflecting the bank balances of WRS (FTX.US’s parent company) and the aggregated customer balances at FTX.US.

Dexter analyzed these spreadsheets and informed the group that the FTX.US bank balances spreadsheet totaled \$138.5 million and that the “Wallet Balances” spreadsheet—the customer balances—totaled \$184.7 million, leaving a hole (or shortfall) of approximately \$46

⁹²⁶ See, e.g., Miller Interview Memo; S&C, *Memorandum re: Interview of Marissa MacDonald*, Dec. 7, 2022 (“MacDonald Interview Memo”); During Interview Notes.

⁹²⁷ S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 26.

⁹²⁸ *Id.*

⁹²⁹ *Id.*

⁹³⁰ S&C, *Talking Points for SDNY Re: FTX.US Shortfall*, Apr. 4, 2023 (“USAO-SDNY Talking Points”), at 2 (quoting FTX_000022866).

million at FTX.US.⁹³¹ Dexter pressured other FTX Group executives to address the hole by transferring funds from FTX.US operating cash accounts to bank accounts that held FTX.US customer funds. Eventually, Bankman-Fried claimed to have resolved the hole by “transferr[ing] 46m from info@alameda-research.com to expenses@ftx.us.”⁹³²

But as S&C’s investigation determined and the CFTC later alleged, the transfer that Bankman-Fried described was not what Dexter had prudently recommended: it was not a transfer from an FTX.US operating cash account to increase the amount of cash available for customer withdrawals in FTX.US’s bank accounts.⁹³³ Instead, as the CFTC alleges, in an effort to cover the hole at FTX.US, Bankman-Fried made a transfer from Alameda’s FTX.US account to another account at FTX.US that could be used to satisfy customer withdrawal demands.⁹³⁴ In other words, Bankman-Fried used Alameda funds to shore up FTX.US’s balance sheet by reducing FTX.US’s nominal liability to Alameda, while not, in reality, adding any additional assets to FTX.US’s balance sheet.⁹³⁵ Dexter reported this transfer to the CFTC soon after it was made, and the CFTC incorporated allegations about the transfer into its case against Bankman-Fried.⁹³⁶

As S&C’s investigation found, the FTX Group executives soon realized that the calculations of FTX.US’s financial position were flawed.⁹³⁷ Dexter identified these errors to a

⁹³¹ *Id.* (citing FTX_001567895).

⁹³² *Id.* at 3 (quoting FTX_000022974).

⁹³³ *Id.*; *Commodity Futures Exch. Comm’n v. Bankman-Fried*, No. 22-cv-10503 (S.D.N.Y.), Dkt. No. 1, at ¶¶ 97-98.

⁹³⁴ USAO-SDNY Talking Points, at 3; *Commodity Futures Exch. Comm’n v. Bankman-Fried*, No. 22-cv-10503 (S.D.N.Y.), Dkt. No. 1 at ¶¶ 97-98.

⁹³⁵ *Commodity Futures Exch. Comm’n v. Bankman-Fried*, No. 22-cv-10503 (S.D.N.Y.), Dkt. No. 1 at ¶ 95 (“Bankman-Fried quickly indicated he would fill the hole at FTX US from liquidation of Alameda assets.”).

⁹³⁶ USAO-SDNY Talking Points, at 3; *Commodity Futures Exch. Comm’n v. Bankman-Fried*, No. 22-cv-10503 (S.D.N.Y.), Dkt. No. 1 at ¶ 98.

⁹³⁷ USAO-SDNY Talking Points, at 3-4 (citing FTX_000287058).

smaller group of FTX.US executives, excluding Bankman-Fried and other key members of FTX Group leadership. Dexter explained that the calculations had involved several bank balances and customer wallet balances, each from a different point in time, and that in the financial documentation provided, “operational cash [was] clearly being counted towards ‘backing’ cash, which is clearly not how this is supposed to work.”⁹³⁸ Caroline Papadopoulos, FTX.US’s controller, pointed out that the calculation was off for another reason: it “includ[ed] [WRS] cash [which] should be considered independent of FTX US.”⁹³⁹ She characterized the ostensible reconciliation as “nonsense.”⁹⁴⁰ In the wake of this discovery, FTX.US filed for bankruptcy with the other FTX Group entities.

In light of these findings, S&C concluded that Bankman-Fried was incorrect when he claimed FTX.US was solvent on the Petition Date. Bankman-Fried’s argument for FTX.US’s solvency relied on similar errors to those made during the attempted reconciliation of the balance sheet: it counted cash held by FTX.US affiliates WRS and LedgerX as cash that could be used to pay out FTX.US customers.⁹⁴¹ Additionally, Bankman-Fried claimed that FTX.US had \$485 million in crypto-assets available to satisfy customer withdrawals. But this was also false; these tokens had declined significantly in value by the Petition Date.⁹⁴² Finally, S&C concluded that even if FTX.US had been solvent, it was appropriate to file it into bankruptcy. Given the extensive evidence of asset commingling across entities in the FTX Group—including the commingling of FTX.US and Alameda assets undertaken in an effort to cover the hole at

⁹³⁸ *Id.* (citing FTX_000287196).

⁹³⁹ *Id.*

⁹⁴⁰ *Id.*

⁹⁴¹ *Id.* at 5 (citing FTX_000287196).

⁹⁴² *Id.* at 5-6.

FTX.US—FTX.US would have been vulnerable to litigation by creditors of other FTX entities if it had not been included in the bankruptcy filings.⁹⁴³

c. Recommendations for Further Investigation

S&C’s investigation confirmed the hole at FTX.US. In conjunction with Alvarez & Marsal, S&C has continued to investigate the size of the hole as of the Petition Date and refine its estimate. The most recent calculation—as of May 7, 2024—estimates that the hole was approximately \$141 million, far greater than FTX.US’s leadership and the senior FTX Group executives had understood.⁹⁴⁴ However, S&C acknowledged it has not focused on whether there was a hole before November 2022, or how large such a hole may have been.⁹⁴⁵

There is reason to believe that FTX.US may have experienced balance sheet shortfalls far earlier than the Petition Date. S&C found that senior FTX Group executives frequently ordered the transfer of assets (both cryptocurrency and fiat currency) between FTX.US and other entities in the FTX Group, such as Alameda and FTX.com.⁹⁴⁶ During S&C’s interviews with FTX.US executives, witnesses discussed the movement of funds between FTX.US and other FTX Group entities. For example, a senior executive in FTX.US compliance described a conversation with an employee with FTX.US’s settlements team that occurred around the time of the discovery of the hole. As the compliance executive reported, when the topic of the hole came up, the settlements employee mentioned “normally . . . go[ing] to Alameda and switch[ing] [a stablecoin] into fiat from [Alameda].”⁹⁴⁷ S&C noted that FTX.US made at least some transfers

⁹⁴³ *Id.* at 3-4.

⁹⁴⁴ Dkt. No. 14301-1, at 29.

⁹⁴⁵ USAO-SDNY Talking Points, at 6.

⁹⁴⁶ *Id.*

⁹⁴⁷ During Interview Notes, at 8.

to and from other FTX Group entities to resolve imbalances in stablecoin reserves, and that at least certain of those transfers involved a swap of one asset held at FTX.US for another asset of equal value held at another FTX Group entity. But it is not clear whether all the transfers took that form, or whether some were transfers undertaken at the direction of FTX Group executives to address balance sheet holes at FTX.US. Another FTX.US executive who served in a senior role in the compliance department described a conversation in which she was told that FTX executive Jayesh Peswani would do “top-side entries on the books” at FTX.US,⁹⁴⁸ suggesting to her that “someone can move something around” among FTX Group entities.

These findings suggest that FTX.US may have experienced “holes,” or shortfalls of available assets relative to liabilities on occasions before November 2022 and that these holes, as well as the November 2022 hole, may have been resolved by FTX employees transferring, or ordering the transfer of, assets from other FTX Group entities to FTX.US. It does not appear, however, that the Debtors have fully investigated the cause of the November 2022 hole at FTX.US, or the existence or causes of holes that may have existed at other times. Nor have they determined (1) whether the balance sheet holes were the result of commingling of customer or corporate assets; (2) their frequency and size; or (3) how they were covered, and who was involved in covering them. In discussions with the Examiner, S&C explained it would be difficult to conclusively determine the causes of the holes at FTX.US because of the poor state of the FTX Group’s record-keeping and the fact that—as the FTX Group’s executives found when they attempted to assess the size of the FTX.US hole in the days before the Petition Date—it is difficult to determine the state of FTX.US’s balance sheet at any given time. This is due to the high volatility of many crypto-assets and constant fluctuations in fiat and cryptocurrency account

⁹⁴⁸ MacDonald Interview Memo, at 19.

balances. Nevertheless, S&C acknowledged it has not investigated in full certain potential causes of the hole or holes at FTX.US.

The Examiner recommends that he be authorized to conduct an investigation into these issues. Further investigation of the existence, cause, and resolution of “holes,” or balance sheet shortfalls, at FTX.US may identify additional misconduct or misuse of customer assets. Additionally, further investigation and reporting on FTX.US’s insolvency could promote public confidence in the bankruptcy process by refuting Bankman-Fried’s false claims that FTX.US was solvent as of the Petition Date. The Examiner notes that further inquiry into potential misuse of customer assets at FTX.US is unlikely to be accretive to the estates given the prior investigations into the FTX Group’s misuse of customer assets. However, the Scope Order recognizes that additional investigations may be warranted if those “additional investigations would be in the public interest.”⁹⁴⁹ Given the significant public interest in issues related to FTX.US—an FTX Group entity that served customers in the United States, was publicly advertised to US customers as a “US based and regulated” exchange that made “[c]rypto investing . . . simple,”⁹⁵⁰ and has been the subject of extensive public debate—it is the Examiner’s view that further inquiry by him into FTX.US is warranted.

VI. Miscellaneous Investigations

The Debtors’ counsel investigated a handful of other issues not readily assigned to one of the other categories of inquiries discussed in this Report, but where the Debtors’ counsel saw a possibility of locating value for the estates. These miscellaneous investigations are discussed here.

⁹⁴⁹ The Examiner may recommend additional investigations if they “would be in the public interest.” *See* Scope Order at ¶ 2.

⁹⁵⁰ FTX.US, <https://ftx.us> (Feb. 10, 2022), *archived at* <https://web.archive.org/web/20220210160911/https://ftx.us/>.

a. FTX Group Properties

S&C investigated properties owned by the FTX Group in the Bahamas.⁹⁵¹ Alvarez & Marsal, along with counsel in the Bahamas, reviewed the Bahamas Land and Property Registry to identify properties owned by the FTX Group and affiliated employees and individuals.⁹⁵² S&C reviewed relevant records and communications related to each property and identified who lived in the residential properties.⁹⁵³

As a result of its investigation, S&C concluded that, although FDM wired funds to purchase the residences, it funded those purchases through transfers from FTX Group bank accounts.⁹⁵⁴ In total, S&C identified 35 commercial and residential properties purchased with more than \$231 million of Debtor funds.⁹⁵⁵ Those properties are the subject of separate actions seeking to recover the value of the properties.⁹⁵⁶

b. Other Investigated Preference Actions

S&C has investigated certain entities for potential preference actions as part of its review of top FTX.com and FTX.US customers. For example, S&C identified two Alameda lenders and found that one lender received loan repayments from Alameda on the days immediately preceding the bankruptcy filing.⁹⁵⁷ S&C also identified and investigated one firm that was

⁹⁵¹ S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 182.

⁹⁵² *Id.*

⁹⁵³ *Id.*

⁹⁵⁴ *Id.*

⁹⁵⁵ *Id.* at 183.

⁹⁵⁶ See *FTX Trading Ltd. v. Bankman-Fried*, No. 23-ap-50448 (Bankr. D. Del.) (JTD); *Alameda Research LLC v. Bankman*, No. 23-ap-50584 (Bankr. D. Del.) (JTD).

⁹⁵⁷ S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 138-40.

founded by a since-departed Alameda executive.⁹⁵⁸ The Debtors have not yet elected to pursue claims against those individuals and entities, but continue to assess possible next steps.

c. NFT Withdrawals

S&C has also investigated certain non-fungible token (“NFT”) transactions that occurred immediately before and on the Petition Date.⁹⁵⁹ By analyzing withdrawal and trading data from that period, S&C found that those NFT transactions were part of a scheme whereby FTX.com users, who could not withdraw funds from the exchange after FTX.com froze withdrawals, paid inflated prices for NFTs sold by Bahamian individuals. Those Bahamian individuals, who could withdraw funds from the exchange after FTX.com lifted the withdrawal freeze for Bahamian users on November 10, 2022, would in turn withdraw the proceeds from the sales of NFTs from FTX.com.⁹⁶⁰ This investigation also identified two former employees of the FTX Group who withdrew funds in a similar way, but those employees voluntarily agreed to return those funds to the Debtors.⁹⁶¹ The Debtors continue to assess next steps with respect to the individuals involved in these transactions.

VII. Payments to Foreign Officials

The USAO-SDNY and the Debtors’ counsel have conducted extensive investigations into transfers from the FTX Group to various foreign government officials, including the transfer of assets to the Securities Commission of the Bahamas (“SCB”) and substantial payments to Chinese government officials. A summary of those investigations is set forth below.

⁹⁵⁸ *Id.* at 143.

⁹⁵⁹ *Id.* at 134.

⁹⁶⁰ *Id.*

⁹⁶¹ *Id.* at 135.

a. Payments to and Contacts with Bahamian Government Officials

1. Transfer of Assets to the Securities Commission of the Bahamas

Immediately after the Petition Date, S&C learned that previously unreleased FTT tokens had been transferred to the custody of the Bahamian government.⁹⁶² That same week, S&C began investigating the circumstances of these transfers.

S&C corresponded with counsel for Bankman-Fried, Wang, and the JPLs, as well as with FTX Group employees and the USAO-SDNY. In an emergency motion filed by the Debtors in these bankruptcy cases, the Debtors accused the SCB of violating the automatic stay by directing the transfer of the Debtors' digital assets out of their bankruptcy estates and to the Bahamian government.⁹⁶³ The JPLs subsequently filed an emergency motion for relief from the automatic stay and to compel the turnover of certain electronic records controlled by the Debtors.⁹⁶⁴ In opposing this emergency motion, the Debtors provided this Court with a copy of an affidavit from the Executive Director of the SCB, which attached a postpetition, November 12, 2022 *ex parte* order from the Supreme Court of the Bahamas authorizing "all of the digital assets on the FTX.com platform within the possession, custody and/or under the control of [FDM]" be transferred to the SCB.⁹⁶⁵ The JPLs and the Debtors subsequently entered into an agreement regarding mutual cooperation that consensually resolved the issues raised by the JPLs' emergency motion.⁹⁶⁶

⁹⁶² See, e.g., Dkt. No. 335 at ¶¶ 33-34.

⁹⁶³ Dkt. No. 22 at ¶ 7; see also 11 U.S.C. § 362.

⁹⁶⁴ See Dkt. No. 197.

⁹⁶⁵ See Dkt. No. 336-2, at 20, 388-90.

⁹⁶⁶ See Dkt. No. 402.

During the criminal trial of Bankman-Fried, the USAO-SDNY presented evidence regarding the post-filing transfer of assets to the SCB.⁹⁶⁷ The USAO-SDNY relied on this evidence in support of a fraud enhancement at sentencing, to establish that Bankman-Fried's offense involved "a misrepresentation or other fraudulent action during the course of a bankruptcy proceeding."⁹⁶⁸ In support of its argument that the enhancement for fraud during a bankruptcy proceeding applied, the USAO-SDNY relied on Wang's trial testimony that Bankman-Fried told him that "ideally [we] should transfer [customer assets] to the Bahamas liquidators or the Bahamas regulators" because "they seemed friendly and seemed willing to let [Bankman-Fried] stay in control of the company."⁹⁶⁹ The USAO-SDNY also cited evidence that, while Bankman-Fried and Wang were working to transfer the assets to the Bahamian authorities, Bankman-Fried instructed Wang to continue the transfers despite warnings from Miller that there was "a significant question of who owns the assets," and that Bankman-Fried "cannot transfer any funds that are the subject of the bankruptcy estate."⁹⁷⁰ The defense, on the other hand, contended that the enhancement did not apply because Bankman-Fried transferred those assets to "compl[y] with an order of a foreign government with physical jurisdiction over him."⁹⁷¹ When Bankman-Fried was sentenced, the sentencing court agreed with the USAO-SDNY and applied the two-level sentencing enhancement.⁹⁷²

⁹⁶⁷ See Transcript at 464:22-471:8, SBF Criminal Case, Dkt. No. 352.

⁹⁶⁸ SBF Criminal Case, Dkt. No. 410, at 57-59 (citing U.S.S.G. § 2B1.1(b)(9)(B)).

⁹⁶⁹ See *id.* at 57-58 (second alteration in original) (quoting Transcript at 465:20-466:1, SBF Criminal Case, Dkt. No. 352).

⁹⁷⁰ See *id.* at 58-59; see also Transcript at 467:22-470:21, SBF Criminal Case, Dkt. No. 352.

⁹⁷¹ See SBF Criminal Case, Dkt. No. 414, at 6.

⁹⁷² See Bankman-Fried Sentencing Transcript at 7:22-8:3, SBF Criminal Case, Dkt. No. 426.

2. Other Payments to and Connections with Bahamian Government Officials

S&C, with assistance from Nardello, also investigated other connections between the FTX Group and current or former Bahamian government officials, including payments made and other benefits conferred in an apparent effort to secure influence in the Bahamas. As described in the Second Ray Report, those payments included a \$1 million “bonus” paid to a former Bahamian government official, who was acting as an attorney for FDM.⁹⁷³ S&C determined that this “bonus” was offered to the former government official to secure her assistance in obtaining a necessary license for FDM under the Bahamas’ Digital Assets and Registered Exchanges Act.⁹⁷⁴ In its investigation, S&C developed evidence that, when asked whether these payments could possibly constitute bribes, the FTX Group employee who offered the “bonus” dismissed those concerns based on his view that the recipient of those payments was no longer a government official.⁹⁷⁵ The former Bahamian government official secured the license for FDM within six weeks.⁹⁷⁶

S&C and Nardello also found that the FTX Group made several donations to entities affiliated with Bahamian government officials and their families.⁹⁷⁷ For example, the FTX Group sent \$500,000 as a purported donation to an entity owned by relatives of a high-ranking Bahamian government official.⁹⁷⁸ In addition, the FTX Group donated \$175,000 to other entities

⁹⁷³ See Second Ray Report, at 16.

⁹⁷⁴ See S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 49; see also Second Ray Report, at 16.

⁹⁷⁵ S&C, *Memorandum re: Interview of Can Sun*, Jan. 11, 2023 (“Sun Interview Memo”), at 13.

⁹⁷⁶ See Second Ray Report, at 16.

⁹⁷⁷ See S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 49.

⁹⁷⁸ See Nardello, *Memorandum re: Issues Concerning Bahamian Insolvency Proceedings Involving FTX*, May 13, 2023, at 31.

affiliated with family members of high-ranking Bahamian government officials.⁹⁷⁹ Finally, S&C and Nardello’s investigation identified other contacts between the FTX Group and Bahamian government officials.

b. Payments to Chinese Government Officials

S&C—in conjunction with Alvarez & Marsal, AlixPartners, Nardello, and TRM Labs—also investigated the circumstances surrounding payments to Chinese government officials in 2021 to unlock Alameda accounts in China.⁹⁸⁰ Those accounts, which contained around \$1 billion, were frozen by the Chinese government as part of its investigation into money laundering involving an Alameda counterparty.⁹⁸¹ The USAO-SDNY brought a superseding indictment against Bankman-Fried charging him with violating the Foreign Corrupt Practices Act in connection with these payments to Chinese government officials, alleging that they totaled “at least approximately \$40 million.”⁹⁸² At the criminal trial of Bankman-Fried, Ellison testified that these payments were in the “ballpark” of \$100 million, and that she understood them to be “a large bribe to Chinese government officials to get some of our exchange accounts unlocked.”⁹⁸³ S&C’s investigation further found that these payments to Chinese government officials totaled approximately \$161 million.⁹⁸⁴

⁹⁷⁹ *See id.*

⁹⁸⁰ S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 15.

⁹⁸¹ *See* Transcript at 827:14-828:14, SBF Criminal Case, Dkt. No. 360.

⁹⁸² *See* SBF Criminal Case, Dkt. No. 115 at ¶¶ 102-05. That charge, along with several others, was severed from the counts that proceeded to trial, and following Bankman-Fried’s trial, the USAO-SDNY declined to pursue a second trial on the remaining counts. *See* SBF Criminal Case, Dkt. No. 388.

⁹⁸³ *See* Transcript at 827:9-12, 832:16-24, SBF Criminal Case, Dkt. No. 360.

⁹⁸⁴ S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 15.

VIII. Political Contributions

As has been widely reported in the press,⁹⁸⁵ the FTX Group; affiliated individuals including Bankman-Fried, Nishad Singh, and Ryan Salame; and affiliated non-profit organizations and political action committees made extensive political contributions.⁹⁸⁶ Donations were directed to politicians of both major American political parties, as well as to political action committees, national, state, and local political parties, and party-aligned groups.⁹⁸⁷ As explained below, multiple investigations have determined that many of these donations were made in violation of law.

a. Government Investigations

As part of its criminal case, the USAO-SDNY charged Bankman-Fried with violating federal election laws by using “straw donors” and corporate funds to make tens of millions of dollars of political contributions in excess of statutory limits.⁹⁸⁸ Among those used as “straw donors” were two executives of the FTX Group, Singh and Salame.⁹⁸⁹ However, due to legal

⁹⁸⁵ See, e.g., Brian Schwartz, *How former crypto king Sam Bankman-Fried and friends quietly donated to political groups and relatives*, CNBC (Dec. 19, 2022), <https://www.cnbc.com/2022/12/19/how-ftx-founder-sbf-and-friends-quietly-donated-to-political-groups-and-relatives.html>, archived at <https://perma.cc/UA4A-XTPF>; Kenneth P. Vogel & Ken Bensinger, *U.S. Scrutinizes Political Donations by Sam Bankman-Fried and Allies*, N.Y. Times, Dec. 17, 2022, <https://www.nytimes.com/2022/12/17/us/politics/sam-bankman-fried-political-donations-doj.html>, archived at <https://perma.cc/UD66-NNJE>.

⁹⁸⁶ Second Ray Report, at 27; SBF Criminal Case, Dkt. No. 410, at 22; see also Brian Schwartz, *How former crypto king Sam Bankman-Fried and friends quietly donated to political groups and relatives*, CNBC (Dec. 19, 2022), <https://www.cnbc.com/2022/12/19/how-ftx-founder-sbf-and-friends-quietly-donated-to-political-groups-and-relatives.html>, archived at <https://perma.cc/UA4A-XTPF>.

⁹⁸⁷ See SBF Criminal Case, Dkt. No. 410, at 21-22; see also Kenneth P. Vogel & Ken Bensinger, *U.S. Scrutinizes Political Donations by Sam Bankman-Fried and Allies*, N.Y. Times, Dec. 17, 2022, <https://www.nytimes.com/2022/12/17/us/politics/sam-bankman-fried-political-donations-doj.html>, archived at <https://perma.cc/UD66-NNJE>.

⁹⁸⁸ SBF Criminal Case, Dkt. No. 80 at ¶¶ 41, 91-96.

⁹⁸⁹ *Id.* at ¶¶ 32-43 (describing a straw donor scheme undertaken with two unnamed executives of the FTX Group); SBF Criminal Case, Dkt. No. 410 (sentencing submission listing Salame and Singh as the unnamed executives).

challenges relating to Bankman-Fried's extradition from the Bahamas, the USAO-SDNY ultimately chose to not try Bankman-Fried on these campaign finance charges.⁹⁹⁰

b. Debtors' Investigation

S&C undertook an extensive investigation into the Debtors' political contributions. This investigation involved a review of the Debtors' internal documents referencing political contributions and cross-referencing identified donations to federal and state campaign finance filings.⁹⁹¹ S&C also worked with AlixPartners to trace transfers from the Debtors' bank accounts to political candidates.⁹⁹² Nardello investigated and summarized public records regarding the Debtors' political donations.⁹⁹³ And S&C inquired into these issues during certain witness interviews.⁹⁹⁴ Separately, on behalf of the Unsecured Creditors' Committee, Paul Hastings and FTI Consulting also undertook an investigation into the political contributions.

These investigations identified over 1,000 political contributions totaling over \$200 million.⁹⁹⁵ They also determined that many of these donations were made using purported "loans" from Debtor entities that were, in fact, transfers from customer or corporate funds to Debtor insiders.⁹⁹⁶ In order to recover these funds for the bankruptcy estates, the Debtors requested that the identified recipients of the political contributions voluntarily return the funds

⁹⁹⁰ See SBF Criminal Case, Dkt. No. 410, at 18 ("[T]he government of The Bahamas informed the United States after the extradition that Bankman-Fried had not been extradited on the campaign finance count, . . . For that reason alone, the Government was unable to proceed to trial on [that charge]").

⁹⁹¹ S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 147.

⁹⁹² *Id.*

⁹⁹³ See, e.g., Nardello, *Memorandum re: Political Entity Contact Information*, Aug. 25, 2023; Nardello, *Report Prepared for Sullivan & Cromwell LLP re: Gabriel Bankman-Fried*, May 17, 2023; Nardello, *Report Prepared for Sullivan & Cromwell LLP re: Alan Joseph Bankman*, May 15, 2023; Nardello, *Report Prepared for Sullivan & Cromwell LLP re: Nishad Thirumale Singh*, Jan. 29, 2023.

⁹⁹⁴ See, e.g., S&C, *Memorandum re: Interview of Mark Wetjen*, Jan. 11, 2023; Sun Interview Memo.

⁹⁹⁵ See Political Contribution Spreadsheet; Political Donation Review Spreadsheet (identifying approximately \$200 million in political donations).

⁹⁹⁶ See, e.g., SBF Criminal Case, Dkt. No. 410, at 23; Second Ray Report, at 27-28.

in lieu of being subjected to an avoidance action.⁹⁹⁷ In response, many of the recipients “have either returned the funds to the Debtors or turned them to [sic] over to the U.S. Department of Justice.”⁹⁹⁸

S&C and the USAO-SDNY continue to investigate issues related to political donations by the Debtors and their affiliates.

IX. Venture Book

The FTX Group created a fund, referred to as the “Venture Book,” that would allow rapid deployment of capital to invest in companies and tokens. The idea behind the Venture Book was to permit the FTX Group to “move fast,” with no “external ‘stakeholders’ or ‘committees.’”⁹⁹⁹ The Venture Book’s stated core mission was to “advance global blockchain and web3 adoption, with a broad investment mandate across social, gaming, fintech, software, and healthcare.”¹⁰⁰⁰ Investigations have revealed that the FTX Group, through the Venture Book, invested nearly \$6 billion, including customer assets, in over 500 individuals and entities between May 2020 and October 2022.¹⁰⁰¹

⁹⁹⁷ *FTX Debtors Send Messages to Recipients of Avoidable Donations*, PR Newswire (Feb. 5, 2023), <https://www.prnewswire.com/news-releases/ftx-debtors-send-messages-to-recipients-of-avoidable-donations-301738948.html>, archived at <https://perma.cc/RCY8-82U7>.

⁹⁹⁸ Second Ray Report, at 28.

⁹⁹⁹ FTX Ventures, <https://ventures.ftx.com> (Aug. 11, 2022), archived at <https://web.archive.org/web/20220811091647/https://ventures.ftx.com/>.

¹⁰⁰⁰ *FTX launches \$2 billion Ventures fund, hires former Lightspeed Partner Amy Wu*, PR Newswire (Jan. 14, 2022), <https://www.prnewswire.com/news-releases/ftx-launches-2-billion-ventures-fund-hires-former-lightspeed-partner-amy-wu-301461078.html>, archived at <https://perma.cc/5SVR-DFBY>.

¹⁰⁰¹ Quinn Emanuel, *Presentation Regarding FTX Professionals, Legal Insiders, and Venture Investments to Chapter 11 Examiner Robert J. Cleary, Esq.*, Mar. 22, 2024, at 77; S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 185.

a. Investigative Steps

After the Petition Date, S&C and Quinn Emanuel investigated the Venture Book and evaluated potential litigation and monetization options.¹⁰⁰² In January 2023, S&C and Quinn Emanuel divided up the then-known Venture Book investments. S&C retained those it had already begun to investigate and those with close ties to issues that were being addressed in other bankruptcy-related cases; Quinn Emanuel assumed responsibility for investigating the rest.¹⁰⁰³

1. Quinn Emanuel Venture Book Investigations

With Alvarez & Marsal, Quinn Emanuel compiled information concerning over 500 Venture Book investments, including the nature of the investments, the investment size, the funding dates and sources, and any future payments due.¹⁰⁰⁴ Quinn Emanuel appropriately prioritized its inquiries based on the size of the investment. For 30 large investments, which Quinn Emanuel defined as investments of \$11 million or more, and which comprised 90% of the Venture Book's value, Quinn Emanuel undertook the most comprehensive investigations.¹⁰⁰⁵ This included a review of the Debtors' documents and data related to each investment, a review of publicly available information, and work with outside consultants to value the investments.

¹⁰⁰² Quinn Emanuel, *Presentation Regarding FTX Professionals, Legal Insiders, and Venture Investments to Chapter 11 Examiner Robert J. Cleary, Esq.*, Mar. 22, 2024, at 79.

¹⁰⁰³ S&C and Quinn Emanuel provided inconsistent lists of Venture Book investments over time. The discrepancy arises primarily from differing ways of categorizing instances in which the Debtors made multiple types of investments (e.g. equity and token) in the same entity, and when the Debtors made investments in multiple legal entities associated with the same venture. Additionally, given the poor state of the Debtors' record-keeping, S&C and Quinn Emanuel discovered previously unknown venture investments during their ongoing investigations. The Examiner is satisfied that Quinn Emanuel and S&C have done a fulsome investigation to identify all of the Debtors' venture investments.

¹⁰⁰⁴ Quinn Emanuel, *Presentation Regarding FTX Professionals, Legal Insiders, and Venture Investments to Chapter 11 Examiner Robert J. Cleary, Esq.*, Mar. 22, 2024, at 80.

¹⁰⁰⁵ *Id.* at 81-85.

Quinn Emanuel prepared memoranda summarizing its investigative findings, including its recommendation for additional steps when appropriate.¹⁰⁰⁶

For 39 medium-sized investments, defined as investments of \$5 million to \$11.5 million, that made up 4.7% of the Venture Book's value, Quinn Emanuel conducted more targeted investigations. These involved a more circumscribed review of the Debtors' documents and public documents as compared to the reviews conducted for the large investments. Quinn Emanuel recommended further investigation and analysis with respect to seven of the investments that fell within the \$5 million to \$11 million range.¹⁰⁰⁷

Finally, Quinn Emanuel worked with Alvarez & Marsal to summarize basic information regarding the remaining, smaller Venture Book investments, i.e., those under \$5 million. Quinn Emanuel did not investigate each of these investments, reasoning that the cost of such investigations relative to their limited value would not be accretive to the bankruptcy estates. These investments totaled approximately \$286 million, making up approximately 4.8% of the Venture Book's total value.¹⁰⁰⁸

2. S&C Venture Book Investigations

In conjunction with Nardello, S&C undertook similar investigations into its assigned Venture Book entities. S&C's investigations involved a review of the Debtors' documents and data related to each investment. The firm also had Nardello prepare investigative memoranda regarding many of the entities assigned to S&C, using publicly available documents and the Debtors' internal documents. S&C then evaluated the merits of pursuing litigation.

¹⁰⁰⁶ *Id.* at 85.

¹⁰⁰⁷ *Id.* at 86; Quinn Emanuel, *Memorandum re: Analysis of Venture Book Investments Between \$5 Million and \$11.5 Million*, Apr. 15, 2024, at 1.

¹⁰⁰⁸ Quinn Emanuel, *QE Assigned Investments Under \$5 Million*.

b. Summary of Findings

The investigations into the Venture Book concluded that the FTX Group's venture investment process was haphazard, with an emphasis on speed over reasoned decision-making. Various FTX Group entities made Venture Book investments, with seemingly little regard for corporate formalities. For instance, some Venture Book investments were made by entities affiliated with Alameda, while others were made by entities affiliated with FTX Trading.¹⁰⁰⁹ Moreover, the FTX Group did not appear to have or follow any investment guidelines.¹⁰¹⁰ Investments were made in amounts varying from under \$1,000 to over \$1 billion. They were made in a variety of modalities, including personal loans to startup founders; purchases of cryptocurrency tokens; and equity investments in publicly traded companies, among others. Investments were paid for in cash, cryptocurrency, and FTX shares.¹⁰¹¹ Investments were often spontaneous or executed very quickly, with limited due diligence prior to investing, and were often based on unsupported valuations.¹⁰¹² Finally, a troubling number of Venture Book investments involved entities with ties to FTX Group senior executives.¹⁰¹³

c. Avoidance Actions

1. Background

As of the date of this Report, the Debtors have brought only a few avoidance actions against Venture Book entities. The Debtors largely have held off on pursuing litigation concerning the Venture Book because they have been working to monetize these investments

¹⁰⁰⁹ Quinn Emanuel, *Presentation Regarding FTX Professionals, Legal Insiders, and Venture Investments to Chapter 11 Examiner Robert J. Cleary, Esq.*, Mar. 22, 2024, at 77.

¹⁰¹⁰ *Id.* at 78.

¹⁰¹¹ *Id.*

¹⁰¹² *Id.*

¹⁰¹³ *Id.*

without the expense and burden of litigation, and in many cases these efforts have been successful. For some large and medium-sized Venture Book investments, the Debtors have decided not to institute avoidance actions yet, for tactical and strategic reasons that appear prudent to the Examiner. Quinn Emanuel concluded that avoidance actions against the entities involved in the small and medium-sized Venture Book investments would not be accretive to the estates, as the cost of litigation would likely outweigh the potential returns.

The Debtors have, however, pursued avoidance actions against a handful of Venture Book entities investigated by S&C and have conducted additional investigations into certain Venture Book investments of concern. These avoidance actions and investigations are described below. The Debtors continue to investigate issues related to the Venture Book and to evaluate options to secure recoveries from these investments.

2. Actual and Intended Avoidance Actions

In instances where it concluded that doing so would be accretive to the estates, S&C has pursued, or prepared to pursue, a handful of avoidance actions against Venture Book entities it investigated. S&C settled some of the potential avoidance actions on the eve of litigation or decided not to pursue them due to intervening events; other avoidance actions have also been resolved, while still others remain ongoing. The facts underlying the more significant of these actual and intended avoidance actions, as found by S&C, are described below, along with a brief description of their status.

(i) K5 Global

At the direction of Bankman-Fried, Alameda and Alameda Research Ventures invested \$700 million in K5 Global and related entities (collectively, “K5”).¹⁰¹⁴ K5 was a business

¹⁰¹⁴ Dkt. No. 1679 at ¶¶ 7-8.

controlled by a celebrity talent agent that operated several investment funds.¹⁰¹⁵ The FTX Group hastily invested in K5 after Bankman-Fried attended a dinner party with celebrities at the home of K5's co-owner; the FTX Group conducted little to no due diligence before making the investment.¹⁰¹⁶ And although the K5 investment was made using funds from Alameda and Alameda Research Ventures, the investment was held by two newly formed shell corporations, SGN Albany LLC and Mount Olympus Capital LP, that were controlled by senior FTX executives, including Bankman-Fried.¹⁰¹⁷

On June 22, 2023, S&C brought an avoidance action against K5, SGN Albany, Mount Olympus Capital, and individuals associated with K5, alleging fraudulent transfer, preferential transfer, property recovery claims, and tort and contract claims under the laws of Delaware and the British Virgin Islands.¹⁰¹⁸ After SGN Albany failed to appear in the action, the bankruptcy estates successfully moved for a default judgment against it, giving the estates ownership of SGN Albany's interest in K5.¹⁰¹⁹ The proceeding remains ongoing as to other defendants.

(ii) Latona

Bankman-Fried created Latona as a vehicle to undertake investments in life sciences companies.¹⁰²⁰ Latona was portrayed as part of the FTX Foundation's philanthropic efforts focused on pandemic preparedness. But in reality, it was an investment vehicle controlled by Bankman-Fried and other senior FTX Group executives.¹⁰²¹ FTX Group entities FTX Trading

¹⁰¹⁵ *Id.* at ¶ 1.

¹⁰¹⁶ *Id.* at ¶¶ 1-5.

¹⁰¹⁷ *Id.* at ¶¶ 28-35.

¹⁰¹⁸ *Id.* at ¶¶ 101-169.

¹⁰¹⁹ *Alameda Research Ltd. v. Kives*, No. 23-ap-50411 (Bankr. D. Del.) (JTD), Dkt. No. 48.

¹⁰²⁰ *Alameda Research Ltd. v. Platform Life Sciences Inc.*, No. 23-ap-50444 (Bankr. D. Del.) (JTD), Dkt. No. 1, at ¶ 5.

¹⁰²¹ *Id.* at ¶¶ 46-48.

and Alameda transferred over \$71 million to Latona.¹⁰²² That money was used to invest in life sciences companies at excessive valuations, and with little to no due diligence.¹⁰²³

S&C brought an avoidance action against Latona, the companies in which it invested, and its insiders (including Bankman-Fried).¹⁰²⁴ The complaint alleged fraudulent transfer, property recovery claims, and contract and tort claims under the laws of Antigua and Barbuda and the British Virgin Islands.¹⁰²⁵ The estates have reached settlement agreements with all of the defendants except for Bankman-Fried.¹⁰²⁶

(iii) Modulo

Modulo Capital (“Modulo”) was an investment fund that received an investment of nearly \$500 million from Alameda and was also a significant creditor of the FTX Group.¹⁰²⁷ An investigation by Nardello and S&C revealed that the operators of Modulo maintained close ties to senior FTX Group executives, and that, in internal emails, Bankman-Fried described Modulo as a *de facto* arm of Alameda.¹⁰²⁸ In light of this information, S&C prepared to litigate an avoidance action against Modulo. However, the Debtors negotiated a settlement agreement in which Modulo transferred over \$400 million in cash to the estates and released over \$50 million in claims against certain Debtors.¹⁰²⁹

¹⁰²² *Id.* at ¶ 12.

¹⁰²³ *Id.* at ¶¶ 51-54.

¹⁰²⁴ *Id.* at ¶¶ 1-2.

¹⁰²⁵ *Id.* at ¶¶ 114-175.

¹⁰²⁶ *Alameda Research Ltd. v. Platform Life Sciences Inc.*, No. 23-ap-50444 (Bankr. D. Del.) (JTD), Dkt. Nos. 89, 97, 102.

¹⁰²⁷ S&C Venture Book Spreadsheet.

¹⁰²⁸ Nardello, *Memorandum re: Modulo Capital—Ownership, Control and Principals*, Jan. 19, 2023, at 7-9.

¹⁰²⁹ Dkt. No. 1244.

(iv) Farmington State Bank/Moonstone Bank

In early 2022, the Debtors had discussions with Farmington State Bank (then d/b/a Moonstone Bank) regarding the development of a cryptocurrency staking program.¹⁰³⁰ Although Moonstone Bank was a small regional bank with only a few million dollars in assets, Debtor entity Alameda Research Ventures invested \$11.5 million in Moonstone Bank's holding company, FBH Corporation.¹⁰³¹ The discussions around the staking program did not prove fruitful, but FTX Group entity FTX Trading nonetheless deposited \$50 million in a Moonstone Bank account.¹⁰³² The USAO-SDNY seized the \$50 million deposit in January 2023.¹⁰³³

S&C considered a potential avoidance action against Moonstone Bank to recover the \$11.5 million investment by Alameda Research Ventures.¹⁰³⁴ However, while S&C was evaluating litigation, the Federal Reserve Board and Washington Department of Financial Institutions announced an enforcement action against Moonstone Bank and, as a consequence, the bank wound down its operations.¹⁰³⁵ Accordingly, S&C determined that litigation was unlikely to be accretive to the estates.¹⁰³⁶

(v) Deck Technologies

Bankman-Fried personally acquired political data analytics company Deck Technologies ("Deck") in August 2022, using an ostensible \$5 million loan from FTX Group entity Alameda and \$1.5 million in personal funds.¹⁰³⁷ S&C investigated this acquisition and determined that at

¹⁰³⁰ S&C, *Review of Post-Petition Investigations for Examiner*, at 106.

¹⁰³¹ *Id.*

¹⁰³² *Id.*

¹⁰³³ *Id.* at 107.

¹⁰³⁴ *Id.*

¹⁰³⁵ *Id.* at 108.

¹⁰³⁶ *Id.*

¹⁰³⁷ *Id.* at 124-125; Nardello, *Memorandum re: Deck Technologies, Inc. and Max Wood*, May 2, 2023, at 3.

the time of the acquisition, Deck had significant debt, lacked funds to make payroll, and did not expect to reach profitability until 2025.¹⁰³⁸ Bankman-Fried nonetheless agreed to Deck's proposed purchase price without negotiation.¹⁰³⁹

Given the circumstances surrounding the Deck acquisition, S&C evaluated fraudulent transfer claims against Deck.¹⁰⁴⁰ While S&C concluded that such claims were plausible, it ultimately decided not to pursue them because the cost of any litigation would outweigh any potential recovery.¹⁰⁴¹ Instead, the Debtors attempted to sell Deck.¹⁰⁴² When those efforts failed, the Debtors placed Deck in a wind-down process.¹⁰⁴³

3. Other Efforts to Monetize Venture Investments

As discussed above, the Debtors have made significant efforts to monetize the FTX Group's venture investments and secure a recovery for the estates without litigation. These efforts are ongoing. Because this monetization project involves sensitive negotiations with potential buyers, this Report does not address the status of monetization efforts in detail. However, one example of a successful monetization that came before this Bankruptcy Court is discussed here.

In its investigation, S&C found that the Debtors held a large stake in the Pyth Network, a “public blockchain-based software system that aggregates pricing data for various financial assets[] . . . in order to provide a real-time public blockchain[-]based feed of prices for such

¹⁰³⁸ S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 125.

¹⁰³⁹ *Id.*

¹⁰⁴⁰ *Id.* at 126.

¹⁰⁴¹ *Id.*

¹⁰⁴² *Id.*

¹⁰⁴³ *Id.*

assets,” which would be used by “[m]arket data providers and consumers.”¹⁰⁴⁴ Debtors Cottonwood Grove, Alameda, and other affiliated entities held approximately 1.12 billion of the original PYTH tokens, the “native cryptographic token of the Pyth Protocol,” and nearly all of the 10 billion original PYTH tokens were held in a blockchain wallet address on FTX.com on the Petition Date.¹⁰⁴⁵ Because almost all of the original PYTH tokens were “inaccessible” due to the filing of the bankruptcy cases, Pyth Data Association contended that “there [was] a substantial risk that without relief from the automatic stay, participants in the Pyth Network and Pyth Protocol[] . . . w[ould] start abandoning the Pyth project.”¹⁰⁴⁶

S&C consulted with the Pyth Data Association, and the parties ultimately agreed that the latter could seek relief from the automatic stay in order to mint new PYTH tokens, which “would have the same technical characteristics and potential uses” as the original PYTH tokens held by the Debtors.¹⁰⁴⁷ As part of that agreement, Debtors Cottonwood Grove and Alameda would receive “an amount of New PYTH equal to the amount of Original PYTH that they and their affiliates owned as of the Petition Date.”¹⁰⁴⁸ The Bankruptcy Court approved Pyth Data Association’s motion for relief from the automatic stay,¹⁰⁴⁹ and the Pyth Network subsequently launched along with the newly minted PYTH tokens.¹⁰⁵⁰ The Debtors then sold an initial tranche of the newly minted PYTH tokens for the benefit of the estates.

¹⁰⁴⁴ Dkt. No. 1632 at ¶ 2.

¹⁰⁴⁵ *Id.* at ¶¶ 4-5.

¹⁰⁴⁶ *Id.* at ¶ 33.

¹⁰⁴⁷ *Id.* at ¶¶ 8-9.

¹⁰⁴⁸ *Id.* at ¶ 9.

¹⁰⁴⁹ Dkt. No. 1693.

¹⁰⁵⁰ S&C, *Review of Post-Petition Investigations for Examiner*, Mar. 15, 2024, at 167.

4. Venture Book Investments of Concern

Quinn Emanuel has identified several additional Venture Book investments of concern. The Debtors are evaluating their options with respect to these investments. Three examples are described below.

(i) Venture Investment-1

Debtor entity Alameda Ventures made several equity investments in Venture Investment-1, a Bitcoin mining company that is incorporated in Cyprus and operates Bitcoin mining facilities in Kazakhstan, the United States, and elsewhere.¹⁰⁵¹ Between August 2021 and April 2022, the Debtors purchased four separate tranches of shares in Venture Investment-1, with a total purchase price of over \$1 billion.¹⁰⁵² Bankman-Fried personally executed three of the four share purchase agreements on behalf of Alameda Ventures.¹⁰⁵³ There is evidence that some of the purchases were made using FTX Group customer funds.¹⁰⁵⁴

The investigation into Venture Investment-1 uncovered problematic facts. At the time of the investment, the company's financial statements raised red flags, both among other potential investors and internally at the FTX Group.¹⁰⁵⁵ Individuals associated with Venture Investment-1, including a board member, were aware of potential inaccuracies in the company's financial statements and valuation materials provided to potential investors.¹⁰⁵⁶ There was also evidence that co-founders of Venture Investment-1 had been involved in criminal conduct in

¹⁰⁵¹ Quinn Emanuel, *Memorandum re: FTX Venture Book Review of Venture Investment-1*, Jul. 12, 2023, at 7.

¹⁰⁵² *Id.* at 2-3.

¹⁰⁵³ *Id.* at 3-4.

¹⁰⁵⁴ *Id.* at 11.

¹⁰⁵⁵ *Id.* at 10, 18-20.

¹⁰⁵⁶ *Id.* at 12-13.

Kazakhstan.¹⁰⁵⁷ And while the FTX Group’s due diligence process identified many of these issues,¹⁰⁵⁸ the FTX Group nevertheless chose to invest.¹⁰⁵⁹

(ii) Venture Investment-2

Debtors Alameda and Alameda Research Ventures made three loans totaling \$43 million in support of Venture Investment-2, three cryptocurrency-related ventures associated with a single individual.¹⁰⁶⁰ Bankman-Fried personally authorized these loans, which were disbursed between March 2021 and April 2022.¹⁰⁶¹

Quinn Emanuel’s investigation revealed that several “badges of fraud” were present at the time of the investments: (1) the individual who controlled all three entities involved in Venture Investment-2 had a close relationship with several senior FTX Group executives, including a possible romantic relationship with a senior executive; (2) the investments were concealed from the public; (3) the loan agreements with Venture Investment-2 may not have been for reasonably equivalent value, as they contemplated several questionable, non-monetary “alternatives to repayment”; and (4) the FTX Group may have been insolvent at the time of the transfers.¹⁰⁶²

(iii) Venture Investment-3

Quinn Emanuel identified a \$10 million “membership interest” that Debtor entity Alameda Research Ventures purchased in Venture Investment-3 in June 2022.¹⁰⁶³ Venture

¹⁰⁵⁷ *Id.* at 7-8.

¹⁰⁵⁸ *Id.* at 14-16.

¹⁰⁵⁹ *Id.* at 16.

¹⁰⁶⁰ Quinn Emanuel, *Memorandum re: FTX Venture Book Review of Venture Investment-2*, Apr. 3, 2023, at 4.

¹⁰⁶¹ *Id.* at 1-4.

¹⁰⁶² *Id.* at 12-14.

¹⁰⁶³ Quinn Emanuel, *Memorandum of FTX Venture Book Review of Venture Investment-3*, July 12, 2023, at 1-2.

Investment-3 was founded by an individual who was formerly associated with several FTX Group entities.¹⁰⁶⁴ There is no evidence the FTX Group conducted any due diligence before making this investment, and there is no evidence supporting the valuation at which the FTX Group invested.¹⁰⁶⁵ More fundamentally, there is no evidence Venture Investment-3 conducted any business when the investment was made.¹⁰⁶⁶ Therefore, it is likely the Debtors would be able to prove that the FTX Group did not receive reasonably equivalent value in exchange for the \$10 million investment.¹⁰⁶⁷

d. Further Venture Book-Related Efforts

The Debtors' counsel undertook significant efforts to investigate and recover funds associated with the large venture investments that make up the vast majority of the Venture Book.

To date, however, for the reasons outlined above, similar investigative efforts have not been undertaken with respect to the Venture Book's small and medium-sized investments. As noted above, Quinn Emanuel has not pursued detailed investigations into individual small and medium-sized investments because it has concluded that doing so would not be cost-effective. The Examiner agrees with Quinn Emanuel's assessment. Given the high cost of investigation and the limited potential return, it would not be accretive to the estates for the Debtors' counsel or the Examiner to investigate the circumstances surrounding each of the hundreds of small and medium-sized Venture Book investments. The Debtors continue to evaluate accretive and cost-effective strategies for asset recovery from small and medium-sized Venture Book investments.

¹⁰⁶⁴ *Id.* at 2.

¹⁰⁶⁵ *Id.* at 5.

¹⁰⁶⁶ *Id.* at 1-2.

¹⁰⁶⁷ *Id.* at 5.

PART 7: RELATED ADVERSARY PROCEEDINGS

This Part sets forth information regarding certain adversary proceedings that have been brought by the Debtors in an effort to recover assets for the estates, and are not discussed elsewhere in this Report.¹⁰⁶⁸

Alameda Research Ltd. v. Voyager Digital, LLC, No. 23-ap-50084 (Bankr. D. Del.) (JTD): This avoidance action seeks to recover alleged preferential transfers based on the Debtors' transactions with Voyager Digital after Voyager Digital filed for Chapter 11 protection in the Southern District of New York on July 5, 2022.¹⁰⁶⁹ Voyager Digital was a "feeder fund," a type of investment fund that pools funds for investment into another fund, which for Voyager Digital was Alameda. The complaint alleges that, between August and October 2022, at the request of Voyager Digital, Alameda and FTX Trading repaid certain loans that Voyager Digital made to Alameda, with accrued interest, with various cryptocurrencies (including repayment of certain loans prior to maturity).¹⁰⁷⁰ The complaint asserts that the combined value of the transfers made by both Alameda and FTX Trading to Voyager Digital amounted to more than \$453.1 million, with more than 98 percent of the total traceable to Alameda.¹⁰⁷¹ This action was resolved¹⁰⁷² by a settlement in which the Debtors agreed to release Voyager Digital and related entities from three claims of Alameda Ventures and one claim of Alameda Research Ventures¹⁰⁷³ in exchange for Voyager Digital releasing the Debtors from 100 claims of Voyager Digital.¹⁰⁷⁴

¹⁰⁶⁸ The information in this Part is current as of the date of this report.

¹⁰⁶⁹ *Alameda Research Ltd. v. Voyager Digital, LLC*, No. 23-ap-50084 (Bankr. D. Del.) (JTD), Dkt. No. 8 at ¶¶ 3-5.

¹⁰⁷⁰ *Id.* at ¶¶ 24-28.

¹⁰⁷¹ *Alameda Research Ltd. v. Voyager Digital, LLC*, No. 23-ap-50084 (Bankr. D. Del.) (JTD), Dkt. Nos. 8-1, 8-2.

¹⁰⁷² *Alameda Research Ltd. v. Voyager Digital, LLC*, No. 23-ap-50084 (Bankr. D. Del.) (JTD), Dkt. No. 23.

¹⁰⁷³ Dkt. No. 13123-1.

¹⁰⁷⁴ Dkt. No. 13123-2.

Alameda Research LLC v. FTX Digital Markets Ltd., No. 23-ap-50145 (Bankr. D. Del.) (JTD): The Debtors allege that the Bahamian JPLs erroneously claim that FDM, a Bahamian entity, “is the constructive owner of FTX.com’s property, including fiat and cryptocurrency, intellectual property, and customer relationships, as a matter of non-bankruptcy law.”¹⁰⁷⁵ This action seeks declaratory relief that FDM has no ownership interest in the Debtors’ assets—including its cryptocurrency, fiat currency, intellectual property, and customer information or relationships—and that any assets held by FDM are held for the Debtors or represent avoidable fraudulent transfers.¹⁰⁷⁶

FTX Trading Ltd. v. Mirana Corp., No. 23-ap-50759 (Bankr. D. Del.) (JTD): This action is brought to avoid and recover transfers made to Mirana Corp., the investment arm of Bybit, the operator of one of the world’s largest cryptocurrency exchanges.¹⁰⁷⁷ The complaint asserts that between September 2021 and the Petition Date, Mirana’s account balance on FTX.com grew from \$40 million to as much as \$500 million, and was valued at “several [hundred] million dollars” in the period preceding FTX Group’s collapse.¹⁰⁷⁸ The complaint alleges that based on its large account value and high levels of trading activity, Mirana was granted “VIP status” by the FTX.com exchange.¹⁰⁷⁹

According to the complaint, Mirana became aware of the financial distress at FTX.com in November 2022, and then “sought to leverage its VIP status on FTX.com to ensure that it

¹⁰⁷⁵ *Alameda Research LLC v. FTX Digital Markets Ltd.*, No. 23-ap-50145 (Bankr. D. Del.) (JTD), Dkt. No. 18 at ¶ 3.

¹⁰⁷⁶ *Id.* at ¶¶ 66-130.

¹⁰⁷⁷ *FTX Trading Ltd. v. Mirana Corp.*, No. 23-ap-50759 (Bankr. D. Del.) (JTD), Dkt. No. 1 at ¶¶ 1-4.

¹⁰⁷⁸ *Id.* at ¶ 46.

¹⁰⁷⁹ *Id.* at ¶¶ 47, 50.

received priority treatment over other customers.”¹⁰⁸⁰ The complaint claims that, on November 7-8, 2022, just prior to withdrawals being halted, Mirana was able to withdraw more than \$327 million in assets. The complaint further alleges that the aggregate value of all assets withdrawn by Mirana- and Bybit-affiliated entities and individuals was \$953.2 million.¹⁰⁸¹

This action also alleges postpetition misconduct by Mirana and its related entities, claiming that Mirana and Bybit violated the automatic stay based on Bybit’s: (1) refusal to transfer estate assets held in Bybit accounts; and (2) efforts to devalue token holdings of the estates that were part of a token swap agreement whereby Alameda received 100 million BIT tokens in exchange for approximately 3.4 million FTT tokens.¹⁰⁸²

FTX Trading Ltd. v. LayerZero Labs Ltd., No. 23-ap-50492 (Bankr. D. Del.) (JTD): This is an action to avoid and recover fraudulent and preferential transfers made to LayerZero Labs Ltd. (“LayerZero”) by Alameda Ventures.¹⁰⁸³ The complaint alleges that Alameda Ventures used funds misappropriated from the Debtors to enter into a series of financing arrangements with LayerZero, including: (1) equity investments in LayerZero of \$70 million; (2) the purchase of STG tokens for \$25 million; and (3) a loan agreement pursuant to which Alameda borrowed \$45 million from LayerZero.¹⁰⁸⁴ The Debtors further allege that as the Debtors faced financial crisis, LayerZero leveraged its position to extract an agreement that: (1) required Alameda Ventures to relinquish its equity stake in LayerZero and warrants it held for LayerZero (ZRO)

¹⁰⁸⁰ *Id.* at ¶ 50.

¹⁰⁸¹ *Id.* at ¶¶ 52, 57 (assets valued as of November 10, 2023).

¹⁰⁸² *Id.* at ¶¶ 117-121.

¹⁰⁸³ *FTX Trading Ltd. v. LayerZero Labs Ltd.*, No. 23-ap-50492 (Bankr. D. Del.) (JTD), Dkt. No. 1 at ¶ 1.

¹⁰⁸⁴ *Id.* at ¶¶ 3-4.

and Stargate (STG) tokens¹⁰⁸⁵ in exchange for forgiveness of Alameda Ventures' loan, and (2) allowed LayerZero to purchase Alameda Ventures' 100 million STG tokens for \$10 million.¹⁰⁸⁶

¹⁰⁸⁵ The LayerZero token, ZRO, is a token minted by LayerZero, a protocol for applications to operate across blockchains. The Stargate token, STG, is a token minted by Stargate Finance, a protocol for asset transfer that employs LayerZero technology.

¹⁰⁸⁶ *Id.* at ¶¶ 6-9.

**PART 8: ESTIMATED DURATION AND PROPOSED BUDGET FOR
RECOMMENDED INVESTIGATIONS**

As explained above, pursuant to the Scope Order, at ¶ 2, the Examiner recommends that he be authorized to undertake additional investigations of the following issues:

1. S&C's representation of Bankman-Fried in connection with his purchase of the Robinhood Shares. This inquiry would focus on (1) the scope and contours of that representation and (2) based on that representation, what, if anything, S&C knew or should have known about the FTX Group's fraud. *See supra*, at Part 2, Section VI.
2. Potential claims against the former shareholders of LHI that sold their interests to WRS, to the extent these claims were not released in the postpetition transaction. This inquiry would (1) determine whether an avoidance action is warranted with respect to these unreleased shareholders, and (2) enable the Examiner to report on the underlying details of the prepetition sale of LHI to WRS. *See supra*, at Part 2, Section VI.
3. The "holes" or balance sheet shortfalls at FTX.US. This inquiry would center on (1) the reasons these holes arose at FTX.US, (2) whether the balance sheet holes were the result of commingling of customer or corporate assets, (3) the frequency and magnitude of the holes, and (4) how they were resolved and by whom. *See supra*, at Part 6, Section V(c).

The Examiner estimates that the additional investigative work related to these issues would take approximately ten weeks. It is estimated that the cost of this work, along with a Report to the Court summarizing the same, would not exceed \$2,400,000.

The Examiner hereby respectfully requests that the Court authorize him to conduct the three investigations summarized above.

Dated: May 20, 2024

Respectfully submitted,

By: /s/ Robert J. Cleary

Robert J. Cleary
Chapter 11 Examiner

ASHBY & GEDDES, P.A.

Michael D. DeBaecke (Bar No. 3186)
500 Delaware Avenue, 8th Floor
Wilmington, DE 19801
Tel: (302) 654-1888
Email: mdebaecke@ashbygeddes.com

-and-

**PATTERSON BELKNAP WEBB &
TYLER LLP**

Daniel A. Lowenthal (admitted *pro hac vice*)
Kimberly A. Black (admitted *pro hac vice*)
1133 Avenue of the Americas
New York, NY 10036-6710
Telephone: (212) 336-2000
Facsimile: (212) 336-2222
Email: dalowenthal@pbwt.com
Email: kblack@pbwt.com

*Counsel to Robert J. Cleary in his capacity
as Chapter 11 Examiner appointed in the
Chapter 11 Cases*

CERTIFICATE OF SERVICE

I, Michael D. DeBaecke, hereby certify that on May 23, 2024, I caused one copy of the *Report of Robert J. Cleary, Examiner* to be served upon (i) all parties of record via CM/ECF; and (ii) the parties on the attached service list via electronic mail, unless otherwise indicated.

Dated: May 23, 2024

/s/ Michael D. DeBaecke
Michael D. DeBaecke (Bar No. 3186)

VIA INTERNATIONAL MAIL

FTX TRADING LTD.
ATTN: PRESIDENT OR GENERAL COUNSEL
10-11 MANDOLIN PLACE
FRIARS HruppenLL ROAD
ST. JOHN'S AG-04
ANTIGUA AND BARBUDA

VIA FIRST CLASS MAIL

ENVIRONMENTAL PROTECTION AGENCY - REGION 2
ATTN BANKRUPTCY DIVISION
290 BROADWAY
NEW YORK NY 10007-186

VIA FIRST CLASS MAIL

INTERNAL REVENUE SERVICE
CENTRALIZED INSOLVENCY OPERATION
2970 MAR
MAIL STOP 5-Q30.133
PHILADELPHIA PA 19104-5016

VIA FIRST CLASS MAIL

UNITED STATES OF AMERICA ATTORNEY GENERAL
ATTN: BANKRUPTCY DEPT
US DEPT OF JUSTICE
950 PENNSYLVANIA AVE NW
WASHINGTON DC 20530-0001

BROWN RUDNICK LLP
ATTN: KENNETH J. AULET, JEFFREY L. JONAS, MICHAEL
WINOGRAD, ALEXANDER F. KASNETZ
SEVEN TIMES SQUARE
NEW YORK NY 10036
KAULET@BROWNRUDNICK.COM;
JJONAS@BROWNRUDNICK.COM;
MWINOGRAD@BROWNRUDNICK.COM;
AKASNETZ@BROWNRUDNICK.COM

BALLARD SPAHR LLP
ATTN: JAMES V. MASELLA, III
1675 BROADWAY, 19TH FLOOR
NEW YORK NY 10019-5820
MASELLAJ@BALLARDSPAHR.COM

BLANK ROME LLP
ATTN: RICK ANTONOFF
1271 AVENUE OF THE AMERICAS
NEW YORK NY 10020
RICK.ANTONOFF@BLANKROME.COM

VIA FIRST CLASS MAIL

BECKET & LEE LLP
ATTN: SHRADDHA BHARATIA
P.O. BOX 3001
MALVERN PA 19355-0701

VIA FIRST CLASS MAIL

ENVIRONMENTAL PROTECTION AGENCY
ATTN: GENERAL COUNSEL
OFFICE OF GENERAL COUNSEL
1200 PENNSYLVANIA AVE NW, 2310A
WASHINGTON DC 20460

VIA FIRST CLASS MAIL

INTERNAL REVENUE SERVICE
CENTRALIZED INSOLVENCY OPERATION
P.O. BOX 7346
PHILADELPHIA PA 19101-7346

BOERSCH & ILLOVSKY LLP
ATTN: SHARON FRASE
1611 TELEGRAPH AVE., SUITE 806
OAKLAND CA 94612
SHARON@BOERSCH-ILLOVSKY.COM

BROWN RUDNICK LLP
ATTN: T. AXELROD, S. DWOSKIN, M. SAWYER
ONE FINANCIAL CENTER
BOSTON MA 02111
TAXELROD@BROWNRUDNICK.COM;
SDWOSKIN@BROWNRUDNICK.COM;
MSAWYER@BROWNRUDNICK.COM

BUTLER SNOW LLP
ATTN: J. BAILEY III, R. CAMPBELL HILLYER
CRESCENT CENTER, SUITE 500
6075 POPLAR AVENUE, P.O. BOX 171443
MEMPHIS TN 38187
JEB.BAILEY@BUTLERSNOW.COM;
CAM.HILLYER@BUTLERSNOW.COM

CARR MALONEY P.C.
ATTN: J. PETER GLAWS, IV, ESQ.
2000 PENNSYLVANIA AVE, NW
STE. 8001
WASHINGTON DC 20006
PETER.GLAWS@CARRMALONEY.COM

COINCIDENT CAPITAL INTERNATIONAL, LTD
C/O SUNIL SHAH
1805 N. CARSON CITY ST., SUITE X-108
CARSON CITY NV 89701
FTXCC@COINCIDENTCAPITAL.COM

COOLEY LLP
ATTN: AUDREY MOTT-SMITH
3 EMBARCADERO CENTER, 20TH FLOOR
SAN FRANCISCO CA 94111
AMOTTSMITH@COOLEY.COM

COOLEY LLP
ATTN: PHILIP M. BOWMAN, ESQ.
55 HUDSON YARDS
NEW YORK NY 10001
PBOWMAN@COOLEY.COM

COZEN O'CONNOR
ATTN: FREDERICK SCHMIDT
3WTC, 175 GREENWICH STREET
55TH FLOOR
NEW YORK NY 10007
ESCHMIDT@COZEN.COM

DLA PIPER LLP (US)
ATTN: DENNIS C. O'DONNELL
1251 AVENUE OF THE AMERICAS
NEW YORK NY 10020
DENNIS.ODONNELL@DLAPIPER.COM

DLA PIPER LLP (US)
ATTN: JEFFREY TOROSIAN
444 W. LAKE ST., SUITE 900
CHICAGO IL 60606
JEFFREY.TOROSIAN@DLAPIPER.COM

CHAMBERLAINS LAW FIRM
ATTN: S. VULETA, L. MCBRIDE, S. BRODOWSKI, S. ASGILL
LEVEL 12 59 GOULBURN STREET
SYDNEY, NSW 2002
AUSTRALIA
STIPE.VULETA@CHAMBERLAINS.COM.AU;
LACHLAN.MCBRIDE@CHAMBERLAINS.COM.AU;
SEBASTIAN.BRODOWSKI@CHAMBERLAINS.COM.AU;
SAM.KEYSASGILL@CHAMBERLAINS.COM.AU

CLARK HILL PLC
ATTN: KEVIN H. MORSE
130 E. RANDOLPH STREET, SUITE 3900
CHICAGO IL 60601
KMORSE@CLARKHILL.COM

DELAWARE DIVISION OF REVENUE
ATTN: ZILLAH FRAMPTON
820 N FRENCH ST WILMINGTON DE 19801
FASNOTIFY@STATE.DE.US

DELAWARE STATE TREASURY
ATTN: BANKRUPTCY DEPT
820 SILVER LAKE BLVD, STE 100
DOVER DE 19904
STATETREASURER@STATE.DE.US

CROWELL & MORING LLP
ATTN: FREDERICK HYMAN
590 MADISON AVE
NEW YORK NY 10022
FHYMAN@CROWELL.COM

DEBEVOISE & PLIMPTON LLP
ATTN: M. N. LABOVITZ, E. WORENKLEIN, M. GODBE
66 HUDSON BOULEVARD
NEW YORK NY 10001
NLABOVITZ@DEBEVOISE.COM;
EWORENKLEIN@DEBEVOISE.COM;
MCGODBE@DEBEVOISE.COM

DEBEVOISE & PLIMPTON LLP
ATTN: SIDNEY P. LEVINSON, JASMINE BALL
66 HUDSON BOULEBARD
NEW YORK NY 10001
SLEVINSON@DEBEVOISE.COM;
JBALL@DEBEVOISE.COM

EVERSHEDS SUTHERLAND (US) LLP
ATTN: ANDREA L. GORDON
700 SIXTH STREET NW, SUITE 700
WASHINGTON DC 20001
ANDREAGORDON@EVERSHEDS-SUTHERLAND.COM

EVERSHEDS SUTHERLAND (US) LLP
ATTN: ERIN E. BRODERICK
227 WEST MONROE STREET, SUITE 6000
CHICAGO IL 60606
ERINBRODERICK@EVERSHEDS-SUTHERLAND.COM

EVERSHEDS SUTHERLAND (US) LLP
ATTN: MARK D. SHERRILL
1001 FANNIN STREET, SUITE 3700
HOUSTON TX 77002
MARKSHERRILL@EVERSHEDS-SUTHERLAND.COM

EVERSHEDS SUTHERLAND (US) LLP
ATTN: P. IVANICK, S. PAUL, P. EHRLICH, L. HOLBERT
THE GRACE BUILDING, 40TH FLOOR
1114 AVENUE OF THE AMERICAS
NEW YORK NY 10036
PETERIVANICK@EVERSHEDS-SUTHERLAND.COM;
SARAHPAUL@EVERSHEDS-SUTHERLAND.COM;
PHILIPHEHLICH@EVERSHEDS-SUTHERLAND.COM;
LYNNHOLBERT@EVERSHEDS-SUTHERLAND.COM

FOLEY & LARDNER LLP
ATTN: BRENDA JONES
90 PARK AVENUE
NEW YORK NY 10016
BMJONES@FOLEY.COM

GOETZ FITZPATRICK LLP
ATTN: SCOTT D. SIMON, ESQ.
ONE PENN PLAZA , SUITE 3100
NEW YORK NY 10119
SSIMON@GOETZFITZ.COM

GREENBERG GLUSKER FIELDS CLAMAN &
MACHTINGER LLP
ATTN: BRIAN DAVIDOFF
2049 CENTURY PARK EAST, STE 2600
LOS ANGELES CA 90067-4590
BDAVIDOFF@GREENBERGGLUSKER.COM

HAYNES AND BOONE, LLP
ATTN: RICHARD D. ANIGIAN, CHARLES M. JONES II
2323 VICTORY AVENUE, SUITE 700
DALLAS TX 75219
RICK.ANIGIAN@HAYNESBOONE.COM
CHARLIE.JONES@HAYNESBOONE.COM

HOGAN LOVELLS US LLP
ATTN: D. TRACEY, III, J. BECK, M. JUMPER
390 MADISON AVENUE
NEW YORK NY 10017
DENNIS.TRACEY@HOGANLOVELLS.COM;
JOHN.BECK@HOGANLOVELLS.COM;
MAYA.JUMPER@HOGANLOVELLS.COM

HOLLAND & KNIGHT LLP
W. GLUCK, M. LARSEN, D. WIRT, J. MAGEE, S. DESAI
31 W. 52ND STREET
NEW YORK NY 10019
WARREN.GLUCK@HKLAW.COM;
MARIE.LARSEN@HKLAW.COM;
DAVID.WIRT@HKLAW.COM;
JESSICA.MAGEE@HKLAW.COM;
SHARDUL.DESAI@HKLAW.COM

HUGH SMITH ESQUIRE
LEVEL 8 224 BUNDA STREET
CANBERRA CITY, ACT 2601
AUSTRALIA
HUGH.SMITH@CHAMBERLAINS.COM.AU

K&L GATES LLP
ATTN: BRIAN D. KOOSSED, ESQ.
1602 K STREET NW
WASHINGTON DC 20006-1600
BRIAN.KOOSSED@KLGATES.COM

KELLY HART & HALLMAN LLP
ATTN: MICHAEL D. ANDERSON
201 MAIN STREET, SUITE 2500
FORT WORTH TX 76102
MICHAEL.ANDERSON@KELLYHART.COM

KROLL RESTRUCTURING ADMINISTRATION LLC
ATTN: SELWYN PERRY
55 EAST 52ND STREET
17TH FLOOR
NEW YORK NY 10055
SERVICEQA@RA.KROLL.COM;
FTXTEAM@RA.KROLL.COM

LANDIS RATH & COBB LLP
ATTN: MATTHEW R. PIERCE, NICOLAS E. JENNER,
GEORGE A. WILLIAMS III
919 MARKET STREET, SUITE 1800
WILMINGTON DE 19801
PIERCE@LRCLAW.COM; JENNER@LRCLAW.COM;
WILLIAMS@LRCLAW.COM

ATTN: JEFFREY S. PRICE, MELISSA J. LEE, SCOTT C.
WILLIAMS
1201 DEMONBREUN STREET, SUITE 900
NASHVILLE TN 37213
JPRICE@MANIERHEROD.COM;
MLEE@MANIERHEROD.COM;
SWILLIAMS@MANIERHEROD.COM

MASSACHUSETTS DEPARTMENT OF REVENUE
ATTN: CELINE E. DE LA FOSCADE-CONDON
100 CAMBRIDGE STREET, P.O. BOX 9565
BOSTON MA 02114
DELAFOCASC@DOR.STATE.MA.US

VIA FIRST CLASS MAIL

MCCARTER & ENGLISH LLP
ATTN: DAVID ADLER ESQ.
WORLDWIDE PLAZA
825 EIGHTH AVE., 31ST FLOOR
NEW YORK NY 10019

MCCARTER & ENGLISH LLP
ATTN: PHILLIP S. PAVLICK
FOUR GATEWAY CENTER
100 MULBERY STREET
NEWARK NJ 07102
PPAVLICK@MCCARTER.COM

MCDERMOTT WILL & EMERY LLP
ATTN: DARREN AZMAN, JOHN J. CALANDRA
JOSEPH B. EVANS, ELIZABETH RODD
ONE VANDERBILT AVENUE
NEW YORK NY 10017-3852
DAZMAN@MWE.COM; JCALANDRA@MWE.COM;
JBEVANS@MWE.COM; ERODD@MWE.COM

MCELROY, DEUTSCH, MULVANEY & CARPENTER,
LLP
ATTN: JEFFREY BERNSTEIN
570 BROAD STREET, SUITE 1401
NEWARK NJ 07102
JBERNSTEIN@MDMC-LAW.COM

MCELROY, DEUTSCH, MULVANEY & CARPENTER,
LLP
ATTN: MICHAEL R. MORANO, ESQ.
1300 MT. KEMBLE AVENUE
P.O. BOX 2075
MORRISTOWN NJ 07962
MMORANO@MDMC-LAW.COM

MIAMI-DADE OFFICE OF THE TAX COLLECTOR
BANKRUPTCY UNIT
200 NW 2ND AVENUE, #430
MIAMI FL 33128
PRISCILLA.WINDLEY@MIAMIDADE.GOV;
MDTCBKC@MIAMIDADE.GOV

MORGAN, & BOCKIUS LLP
ATTN: JOHN C. GOODCHILD III; MATTHEW C.
ZIEGLER
1701 MARKET STREET
PHILADELPHIA PA 19103
JOHN.GOODCHILD@MORGANLEWIS.COM;
MATTHEW.ZIEGLER@MORGANLEWIS.COM

MORRIS JAMES LLP
ATTN: SARAH M. ENNIS, TARA C. PAKROUTH
500 DELAWARE AVENUE, SUITE 1500
WILMINGTON DE 19801
SENNIS@MORRISJAMES.COM;
TPAKROUH@MORRISJAMES.COM

MORRISON COHEN LLP
ATTN: JASON P. GOTTLIEB
909 THIRD AVENUE, 27TH FLOOR
NEW YORK NY 10022
JGOTTLIEB@MORRISONCOHEN.COM

OCTOPUS INFORMATION LTD
ATTN: LINFENG DONG, OMC CHAMBERS
WICKHAMS CAY 1
ROAD TOWN, TORTOLA
BRITISH VIRGIN ISLANDS
OCTOPUS_FTX@TEAMB.CN

PACHULSKI STANG ZIEHL & JONES LLP
ATTN: TEDDY M. KAPUR, JASON H. ROSELL
919 N. MARKET STREET, 17TH FLOOR
WILMINGTON DE 19801
TKAPUR@PSZJLAW.COM; JROSELL@PSZJLAW.COM

PAUL HASTINGS
ATTN: KRISTOPHER M. HANSEN, KENNETH
PASQUALE, EREZ E. GILAD
200 PARK AVENUE
NEW YORK NY 10166
KRISHANSEN@PAULHASTINGS.COM;
KENPASQUALE@PAULHASTINGS.COM;
EREZGILAD@PAULHASTINGS.COM

MORGAN, LEWIS & BOCKIUS LLP
ATTN: JOSHUA DORCHAK; DAVID K. SHIM
101 PARK AVENUE
NEW YORK NY 10178
JOSHUA.DORCHAK@MORGANLEWIS.COM;
DAVID.SHIM@MORGANLEWIS.COM

MORRIS, NICHOLS, ARSHT & TUNNELL LLP
ATTN: DONNA L. CULVER
1201 NORTH MARKET STREET, 16TH FLOOR
P.O. BOX 1347
WILMINGTON DE 19899-1347
DCULVER@MORRISNICHOLS.COM

VIA FIRST CLASS MAIL
NATIONAL ASSOCIATION OF ATTORNEYS GENERAL
ATTN: KAREN CORDRY
1850 M ST., NW 12TH FLOOR
WASHINGTON DC 20036

OFFICE OF THE ATTORNEY GENERAL OF
WASHINGTON
ATTN: STEPHEN MANNING
P. O. BOX 40100
OLYMPIA WA 98504-4010
STEPHEN.MANNING@ATG.WA.GOV

PACHULSKI STANG ZIEHL & JONES LLP
ATTN: MARY F. CALOWAY
ONE SANSOME STREET, SUITE 3430
SAN FRANCISCO CA 94104
MCALOWAY@PSZJLAW.COM

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
ATTN: KENNETH S. ZIMAN
1285 AVENUE OF THE AMERICAS
NEW YORK NY 10019-6064
KZIMAN@PAULWEISS.COM

COUNSEL TO EMBED SHAREHOLDER DEFENDANTS
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
ATTN: RANDALL S. LUSKEY
535 MISSION STREET, 24TH FLOOR
SAN FRANCISCO CA 94105
RLUSKEY@PAULWEISS.COM

PROSKAUER ROSE LLP
ATTN: BRIAN S. ROSEN, DYLAN J. MARKER
ELEVEN TIMES SQUARE
NEW YORK NY 10036-8299
[BROSEN@PROSKAUER.COM](mailto: BROSEN@PROSKAUER.COM);
[DMARKER@PROSKAUER.COM](mailto: DMARKER@PROSKAUER.COM)

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WEST BAY STREET & BLAKE ROAD
PO BOX N-4875
NASSAU
THE BAHAMAS
BSIMMS@LENNXPATON.COM; KEVIN.CAMBRIDGE@PWC.COM;
PETER.GREAVES@HK.PWC.COM

PULSAR GLOBAL LTD
ATTN: MICHELE WAN AND JACKY YIP
UNIT 903-905, K11 ATELIER VICTORIA DOCKSIDE
18 SALISBURY ROAD
KOWLOON
HONG KONG
MICHELE.WAN@PULSAR.COM; JACKY.YIP@PULSAR.COM

REED SMITH LLP
ATTN: AARON JAVIAN
599 LEXINGTON AVENUE
NEW YORK NY 10022
AJAVIAN@REEDSMITH.COM

RIMON, P.C.
ATTN: FREDERICK CHANG
506 2ND AVE., SUITE 1400
SEATTLE WA 98104
FREDERICK.CHANG@RIMONLAW.COM

RIMON, P.C.
ATTN: JACQUELYN H. CHOI
2029 CENTURY PARK EAST, SUITE 400N
LOS ANGELES CA 90067
JACQUELYN.CHOI@RIMONLAW.COM

SCHULTE ROTH & ZABEL LLP
ATTN: DOUGLAS S. MINTZ
555 13TH STREET, NW, SUITE 6W
WASHINGTON DC 20004
DOUGLAS.MINTZ@SRZ.COM

SCHULTE ROTH & ZABEL LLP
ATTN: REUBEN E. DIZENGOFF
919 THIRD AVENUE
NEW YORK NY 10022
REUBEN.DIZENGOFF@SRZ.COM

SECURITIES & EXCHANGE COMMISSION
SECRETARY OF THE TREASURY
100 F. STREET NE
WASHINGTON DC 20549
SECBANKRUPTCY@SEC.GOV

SECURITIES & EXCHANGE COMMISSION - NY OFFICE
ATTN: BANKRUPTCY DEPT
BROOKFIELD PLACE
200 VESEY STREET, STE 400
NEW YORK NY 10281-1022
BANKRUPTCYNOTICESCHR@SEC.GOV;
NYROBANKRUPTCY@SEC.GOV

SECURITIES & EXCHANGE COMMISSION -
PHILADELPHIA OFFICE
ATTN: BANKRUPTCY DEPT
ONE PENN CENTER
1617 JFK BLVD, STE 520
PHILADELPHIA PA 19103
SECBANKRUPTCY@SEC.GOV

STATE OF DELAWARE ATTORNEY GENERAL
ATTN: BANKRUPTCY DEPT
CARVEL STATE OFFICE BLDG.
820 N. FRENCH ST.
WILMINGTON DE 19801
ATTORNEY.GENERAL@STATE.DE.US

STRADLEY RONON STEVENS & YOUNG, LLP
ATTN: DEBORAH A. REPEROWITZ
100 PARK AVENUE, SUITE 2000
NEW YORK NY 10017
DREPEROWITZ@STRADLEY.COM

SULLIVAN & CROMWELL LLP
ATTN: JAMES L. BROMLEY, STEPHEN EHRENBERG,
125 BROAD STREET
NEW YORK NY 10004
BROMLEYJ@SULLCROM.COM;
EHRENBERGS@SULLCROM.COM

THE DALEY LAW FIRM
ATTN: DARRELL DALEY, SAMANTHA NEAL
4845 PEARL EAST CIRCLE, SUITE 101
BOULDER CO 80301
DARRELL@DALEYLAWYERS.COM;
SAMANTHA@DALEYLAWYERS.COM

THE SECURITIES COMMISSION OF THE BAHAMAS
ATTN: PRESIDENT OR GENERAL COUNSEL
POINCIANA HOUSE, NORTH BUILDING, 2ND FLOOR
31A
EAST BAY STREET, P.O. BOX N-8347
NASSAU
THE BAHAMAS
INFO@SCB.GOV.BS

U.S. DEPARTMENT OF JUSTICE
ATTN: SETH B. SHAPIRO
CIVIL DIVISION
1100 L STREET, NW, ROOM 7208
WASHINGTON DC 20005
SETH.SHAPIRO@USDOJ.GOV

U.S. DEPARTMENT OF JUSTICE
ATTN: WARD W. BENSON
P.O. BOX 227, BEN FRANKLIN STATION
WASHINGTON DC 20044
WARD.W.BENSON@USDOJ.GOV

US ATTORNEY FOR THE DISTRICT OF DELAWARE
ATTN: DAVID C. WEISS C/O ELLEN SLIGHTS
1007 ORANGE ST STE 700
P.O. BOX 2046
WILMINGTON DE 19899-2046
USADE.ECFBANKRUPTCY@USDOJ.GOV

VENABLE LLP
ATTN: ANDREW J. CURRIE
600 MASSACHUSETTS AVENUE, NW
WASHINGTON DC 20001
AJCURRIE@VENABLE.COM

VENABLE LLP
ATTN: XOCHITL S. STROHBEHN, CAROL A. WEINER,
ARIE A. PELED
1270 AVENUE OF THE AMERICAS, 24TH FLOOR
NEW YORK NY 10020
XSSTROHBEHN@VENABLE.COM;
CWEINERLEVY@VENABLE.COM;
AAPELED@VENABLE.COM

WHITE & CASE LLP
ATTN: BRIAN D. PFEIFFER, BRETT BAKEMEYER
1221 AVENUE OF THE AMERICAS
NEW YORK NY 10020-1095
BRIAN.PFEIFFER@WHITECASE.COM;
BRETT.BAKEMEYER@WHITECASE.COM

WILMER CUTLER PICKERING HALE AND DORR LLP
ATTN: PETER G. NEIMAN, NICHOLAS WERLE
7 WORLD TRADE CENTER
150 GREENWICH STREET
NEW YORK NY 10007
PETER.NEIMAN@WILMERHALE.COM;
NICK.WERLE@WILMERHALE.COM

WINCENT INVESTMENT FUND PCC LTD
ATTN: CHARLES MELVIN, C/O WINCENT CAPITAL
MANAGEMENT
OLD POLICE STATION 120B
IRISH TOWN GX11 1AA
GIBRALTAR
LEGAL@WINCENT.CO

WINTERMUTE ASIA PTE. LTD
ATTN: LEGAL DEPARTMENT
24 EAN KIAM PLACE
429115
SINGAPORE
LEGAL@WINTERMUTE.COM

ZACHARY BRUCH
ATTN: PETER S. PARTEE, SR
HUNTON ANDREWS KURTH LLP
200 PARK AVE
NEW YORK NY 10166
PPARTEE@HUNTONAK.COM

David L. Finger (ID #2556)
FINGER & SLANINA, LLC
One Commerce Center
1201 N. Orange St., 7th fl.
Wilmington, DE 19801
dfinger@delawgroup.com

Katie Townsend
Adam Marshall
THE REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
1156 15th Street NW, Suite 1020
Washington, DC 20005
ktownsend@rcfp.org; amarshall@rcfp.org