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Updates Regarding Cryptocurrency Bankruptcy Cases

Investor Alert: May 2, 2023

Montpelier, VT – The Vermont Department of Financial Regulation (the Department) posts this alert to update Vermont investors on important developments in several bankruptcy cases involving cryptocurrency companies. This alert follows related Investor Alerts published by the Department [in July](#) and [December 2022](#).

As a reminder, even without the complication of a bankruptcy proceeding, cryptocurrencies are risky investments. Cryptocurrencies are not the functional equivalents of traditional banking, securities, or insurance investment products. There is no lender of last resort, little to no financial disclosure, and usually no insurance protection for losses arising from market fluctuations, theft, or scams. Additionally, these bankruptcy cases can move rapidly. Investors should stay alert for new developments.

VOYAGER

Voyager Digital Holdings and several of its affiliates filed Chapter 11 bankruptcy proceedings in the Southern District of New York on July 5, 2022. Vermont has appeared as an interested party. Following the collapse of a planned sale of the company to FTX, Voyager confirmed a Chapter 11 plan and Asset Purchase Agreement (APA) which included the sale of customer accounts to crypto exchange Binance US. The plan also contained a toggle feature which allowed Voyager to pivot to self-liquidation if necessary. Binance US recently terminated the APA and will not acquire customer accounts. In response, Voyager announced that it will pivot to self-liquidation and will soon begin the partial distribution of crypto assets to customers by restarting its platform. The return to customers is expected to be slightly lower under the liquidation than it would have been under the APA, but the details will depend on the costs of the liquidation and prevailing crypto prices. Further hearings are expected in the coming weeks.

For more detailed information, [please visit Stretto, the current case management organization.](#)

CELSIUS

Celsius Network and its affiliates filed Chapter 11 bankruptcy proceedings in the Southern District of New York on July 13, 2022. Vermont has appeared as an interested party. Following numerous investor communications to the Court and a motion by the United States Trustee, the Court appointed an Examiner to investigate certain account management and fraud activities

arising from the pre-bankruptcy business activities of Celsius companies. The Department strongly supported the United States Trustee motion.

The Examiner issued the report on November 14, 2022. That report found, among other things, that Celsius had not properly segregated or accounted for customer assets – even in the accounts designated as “custodial” – had incurred large losses on risky investments and loans made with customer assets, had engaged in substantial market manipulation of the CEL token, and that its former Chief Executive Officer, Alex Mashinsky, had made false and misleading statements to investors.

The Unsecured Creditors’ Committee (UCC) has been charged with investigating potential issues involving former CEO Mashinsky’s pre-bankruptcy conduct. The UCC recently obtained Court approval to file a class claim for fraud. As an initial matter, the UCC relied substantially on the facts set forth in the Examiner’s report. Further hearings will be held on this issue.

Additionally, the Court entered an order in March 2023 holding that based on the applicable Terms of Use, customer assets held in Earn accounts were property of the bankruptcy estate rather than property of the individual customers. This means the assets could be used to make distributions to customers and creditors.

After previous failed attempts to sell its assets, Celsius has filed a plan of reorganization which features the contribution of cash by a plan sponsor, some distribution of cash and crypto assets to creditors, and the formation of a new company in which larger customer creditors will receive equity interests. The new company intends to affiliate with third-party providers which are regulatorily compliant.

On April 25, 2023, Celsius began an auction to sell its assets with bidders NovaWulf, Fahrenheit LLC, and the Blockchain Investment Recovery Committee. As of May 1, the auction remains ongoing. A successful bid will require confirmation by the Court.

Further hearings on the Plan will be held later this spring.

For more detailed information, please visit [Stretto, the case management organization](#).

FTX

FTX Trading Limited and several affiliates filed Chapter 11 proceedings in the District of Delaware on November 11, 2022. Around the same time as the bankruptcy filing, FTX appointed new management. Debtors have reported that they have identified and collected over \$7 billion in assets available for creditor recovery.

Numerous federal regulators and law enforcement agencies have taken legal action against former CEO Sam Bankman-Fried and others arising from pre-bankruptcy fraud and other illegal activities. Due to the substantial involvement of other regulators and law enforcement, the Department has monitored but not taken an active role in the FTX case.

For more detailed information, please [visit Kroll, the case management organization](#).

BLOCKFI

BlockFi Inc. filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the District of New Jersey on November 28, 2022. In February 2022, BlockFi had reached a [settlement with the Securities and Exchange Commission](#) (SEC) and most U.S. states, including Vermont, arising from allegations that BlockFi was engaged in an unregistered securities offering. The bankruptcy filing may implicate BlockFi's ability to meet its financial obligations under that settlement. On the Petition Date, BlockFi still owed three payments to Vermont under the terms of the settlement. The Department will file a claim in the BlockFi bankruptcy case for the amount which remains unpaid. BlockFi has not yet filed a Chapter 11 plan. The Court recently approved the sale of 6,400 mining rigs for over \$4 million.

For more detailed information, please see the [applicable Kroll case management website](#).

GENESIS

On January 19, 2023, Genesis Holdco, LLC and two affiliates filed Chapter 11 cases in the bankruptcy court for the Southern District of New York. Genesis has obtained Court approval of procedures to sell substantially all Debtors' assets, and further hearings are scheduled for June and July 2023.

The Department continues to monitor the Genesis bankruptcy proceeding.

For more detailed information, please see the [applicable Kroll case management website](#).

As noted in a previous alert, once a bankruptcy proceeding is filed, it is often not clear whether an investor or the cryptocurrency company owns the crypto assets. Investors could lose some or all of their investments, either due to the company's insolvency or due to a court determination that the company owns the crypto assets. The Court Order in the Celsius case has shed some light on this issue, but much depends on the Terms of Use applicable to a particular type of crypto investment and account.

As always, Vermonters should not invest money in crypto assets or companies which they cannot afford to lose. If you have concerns about your individual situation, please contact bankruptcy counsel.

For further general information about cryptocurrencies, please see the Investor Alerts dated [August 23, 2021](#) and [December 1, 2022](#). To file a complaint or for further information, please contact the Department at 833-DFR-HOTLINE, the Banking Division at dfr.bnkconsumer@vermont.gov, or the Securities Division at dfr.securitiesinfo@vermont.gov.

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