COMMONWEALTH OF THE BAHAMAS 2022

IN THE SUPREME COURT COM/com/00060

Commercial Division

IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020 (as amended)

AND IN THE MATTER OF the Companies (Winding Up Amendment) Act, 2011

AND IN THE MATTER OF FTX DIGITAL MARKETS LTD. (In Provisional Liquidation)
(A Registered Digital Asset Business)

NINTH AFFIDAVIT OF KEVIN CAMBRIDGE
(Joint Provisional Liquidators' Second Interim Report)

I, KEVIN G. CAMBRIDGE, of 2 Bayside Executive Park, West Bay Street and Blake Road, Nassau, N.P. The Bahamas make Oath and say as follows:

1. That I am a Partner of PricewaterhouseCoopers Advisory (Bahamas) Limited **("PwC Bahamas")**, having its place of business at 2 Bayside Executive Park, Nassau, N.P., The Bahamas and along with Mr. Brian Simms KC of Messrs. Lennox Paton and Mr. Peter Greaves of PricewaterhouseCoopers Limited (a Hong Kong incorporated entity), we are the Joint Provisional Liquidators **("the JPLs")** of FTX Digital Markets Ltd. (In Provisional Liquidation) **("Company" or "FTX Digital")**, and I am duly authorized to make this Affidavit on behalf of the JPLs and the Company.

2. The facts and matters referred to herein are, unless otherwise stated, within my own knowledge or are obtained from documents in the possession of the JPLs or our Counsel as the case may be, and are true to the best of my knowledge, information and belief. Where the matters deposed hereto are not within my knowledge, they are derived from the sources which I identify and are true to the best of my information and belief.

3. This Affidavit is made for the purpose of exhibiting the Second Interim Report of the JPLs **("the Second Interim Report")** dated 23rd May 2023. There is now produced and shown to me marked **"KC-A"** a full and true copy of the Second Interim Report.

4. The Second Interim Report is prepared and submitted by the JPLs to this Honourable Court for the purpose of providing information regarding the work undertaken by the JPLs since the First Interim Report dated 8th February 2023. The facts set out therein are true and correct to the best of my knowledge and belief.

SWORN TO before me this)

23rd day of **May, 2023** at)

Nassau, N.P., The Bahamas)

.....

Before me,

.....

NOTARY PUBLIC

COMMONWEALTH OF THE BAHAMAS **2022**

IN THE SUPREME COURT **COM/com/00060**

Commercial Division

IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020 (as amended)

AND IN THE MATTER OF the Companies (Winding Up Amendment) Act, 2011

AND IN THE MATTER OF FTX DIGITAL MARKETS LTD.
(A Registered Digital Asset Business)

CERTIFICATE

I hereby certify that the attached is a true copy of **Exhibit "KC-A"** referred to in the Ninth Affidavit of Kevin Cambridge sworn before me this **23rd day** of **May A.D., 2023.**

NOTARY PUBLIC

TAB A

FTX DIGITAL MARKETS LTD. (IN PROVISIONAL LIQUIDATION)

23 MAY 2023

Second Interim Report and Accounts of the Provisional Liquidators to The Supreme Court of The Bahamas

COMMONWEALTH OF THE BAHAMAS **2022**

IN THE SUPREME COURT **COM/COM/[000060]**

COMMERCIAL DIVISION

IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020

(as amended)

AND IN THE MATTER OF the Companies (Winding Up Amendment) Act, 2011

AND IN THE MATTER OF FTX DIGITAL MARKETS LTD

(A Registered Digital Asset Business)

SECOND INTERIM REPORT AND ACCOUNTS OF THE JOINT PROVISIONAL LIQUIDATORS

TO

THE SUPREME COURT OF THE COMMONWEALTH OF THE BAHAMAS

Dated the 23rd of May, A.D., 2023

Table of contents

1. Foreword

1.1. Basis of preparation

This report has been prepared by the Joint Provisional Liquidators ("JPLs") of FTX Digital Markets Ltd. (In Provisional Liquidation) (the "Company" or "FTX Digital") for the purpose of providing a second interim report to the Commercial Division of the Supreme Court of The Commonwealth of The Bahamas ("The Supreme Court of The Bahamas"). All currency amounts in this document are expressed in United States ("US") dollars ("USD") unless otherwise noted.

1.2. Disclaimer

This is the JPLs' second report detailing their activities to The Supreme Court of The Bahamas to date. The report is prepared and submitted by the JPLs to the Supreme Court for the purpose of providing information regarding the work undertaken by the JPLs since the first report.

Neither the JPLs, Lennox Paton, any member firm of PricewaterhouseCoopers International Limited ("PwC") (each member firm of which is a separate legal entity), nor any of their employees, professional advisers or agents ("Professional Parties") will be responsible for any loss, damage, liabilities or claims arising from the use and/or reliance on this report. None of the Professional Parties accept any liability or assume any duty of care to any third party (whether it is an assignee or successor of another third party or otherwise) in respect of this report. The JPLs are acting as agents of the Company, without personal liability.

In preparing this report, the JPLs have relied upon the limited and incomplete available information from the Company's current and former management and directors and the Company's books and records. This information is subject to ongoing investigation. Except where specifically stated, the JPLs have not sought to establish the reliability of the sources of information presented to them by reference to independent evidence. Any prospective financial analyses presented in this report are based on estimates and assumptions, and projections of uncertain future events, including judgements made by the JPLs, based on the limited information available at the time. The JPLs' work in relation to this provisional liquidation is ongoing and accordingly actual results may vary from the information provided in this report. No representation of any kind (whether expressed or implied) is given by the JPLs as to the accuracy or completeness of the information. The JPLs reserve their right to amend or supplement this report in due course.

1.3. Privacy Statement

In providing liquidation services, Lennox Paton, PwC and the JPLs may collect or obtain personal data about individuals associated with the Provisional Liquidation for the purposes of undertaking certain activities relevant to the liquidation, such as compliance with applicable laws and regulations (e.g., AML, FATCA, CRS, etc.) and distributions to stakeholders. We encourage stakeholders to periodically review the privacy statements on the JPLs' respective websites to learn more.

2. Appointment & purpose

2.1. Appointment of the JPLs

On 10 November 2022, the Securities Commission of the Commonwealth of The Bahamas ("SCB") presented a winding up petition against FTX Digital and suspended its licence to operate from the Commonwealth of The Bahamas ("The Bahamas") as a digital asset business. FTX Digital is a wholly owned subsidiary of FTX Trading Ltd ("FTX Trading"), a company incorporated in Antigua and Barbuda ("Antigua").

Following the presentation of the petition, at a hearing on 10 November 2022, The Supreme Court of The Bahamas appointed Mr Brian Simms KC of Lennox Paton as Provisional Liquidator and ordered that FTX Digital be placed into provisional liquidation. On 14 November 2022, Kevin Cambridge of PricewaterhouseCoopers Advisory (The Bahamas) Limited ("PwC Bahamas") and Peter Greaves of PricewaterhouseCoopers Limited ("PwC Hong Kong") were also appointed by The Supreme Court of The Bahamas as additional Provisional Liquidators. Copies of the appointment orders of the JPLs (together, the "JPL Orders") are available to view and download in the Document Library on the website portal:

Case website portal: https://www.pwc.com/bs/en/services/business-restructuring-ftx-digital-markets.html

2.2. Powers of the JPLs

The JPLs are Court-appointed Officers; acting as agents and without personal liability and are authorised to act jointly and severally. Under Section 199(4) of the Companies (Winding Up Amendment) Act, 2011 (the "Winding Up Act") the JPLs are authorised to take any action that is considered appropriate and expedient to maintain the value of the Company's assets, whether owned or managed by FTX Digital or to carry out the functions for which the JPLs were appointed, which include those powers stated in Part I (with sanction of The Supreme Court of The Bahamas) and Part II of the Fourth Schedule of the Winding Up Act.

Under the terms of the JPL Orders, executive authority of the incumbent management of the Company ceased, except insofar as the JPLs sanction their continuance, and accordingly sole responsibility for the management of the affairs, business and assets of the Company vests in the JPLs.

2.3. Purpose of the report

The purpose of this report is to provide an outline of the steps taken by the JPLs since the first report in the discharge of their duties. Alongside this the JPLs have included relevant background to the Company's current financial position and highlighted selected key issues which may impact on the final outcome for the estate. In producing this report, the JPLs are not waiving any legal privilege whatsoever in relation to legal advice they have received.

3. Executive summary

3.1. Key activities since first report

Since the first report, the JPLs obtained Chapter 15 recognition from the Delaware Bankruptcy Court of The Bahamas Provisional Liquidation as a foreign main proceeding ("Chapter 15 Recognition") and received court sanction of the Cooperation Agreement signed with the Chapter 11 Debtors from the Delaware Bankruptcy Court and The Supreme Court of The Bahamas (the "Cooperation Agreement").

Regrettably, despite the entry into the Cooperation Agreement, the JPLs have faced numerous obstacles and lack of cooperation from the Chapter 11 Debtors. In particular, the Chapter 11 Debtors have sought to assert interests in and/or claims over USDT stablecoins which the Cooperation Agreement expressly provided that the JPLs would control. The Chapter 11 Debtors have also denied the JPLs full access to data to which the JPLs are entitled pursuant to the Cooperation Agreement. Further the Chapter 11 Debtors have interfered with the JPLs' efforts to monetise and lead the liquidation process of FTX Property. The JPLs' requests for access to the email, slack chat and google drive messages of FTX Digital employees remains unfulfilled which in turn is hampering the JPLs' abilities to discharge their fiduciary duties to their estate and stakeholders including the customers of FTX Digital. It is also unclear whether the AWS data provided by the Chapter 11 Debtors is complete. The JPLs are still hopeful that the Chapter 11 Debtors will comply with the terms of the Cooperation Agreement and are awaiting a response from the Chapter 11 Debtors in this regard. Unfortunately, the stance taken by the Chapter 11 Debtors in the adversary proceeding against FTX Digital and the JPLs in the Delaware Bankruptcy Court (the "Adversary Proceeding"), discussed more in depth herein, suggests otherwise.

Under the Cooperation Agreement and prior to the recent deterioration in relations with the Chapter 11 Debtors, the JPLs received from the Chapter 11 Debtors certain platform trading data for FTX International (the "Platform"). An initial review of that platform trading data, alongside previous analysis performed by the JPLs of FTX Digital's books and records has highlighted that:

1. The platform itself did not appear to classify FTX International customers as customers of any single FTX entity;
2. From January 2022 onwards, FTX International customers began depositing USD and subsequently other currencies and were directed by the platform website to send the funds to a bank account in FTX Digital's name; and
3. There was limited accounting for intercompany transfers of customer money from bank accounts held in FTX Digital's name to bank accounts operated by Affiliates, but of $15bn in fiat deposits made by customers to FTX Digital, $5.6bn was transferred to FTX Trading and $2.1bn to Alameda.

Separately, through their investigations, the JPLs have identified Line of Credit agreements ("LOCs") issued by FTX Digital to customers of the International Platform granted credit facilities to trade beyond the balance of their account. We understand that as part of the migration, an exercise was carried out to contact customers with existing LoC's, requiring them to execute revised terms with FTX Digital as the counterparty and that acceptance was a condition of a continuing line of credit. The JPLs have to date identified a number of such LoCs signed by customers and understand that there are more examples in FTX Digital's records held by the Chapter 11 Debtors. The foregoing information supports the JPLs' belief that the migration of customers to FTX Digital had occurred. These documents had been requested specifically by the JPLs but were not included or referenced in the information provided by the Chapter 11 Debtors until after the JPLs filed evidence of their knowledge of the existence of LoCs in the name of FTX Digital, and then only two examples were provided.

The review of the platform data, along with the other factors highlighted in our first report (such as the pre-13 May 2022 Terms of Service, the 13 May Terms of Service and Customer Migration programme) lead the JPLs to believe that FTX Digital was the key counterparty with which many FTX International customers interfaced from May 2022 onwards (aside from certain exclusions to the customer population where separate regulatory perimeters may have applied, including Australia, Japan and Turkey).

The JPLs have further identified material volumes of customer withdrawals ahead of the petition date in The Bahamas that may be subject to claw back claims as antecedent transactions. These include withdrawals immediately prior to the petition date and withdrawals by FTX 'controlled' users and accounts. Where FTX Digital

was the counterparty to these customers, the JPLs may be the only party that is able lawfully to pursue clawback claims for the benefit of customers and creditors.

On 9 March 2023, the JPLs wrote to the Chapter 11 Debtors to inform them of their intention to file an application for Directions (the "Directions Application") to The Supreme Court of The Bahamas in connection with the Provisional Liquidation of the FTX Digital estate. The Application addresses several legal issues that are fundamental to the progress of the Provisional Liquidation and in identifying customers/creditors and potential beneficiaries of assets to which FTX Digital is entitled.

The draft Directions Application attached to this Report and shared with the Chapter 11 Debtors, included a request for directions from The Supreme Court of The Bahamas in respect of the following matters:

1. The parameters of the FTX Digital estate;
2. The rights and obligations of the JPLs in relation to FTX Digital;
3. Who are FTX Digital's customers;
4. The nature of the rights and obligations of FTX Digital's customers;
5. The relationship of customers of FTX DM to each other and other creditors and stakeholders of FTX Digital including the applicable counterparty in respect of perpetual futures contracts.

These issues are fundamental to the further progress of FTX Digital's Provisional Liquidation in order to, among other things, determine, who are FTX Digital's customers and for creditors views to be ascertained.

In response, to being given notice of the Directions Application and in breach of the Cooperation Agreement and the automatic stay afforded to the JPLs under the Chapter 15 recognition order, on 19 March 2023 the Chapter 11 Debtors filed an adversary proceeding against FTX Digital and the JPLs in the Delaware Bankruptcy Court ("the Adversary Proceeding"). The Adversary Proceeding was filed on the night before the hearing of the JPLs' application in the Bahamas Court (of which the Chapter 11 Debtors were given notice) for leave to seek, if necessary, from the Delaware Bankruptcy Court relief from the automatic stay in the Chapter 11 cases so that the Directions Application could proceed unhindered in the Bahamas Court. The Adversary Proceeding seeks a declaratory judgement that FTX Digital has no ownership interest in any of the Debtors' property and that any transfers to or through FTX Digital were fraudulent and voidable. The JPLs filed a motion to dismiss this proceeding on 8 May 2023 arguing that the Adversary Proceeding should be dismissed entirely. More specifically, the JPLs argued that: (a) the entire complaint must be dismissed as void because it violated FTX Digital's automatic stay, (b) the fraudulent transfer counts were improperly pled and unsubstantiated and therefore should be dismissed, (c) all the claims against the JPLs should be dismissed as the JPLs themselves are not the proper defendant, and (d) the declaratory judgment counts should be dismissed in favour of the proceeding to be commenced in The Bahamas pursuant to the JPLs Directions Application. The Chapter 11 Debtors will have an opportunity to respond and the JPLs an opportunity to reply to any such response. No hearing date for this matter has yet been set.

On 20 March 2023, the JPLs obtained an Order from The Supreme Court of The Bahamas sanctioning the JPLs' application to the Delaware Bankruptcy Court to seek relief, if necessary, from the automatic stay in the Chapter 11 cases and it was stated that determination of these issues is fundamental to FTX Digital's liquidation progressing The JPLs' primary position, as explained to The Supreme Court of The Bahamas Court, was that the Directions Application did not violate the automatic stay. However, out of an abundance of caution the order permitted the JPLs to seek relief from the automatic stay if the Delaware Bankruptcy Court determined that it applied. The Directions Application was necessitated in part, by the fact that the Chapter 11 Debtors contended that filing the Directions Application would be in breach of the Chapter 11 automatic stay. That said, the Chapter 11 Debtors appeared by counsel at the hearing before the Supreme Court of The Bahamas on 20 March 2023 and did not object to the sanction sought by the JPLs or claim that the Directions Application was a breach of the automatic stay.

Consequent upon the Order of The Supreme Court of The Bahamas of 20 March 2023, on 29 March 2023, the JPLs filed a Motion in the Chapter 11 proceedings for an order that the Chapter 11 automatic stay does not apply to the Directions Application, alternatively for relief from the stay to allow the JPLs to file the Directions Application (the "Motion to Lift Stay"). In response, the Chapter 11 Debtors objected to the Motion to Lift Stay, to which the JPLs filed a response with the Delaware Court on 12 May 2023, ahead of a hearing to consider this and other matters on 17 May 2023. This hearing, including the JPLs' Motion to Lift Stay, has now been rescheduled to 8 June 2023. Subject to Delaware Court approval of this motion, the JPLs will seek to file the Directions Application to resolve key matters in the FTX Digital estate as referred to above.

Lack of Cooperation by Chapter 11 Debtors

Contrary to the Cooperation Agreement, the JPLs have been denied access by the Chapter 11 Debtors to any further information to which FTX Digital is entitled including Email, Slack communication and Google Drive information. Notwithstanding this, the JPLs have continued to discharge their duties to secure and preserve the assets of FTX Digital, including cash, real estate, vehicles and chattels. Despite the terms of the Cooperation Agreement which provided that the Chapter 11 Debtors would work together with the JPLs in good faith for six months to develop alternatives for the potential sale, reorganization or other monetization of the international FTX.com platform (the 'International Platform'), since a meet and confer between the JPLs and Chapter 11 Debtors on 15 March 2023 the Chapter 11 Debtors have, in breach of the Cooperation Agreement, excluded the JPLs from ongoing discussions concerning the reorganization or monetization of the International Platform.

Debtors Interference with Moonstone and Silvergate Accounts in name of FTX Digital

As discussed in the JPLs' First Report to this Court, on 20 January 2023, the United States Department of Justice (the "DOJ") filed a notice in the Chapter 15 Case that it had seized approximately $143m in fiat from bank accounts at Moonstone and Silvergate in the name of FTX Digital [Docket No. 119]. The JPLs have been actively engaged in discussions with the DOJ to negotiate the release of the funds back to the JPLs. The JPLs have met with the DOJ twice in person and have had several teleconferences with the DOJ to discuss the issue. The JPLs have reason to believe that the Chapter 11 Debtors have, and continue to, actively interfere with the JPLs' negotiations with the DOJ regarding the Moonstone and Silvergate accounts in violation of the Cooperation Agreement and the automatic stay pursuant to the recognition order in respect of the Provisional Liquidation of FTX Digital under Chapter 15 of the US Bankruptcy code. The JPLs would prefer to come to a consensual conclusion but are taking legal advice in relation to the issues set out above and with respect to options available to recover seized funds.

Claims Portal/Registrants to Date

On 5 January 2023 the JPLs announced that FTX Digital's customers could register any potential claims on the Claims Portal that the JPLs had created for that purpose. Since that date a total of 45,281 claims comprised of 44,288 Individual customer claims, 909 Institutional customer claims and 84 Trade Creditor claims have been registered on the Claims Portal.

3.2. Financial update

At the time of the first report the JPLs had in their control $31.5m of estate cash and were in the process of securing $44.8m in bank accounts marked as funds held for-the-benefit-of customers ("FBO") cash. Further sums of cash in FTX Digital's name totalling $143.2m have been subject to state forfeiture by the DOJ (refer to section above). Please see Section 6 for an update on the current financial position.

With the sanction of the Supreme Court of The Bahamas, since their appointment the JPLs have settled or are in the process of settling (subject to cash flow considerations) approximately $19.7m in estate costs and professional fees from the general estate cash. Although it is unclear yet whether fiat funds marked as FBO are assets of customers held on trust, out of an abundance of caution the JPLs have not thus far used FBO cash to meet estate costs to date.

3.3. Legal proceedings

Since the First Interim Report, the JPLs have made several sanction applications to The Supreme Court of The Bahamas, including but not limited to the proposed Directions Application. For more details in relation to the applications made to the Supreme Court since the First Interim Report, see section 7 below.

i. Further, in accordance with the Cooperation Agreement on 14 February 2023 seven (7) Chapter 11 Debtors[1] sought and obtained recognition in The Supreme Court of The Bahamas;
ii. On 15 February 2023 the Delaware Bankruptcy Court recognized the Provisional Liquidation of FTX Digital as a foreign main proceeding and the JPLs as the foreign representatives of FTX Digital as foreshadowed in the First Interim Report.
iii. The Chapter 11 Debtors filed the Adversary Proceeding on 19 March 2023 against FTX Digital and the JPLs as referred to above.

[1] West Realm Shires Inc., West Realm Shires Services Inc., Alameda Research LLC, Alameda Research Ltd. Maclaurin Investments Ltd. Clifton Bay Investments LLC, FTX Trading Ltd.

iii. The Chapter 11 Debtors filed the Adversary Proceeding on 19 March 2023 against FTX Digital and the JPLs as referred to above.
iv. On 20 March 2023 upon The Supreme Court of The Bahamas finding that the determination of the issues raised by its officers, the JPLs, in the proposed Directions Application were fundamental to the progress of the Provisional Liquidation of FTX Digital the JPLs were sanctioned to seek confirmation and/or approval from the Delaware Bankruptcy Court in the Chapter 11 Proceedings that the JPLs' proposed Directions Application would not constitute a breach of the automatic stay in the Chapter 11 Proceedings in favour of the Chapter 11 Debtors. Alternatively, if the Delaware Bankruptcy Court was of the view that the Directions Application, would, if issued, constitute a breach of the automatic stay, The Supreme Court of The Bahamas sanctioned the JPLs to make an application to the Delaware Bankruptcy Court for relief from the automatic stay in order to avoid any risk of a finding by the Delaware Bankruptcy Court that the JPLs and/or the Company were in breach of the automatic stay.
v. On 29 March 2023, the JPLs filed the Motion to Lift Stay as referred to above.
vi. On 8 May 2023 the JPLs filed a Motion in the Chapter 11 to dismiss the Adversary Proceeding or, in the alternative, to abstain from ruling on counts I-IV.
vii. The JPLs filed a Reply to the Debtors claim that FTX Digital has breached the automatic stay on 12 May 2023.
viii. The JPLs are in the process of preparing an application to be filed shortly to obtain the sanction of The Supreme Court of The Bahamas for leave to sell certain assets of FTX Digital which are deemed to be depreciating assets including motor vehicles, golf carts, computer equipment and certain office equipment.

The JPLs continue to participate in the Chapter 11 proceedings when deemed necessary in the best interest of FTX Digital estate. For more detail in relation to the Chapter 11 and Chapter 15 proceedings and a full list of motions filed before the Delaware Bankruptcy Court in relation to the Chapter 11 and Chapter 15 proceedings, please review section 7 of this report.

The Cooperation Agreement, Chapter 15 Recognition Order and response to the Adversary Proceeding are attached to this report and available on the case website.

The Directions Application

From the outset of their appointments, the JPLs have actively sought (i) to identify which persons or entities were or are FTX Digital's accountholders, customers, and creditors; (ii) to determine the legal relationship between FTX Digital and those who are identified as such; and (iii) to recover assets for all FTX Digital stakeholders, to be distributed in accordance with Bahamian law and procedure. These issues relating to the identification and protection of FTX Digital's accountholders, customers, and creditors (the "Non-U.S. Law Customer Issues"), are highly complex and turn on key questions of the laws of the Bahamas, Antigua & Barbuda, and/or England. One key determination is the effect of the planned novation and migration of customers from FTX Trading to FTX Digital.

Therefore, as this Court is aware, the JPLs wish to file the proposed Directions Application in this Court in accordance with their statutory duties. Because none of the Non-U.S. Law Customer Issues involve U.S. law, and none of the parties affected are U.S. entities or citizens, the JPLs are hopeful that the Delaware Court will conclude that these issues are best resolved by this Court, being the Court with control of the Provisional Liquidation as a main proceeding as opposed to the Delaware Bankruptcy Court whose only involvement with FTX Digital is pursuant to its recognition of the Bahamas Provisional Liquidation as a foreign main proceeding pursuant to Chapter 15 of the US bankruptcy code. This Court has already held that resolution of "the issues raised by [FTX Digital's] officers, the JPLs, in the proposed [Application] is fundamental to the progress of the provisional liquidation of [FTX Digital] in this Honourable Court". A copy of the Order of the Court dated 20th March 2023 is attached.

Given the importance of prompt resolution of the Directions Application the JPLs actively sought to engage the Chapter 11 Debtors in discussions around coordinated, efficient, proceedings to resolve the Non-U.S. Law Customer Issues. On March 15, 2023, the JPLs, their counsel, John Ray III, and counsel to the Chapter 11 Debtors held a virtual telephonic conference. The call began constructively, however, it soon became unproductive. The Chapter 11 Debtors noted that FTX Digital was the only FTX entity that was not falling in line with their agenda. They said that the mere filing of the Directions Application would send a "torpedo" into the Chapter 11 Cases, and that the Chapter 11 Debtors would never consent to any jurisdiction other than the U.S. to resolve any Non-U.S. Law Customer Issues. While sensitive to the Chapter 11 Debtors' concerns, the JPLs explained that, as court-appointed fiduciaries, they are duty-bound to serve FTX Digital and their home court of The Supreme Court of The Bahamas and cannot abdicate their duties in deference to the professionals of an affiliated entity. The JPLs

reiterated their view that the best path forward would be to work together and agree to a consensual protocol to coordinate the resolution of all issues regarding customer migration and the rights and obligations related thereto. Because the Chapter 11 Debtors insisted that all Antiguan, Bahamian and English law issues should not be resolved at all, or should all be resolved by the Delaware Bankruptcy Court at some unspecified future time, there was no further engagement on any consensual protocol for a coordinated resolution of outstanding legal issues. Notwithstanding their numerous disputes with the Chapter 11 Debtors, the JPLs are focused on maximising realisations and distributions to customers and thus will continue to explore possible paths to resolve all or some of the issues without litigation and the related costs and expenses related thereto.

3.4. Data collection and investigations

On 13 February 2023, as part of the Cooperation Agreement, the Chapter 11 Debtors provided the JPLs with access to the FTX International platform database. This database contained over 40 terabytes of data and some data tables included over 10 billion transaction records pertaining to users, accounts and transaction activity. Since providing this information, the Chapter 11 Debtors have declined to provide the remainder of the information to which FTX Digital is entitled which is in the possession of the Chapter 11 Debtors. This includes Email, Google Drive and Slack data for employees of FTX Digital. The JPLs still do not have access to this data at the time of submitting this report.

The JPLs performed an analysis of the FTX International platform records to profile the information contained within it. This allowed the JPLs to better understand the types of customers and their balances at the date of insolvency. Alongside this profiling, investigation work has been conducted to determine how customers might be attributed to, or interact with, different FTX entities. The conclusion that the JPLs have reached is that from early 2022, many users were directed to deposit fiat currency into bank accounts that were operated by FTX Digital, and from May 2022, users were migrated to FTX Digital, save in respect of a small minority of services which FTX Trading still provided. These platform records were shared under a Non-Disclosure Agreement entered into between the JPLs and the Chapter 11 Debtors and consequently, the JPLs have not included any specific datapoints from the platform records within this publicly available Court Report.

Work remains ongoing in respect of Platform data reconciliation and the JPLs will be guided by The Supreme Court of The Bahamas' determination of the issues encompassed by the Directions Application.

3.5. Next steps

There are still a number of key areas which require further work in order to recover assets and return monies to customers and creditors. In section 9 we set out these proposed next steps.

The JPLs note that the Winding Up Act does not require them to conduct periodic hearings or report to The Supreme Court of The Bahamas, but in acknowledgement of the significant public interest in this case, it is proposed that the JPLs next report is submitted to the Supreme Court of The Bahamas by no later than 9 August 2023, the return date for the winding up petition.

The JPLs and their advisors are considering options regarding the Chapter 11 Debtors, and various and continuing breaches of the Cooperation Agreement, which may include litigation in the Delaware Bankruptcy Court and/or the Supreme Court of The Bahamas.

4. Asset recovery and preservation

4.1. Recovery of value from FTX Property

The JPLs identified 41 properties with a total acquisition price of $256m conveyed in the name of FTX Property Holdings Limited ("FTX Property") or in the name of individual employees of FTX Digital. FTX Property did not operate a bank account and based on a review of the books and records, the JPLs have concluded that all property purchases, operating and maintenance costs were financed by FTX Digital prior to insolvency. FTX Digital is potentially the only, or at least the largest, creditor of FTX Property.

The Cooperation Agreement

By the Cooperation Agreement the Chapter 11 Debtors and the JPLs agreed that the disposition of the real property held by Bahamas-based FTX Property would be managed by the JPLs and therefore, upon approval of the Cooperation Agreement by the US Bankruptcy Court, the FTX Property Dismissal Motion (previously filed by the JPLs) would be dismissed with prejudice.

On 25 January 2023, the Chapter 11 Debtors filed a *Motion to Approve the Cooperation Agreement* [Docket No. 578]. On 9 February 2023, the US Bankruptcy Court entered an Order approving the Cooperation Agreement [Docket No. 683]. On 27 February 2023, the JPLs withdrew the FTX Property Dismissal Motion [Docket No. 772]

The Cooperation Agreement sets out the shared goal of the JPLs and Chapter 11 Debtors in maximising the recovery to the customers and creditors of each estate. This includes maximising the recoverable assets at each estate and returning value to the appropriate estate. The Cooperation Agreement provided that either a liquidation proceeding with respect to FTX Property would be opened in The Supreme Court of The Bahamas to run concurrently with the pending Chapter 11 case of FTX Property or the Parties would determine another mutually acceptable arrangement for the sale of the applicable properties free and clear of claims against such properties. Specifically, in respect of FTX Property, the JPLs agreed with the Chapter 11 Debtors that the JPLs would take the lead in managing the properties, determining the appropriate strategy for the monetisation of the properties, identifying buyers and conducting the marketing process, provided that the strategy, as well as the buyers and deal terms recommended by the JPLs, was subject to approval by the Chapter 11 Debtors (such approval not to be unreasonably withheld or delayed).

To that end, the JPLs prepared the necessary documentation for the issuance of a Statutory Demand, and Winding Up Petition over FTX Property. On 14 February 2023 the Statutory Demand was served on the registered office of FTX Property. Service was objected to by the Chapter 11 Debtors as being a violation of the automatic stay, even though the Cooperation Agreement expressly contemplated a winding up by the Supreme Court of The Bahamas and the service of a statutory demand was a condition precedent to such a winding up. While the JPLs disagreed entirely with the Chapter 11 Debtors position on this matter, in the spirit of cooperation, the JPLs agreed to rescind the Statutory Demand with the understanding that the Debtors would engage in discussions to commence the agreed upon liquidation proceeding in The Bahamas. However, since this time the Chapter 11 Debtors have not engaged in discussions regarding the commencement of a liquidation proceeding and limited progress has been made to obtain control over the real estate. The JPLs' intention is to market and sell the properties as contemplated by the Cooperation Agreement and they will, if necessary, seek the assistance of the Supreme Court of The Bahamas Court to do so. Some of the property purchases were not completed at the time of the JPLs' appointment and the JPLs are considering the strategy in relation to these with a view towards maximising recoveries for customers and creditors. The JPLs hope to present the strategy for the sale of all the properties and seek the Debtors' agreement for the process to proceed. The JPLs have taken steps to confirm that the necessary running costs of the properties, including insurance, are current.

In the interim, the JPLs continue to preserve the value of the assets held by FTX Property in The Bahamas, by arranging for security, maintenance, repairs, utilities and insurance, funded by FTX Digital.

The JPLs have had discussions with vendors regarding the completion of incomplete property acquisitions and appropriately credentialled real estate agents regarding optimal strategies to maximise value from real estate assets. While those discussions have been fruitful, there has been a recent delay triggered by the unannounced interference by the Chapter 11 Debtors in The Bahamas. The JPLs are presently seeking to discuss the matter with the Debtors in the coming weeks with a view to reaching a practical resolution.

4.2. FTX Digital Motor vehicles & chattels

The JPLs have completed the vehicle fleet appraisal process. Valuations have been obtained from 2 independent appraisers. The JPLs require the sanction of the Supreme Court of The Bahamas in order to commence selling assets. As substantially all of the motor vehicles, IT and office equipment are depreciating, the JPLs are in the process of filing an application for sanction from the Court in order to sell these assets.

The JPLs invited offers from local dealerships and bulk equipment purchasers in respect of these assets and will advertise locally for sale to ensure an appropriate level of price discovery. The JPLs continue to insure the Company's vehicle fleet however seek to recover a portion of the associated costs at the end of the insurance policy period as vehicles are sold and secured.

4.3. Other FTX Digital assets

A residential property in The Bahamas held in the name of Allan Joseph Bankman and Barbara Helen Fried in Old Fort Bay was paid for by FTX Digital. This property was voluntarily returned by Allan Joseph Bankman and Barbara Helen Fried to the control of FTX Digital. The JPLs are assessing the next steps to preserve, maintain and ultimately realise value for the estate of FTX Digital.

Data collection and investigations

4.4. FTX International platform data capture

On 13 February 2023, as part of the Cooperation Agreement, the Chapter 11 Debtors provided the JPLs with access to two database snapshots for the FTX International Platform. These databases contained the majority of records relating to the FTX International Platform's operations and transaction history, including (but not limited to) the details of users, trading accounts for each user, the coin balances within each account, fiat and cryptocurrency deposit and withdrawal records, and trading records. The database snapshots were taken after the FTX International platform was made unavailable to users by the Chapter 11 Debtors, and effectively represents its 'end position' after activity ceased.

Upon receiving access, the JPLs' technology specialists moved a copy of the database to a secure analytics environment. This analytics environment was then used to interrogate the data in order for the JPLs to gain an understanding of the various user profiles and positions on the FTX International platform, as well as respond to third party requests for information.

Due to the size of the databases, which exceeded 10 billion rows for some database tables, certain technical steps were required to be performed in order to transform/modify the data into a format that would enable efficient analysis and interrogation. Please refer to the below for analysis of platform data.

4.5. Cooperation with Chapter 11 Debtors around device imaging

On 15 February 2023, as part of the Cooperation Agreement and upon the request of the Chapter 11 Debtors, the JPLs facilitated access to Alameda devices for imaging by representatives of the Chapter 11 Debtors. Although not licensed to operate in the jurisdiction, Alameda operated from The Bahamas sharing the FTX Digital offices. In addition to the device imaging, the JPLs handed over paper files for Alameda stored in the FTX Digital offices.

4.6. Capture of other data sources

Following the exchanges of data described above, the JPLs continued discussions with the Chapter 11 Debtors in order to agree the detailed process for how other data in their control would be shared with the JPLs. The JPLs' primary goal was to obtain a copy of any Google Email, Google Drive and Slack data for employees of FTX Digital, during the time they were employed by FTX Digital, as these were considered to contain critical and relevant information to the provisional liquidation process.

Following initial discussions, on 27 February 2023 representatives of the Chapter 11 Debtors informed the JPLs they could not provide this data due to legal privilege. The JPLs have queried the legal rationale for such an illogical position especially in light of confidentiality provisions having already been agreed. The Debtors have yet to provide an answer. At the time of the report the JPLs still do not have access to key records belonging to FTX Digital, including (but not limited to):

- Email and Slack correspondence between FTX Digital Employees and external parties dealing with FTX Digital (users of the FTX International platform, suppliers and others);
- Document repositories containing employment contracts, loan contracts and other legal documents where FTX Digital is a counterparty; and
- Information related to users of the platform - such as records of KYC processes completed by FTX Digital when onboarding new users or uplifting existing ones.

Per the terms of the Cooperation Agreement, discussions are ongoing with the Chapter 11 Debtors to obtain the FTX Digital data in the Chapter 11 Debtors' control.

4.7. FTX International Platform analysis

Following receipt of the database of the FTX International Platform the JPLs performed data analysis of key record sets obtained. The Platform refers to the technology solution that FTX International used to provide its core

exchange trading service to its customers. Key components of the Platform included i) a front end – both in a web version as well as smartphone app versions, ii) an order-taking and matching engine, and iii) a core set of python code / Application Programming Interfaces ("APIs") that performed functions not related to the order-taking and matching engine (e.g. account management, deposits and withdrawals).

FTX International's stated position was that it was an exchange platform provider only, and not a risk taker or counterparty to trades. As such, the Platform's primary mechanism to generate revenue was taking a fee percentage for all trades performed on the Platform. This operated through the concept of 'makers' and 'takers' – whereby the maker was the party (user) person originally placing an order, and the taker was the party (user) person accepting/matching against it. Both the maker and the taker were charged a percentage of any traded volume as a fee, with maker fees generally being lower.

The objective of the targeted analysis was to obtain an overview of users on the Platform, along with their ending balance positions and other activity. The targeted analysis involved reviewing data tables from the main Platform database (the primary record store of the Platform), based on those that appeared relevant to the core information sought. Additionally, where required, a review of the Platform code, already in the possession of the JPLs was performed to better understand how the Platform used/interpreted data and presented it to users through its interface.

The purpose of this analysis was to:

- Understand, and quantify, the users, accounts and coin balances that existed on the Platform at its end of life;
- Identify what user groups existed on the Platform - for example third party trading users, versus FTX employees, versus related parties or FTX-controlled accounts;
- Understand the timeline of activity, particularly fiat and crypto deposits and withdrawals, in the lead up to the closing of the Platform; and
- Identifying any information that supported a determination as to which FTX entity users may be attributed, including information relating to the migration of customers from FTX Trading to FTX Digital.

The AWS Main database contained over 400 different data tables and over 10 billion records. Within the Platform, both fiat and cryptocurrency tokens were considered as 'coins'. The Platform defined a list of coins that could be stored / traded, and there were 702 available coins at the end of life of the Platform. Each account on the Platform had its own form of 'wallet' ("Platform Wallet"). This should not be confused with traditional cryptocurrency wallets that involved key management. The Platform Wallet effectively stored the balance of all coins (fiat and cryptocurrency) for each account and allowed users to exchange these for actual fiat or cryptocurrency through various withdrawal mechanisms. A user's Platform Wallet would also be used to calculate things like how much they could trade and their collateral for open positions. Key (preliminary) findings from the analysis of the Platform includes:

- While the Platform had many "users", the vast majority of these did not have, nor had, any account balances or deposit or withdrawal activity. Furthermore, a small percentage of users held most of the account balances on the Platform;
- The Platform did not appear to classify users as belonging to any single FTX entity. Within the Platform, it does appear some logic was used to split out certain groups (such as FTX Japan customers or FTX EU customers), however this was not relevant to the majority of users;
- From January 2022 onwards, Platform users depositing USD were directed to send the funds to a bank account in FTX Digital's name. Later in 2022, deposit instructions for other fiat currencies were also changed to instruct customers to send funds to bank accounts in FTX Digital's name. As noted above, from May 2022 the Terms of Services were amended to specifically refer to FTX Digital as the provider of the vast majority of services on the FTX International Platform;
- There was limited accounting within the Platform, and there appears to be no reconciliation between the aggregate amount of customer balances on the Platform, and actual fiat or cryptocurrency held by FTX International. The impact of this is that there is no easy way to link, or trace, the balances reported as being held by users to the actual assets held under the control of FTX International; and

- There appears to be a significant number of FTX 'controlled' users and accounts on the Platform. Many of these had negative balance positions, suggesting that these accounts may have withdrawn, or traded with, funds they never owned. It is also unclear why FTX entities would have balances on the Platform, given the exchange was purportedly not engaging in trading activity.

FTX International offered the facility for users to obtain loans in USD from the Platform. It is understood these Lines of Credit ("LoC") were granted by way of legal agreements between FTX and users. Through their investigations, the JPLs have identified LoCs issued by FTX Digital to customers of the International Platform. The LoCs made credit facilities available to customers that allowed them to purchase digital securities in amounts beyond the fiat balance in their account. This information supports the JPLs' belief and understanding that the migration of customers to FTX Digital had occurred. These documents were requested from the Chapter 11 Debtors but only two examples were provided and then only after the JPLs had made their filings disclosing their knowledge of the LoCs. It would appear therefore that this evidence was withheld from production by the Chapter 11 Debtors, which underscores the potential for damage resulting from the Chapter 11 Debtors' efforts to impede the JPLs' review and investigation of FTX Digital's information and data. An analysis of customer account balances identified many instances where an account's coin balance was 'negative'. Theoretically, users should not be extended into a negative balance position when trading, however the code appears to indicate that overrides were built into the Platform allowing some users to trade when in a negative balance (i.e. overdrawn) position. The impact of this is that users with negative balances may have never deposited these coins (via other trading activity), and therefore there will likely be an asset shortfall in aggregate.

Recreating user transaction and holding statements is complicated by the fact that the Platform recorded balances as a single static field. This field was updated/overwritten as functions within the Platform impacted upon it. There is no single transaction table that records all transactions that may have affected a user's balance. For example, to reconcile a user's balance, it requires querying the fiat deposits and withdrawals tables, crypto deposits and withdrawals tables, the loans table and the fills table. All these transactions are then added together to reconcile their aggregate amount to the current balance. With respect to other functions that might affect a user's balance, it is understood the Platform allowed other profit-making activities (outside trading), like 'loaning' out funds to other users. These should have resulted in profit and loss to users' accounts and would have affected their balances. We could not identify on the Platform any records showing how much money was in fiat bank accounts, nor any reconciliation activity between user's aggregate coin balances and fiat bank account balances. It therefore appears that there was limited tracking to ensure fiat bank account balances (of customer monies) matched what was recorded as being owed to customers in the Platform Wallets. Cryptocurrency deposits and withdrawals were much more automated than those for fiat, as the platform handled most of the processing and transfer functions.

In order to be in a position to adjudicate claims based on users' closing balances, it is envisaged that the following steps will be required:

- **Step 1:** Verification of ending balance and transaction history
- **Step 2:** Determine any transactional adjustments required to calculate the final balances for claims
- **Step 3:** Determine repayment priority and pools

Work remains ongoing in respect of Platform data reconciliation and will be guided by the Directions Application.

4.8. Employee interviews

The JPLs have broad discovery powers to conduct examinations of former employees or other persons of interest in the pursuit of their objectives. The JPLs have continued to conduct interviews of former employees and stakeholders to substantiate views of matters critical to the execution of the Provisional Liquidation and will continue to seek to recover information and support understanding on key issues in this way as appropriate.

4.9. Regulatory enquiries

The JPLs have been requested by a number of regulatory bodies to provide information related to users of the platform. The receipt of these requests, and provision of information, is confidential and ongoing.

5. Conduct of Provisional Liquidation

5.1. Customer claims update

Through the creditor portal launched on 13 December 2022 (https://digitalmarketsclaim.pwc.com), the JPLs have invited customers of FTX Digital and third party claim holders with potential claims against FTX Digital to register their contact information. The JPLs have circulated updates to those who have registered contract addresses and/or appear in the records of FTX Digital as customers. The JPLs have noted a material increase in customer registrations following the second email communication to customers in April/May 2023.

Since the JPLs notified FTX Digital's customers of their ability to register any potential claims on the Claims Portal on 5 January 2023, the JPLs have received a total of 46,922 comprised of 45,878 Individual customer claims, 958 Institutional customer claims and 86 Trade Creditor claims.

The JPL team responds to enquiries from customers and creditors each day. The majority of requests relate to requests for balance and transaction statements. The JPLs are not presently in a position to provide holding or transaction statements to individual customers and will first need to clarify key matters in the Directions Application. The JPLs also anticipate the need to coordinate with the Chapter 11 Debtors to ensure that consistent information is available to customers. The JPLs will need to implement a process for secure customer identification verification customers in any event before such information can be made available.

5.2. Other matters

FTX Digital made 95 donations (to the value of $5.4m) to local charities and community organisations in The Bahamas between 1 January 2021 and the insolvency. Some of those charities have written to the JPLs to offer the return of funds to the estate. The JPLs are in the process of liaising with the charities requesting an accounting of the sums received and confirmation of any remaining balances held.

6. Financial updates

6.1. Available liquidity

The JPLs have taken custody of the funds held with BCB, Deltec Bank, Equity Bank and Fidelity Bank. These funds have been credited to accounts in control of the JPLs. A high level summary of the subsequent payments and receipts of the estate against general estate cash is set out below.

	USDm
General estate cash at 14 November 2022	**21.5**
Professional fees from the JPLs, primary counsel and financial advisers include: • PricewaterhouseCoopers network firms ("PwC") $8.9m[2] • Lennox Paton ("LXP") $3.1m[3] • White & Case ("W&C") $5.2m Other professional fees include: • Foreign independent legal counsel $629k[4] • Foreign independent crypto expert $68k[4] • Foreign independent intellectual property expert $19k[4] • Hill and Hill $15k • BRF Chambers $6k • Olshan Frome Wolosky LLP $4k • Providence Law $2k Not all approved fees have been paid to date. The JPLs have remitted payments subject to availability of cash.	(17.9)
Payroll	(0.9)
Other estate commitments	(0.9)
General estate cash balance as at 30 April 2023	**1.8**

Source: *FTX Digital bank statements*

The disbursements relate to the legal and professional costs and estate costs associated with preserving and safeguarding the estate assets, such as insurance, maintenance and security.

The JPLs have established cash management controls including rolling 13-week short term cash flow forecasts, purchase order and payment approval controls and AML treasury controls. Pursuant to the Cooperation Agreement between the JPLs and the Chapter 11 Debtors, costs of safeguarding and protecting the real estate held in the title of FTX Property are being separately recorded as a cost to the account of the estate of FTX Property.

6.2. Cash at bank

Since the last report, the JPLs gained control over sums held in accounts in the name of FTX Digital with BCB and Equity Bank. The JPLs continue to investigate the existence of further assets, or funds and to examine whether funds held by other parties, including Affiliates and Related Parties belong to FTX Digital.

[2] for the period 14th November to 31st January 2023
[3] for the period 9th November to 31st January 2023.
[4] These amounts were invoiced in GBP, shown here in USD equivalent.

The status of funds held in the name of FTX Digital confirmed to date is set out below:

Financial institution (USDm)	Total	Recovered by the JPLs	Civil forfeiture (DOJ)
BCB Bank*	18.1	18.1	-
Equity Bank*	26.7	26.7	-
Fidelity Bank**	31.2	31.2	-
Deltec Bank	0.3	0.3	-
Moonstone Bank	50.0	-	50.0
Silvergate Bank	93.2	-	93.2
Total	**219.5**	**76.3**	**143.2**

Source: *FTX Digital bank statements*

****NB:*** *The names of the banks holding these accounts were not previously disclosed pending transfer to the JPLs' control, which has taken place since the 1st Court Report.*

*****NB:*** *The JPLs have control of these funds but use of some of the balances are restricted under the terms of FTX Digital's regulatory licence. Part of the balance is also subject to a potential offset claim for pre-appointment credit card liabilities*

6.3. Statement of Affairs

Pursuant to Order 6 of the Companies Liquidation Rules, the JPLs are in the process of preparing an indicative draft Statement of Affairs ("SoA"). This analysis continues to be inhibited by lack of access to the full books and records of the Company.

7. Legal proceedings

As set out in the First Interim Report, the JPLs have and continue to retain Lennox Paton to act as primary local counsel in respect of the provisional liquidation proceedings before the Supreme Court and matters of Bahamian law. White & Case LLP continues to act as primary counsel relating to all US matters, including the Chapter 11 and Chapter 15 proceedings.

The JPLs continue to engage other Bahamian, US and English counsel to assist on discrete legal issues.

7.1. The Supreme Court of The Bahamas applications

Since the First Interim Report, the JPLs have instructed and participated in the following applications and hearings before The Supreme Court of The Bahamas:

Bahamas Court filing/hearing	Description
Sanction application	On 6 February 2023, the JPLs filed an application seeking an order sanctioning the Settlement and Cooperation Agreement and the Confidentiality Arrangements Agreement dated 6 January and 30 January 2023 respectively, both of which were entered into between FTX Digital, acting by the JPLs and the Chapter 11 Debtors. Pursuant to an Order filed on 21 March 2023, the JPLs received the sanction of the Court relative to the Cooperation Agreement.
Sanction application	On 6 February 2023, the JPLs filed an application seeking an order for the unsealing of the Affidavit of Brian Simms KC and Summons for Directions both filed on 11 November 2022.
Sanction application	On 7 February 2023, the JPLs filed an application seeking an order (i) permitting the JPLs to be indemnified out of any assets found to be held on trust for expenses incurred in carrying out any work in relation to any such trust assets and (ii) approving the rates of remuneration of the JPLs, their agents, assistants and attorneys ("Indemnification and Rate Approval Application"). Pursuant to an Order filed on 7 March 2023, the JPLs received the sanction of the Court relative to the Indemnification and Rate Approval Application.
Attendance at hearing	On 10 February 2023, the JPLs attended a hearing on the application of the SCB for an Order that the hearing of the Petition be adjourned to 9 August 2023 at 10:00am. The Court granted the Order sought by the SCB.
Attendance at hearing	On 14 February 2023, the JPLs attended a hearing on the application of Mr. Kurt Knipp for an Order that Mr. Kurt Knipp be recognized as the foreign representative of certain Chapter 11 Debtors in The Bahamas, namely, West Realm Shire Inc., West Realm Shires Services Inc., Alameda Research LLC, Alameda Research Ltd., Maclaurin Investments Ltd., Clifton Bay Investments LLC and FTX Trading Ltd.
Sanction application	On 10 March 2023, the JPLs filed the Fee Approval Application. Pursuant to an Order filed on 4 April 2023, the Court approved the payment by the JPLs of the remuneration, expenses and costs in the amounts of US$18,802,198.03 and £69,421.66 plus applicable taxes.
Sanction application	On 15 March 2023, the JPLs filed an application seeking the sanction of the Supreme Court to seek confirmation and/or approval from the Delaware Bankruptcy Court that the Directions Application was not a breach of the automatic stay in favour of the Chapter 11 Debtors, or alternatively, if the Delaware Bankruptcy Court was of the view that the Directions Application, would, if issued, be in breach of the automatic stay, sanction of the Supreme Court to make an application to the Delaware Bankruptcy Court to lift the stay. The application was necessitated in part, by the fact that the Chapter 11 Debtors

	contended that the filing of the Directions Application would be in breach of the Chapter 11 automatic stay. Pursuant to an Order filed on 21 March 2023, the JPLs received the sanction of the Court.
Directions Application	Application for Directions on matters fundamental to the Provisional Liquidation of FTX Digital The JPLs are faced with a number of legal questions that are central to determining the appropriate approach to the Provisional Liquidation of FTX Digital. Accordingly, the JPLs consider it appropriate to seek directions from the Supreme Court on how these matters should be determined. In this regard, on 15 March 2023 the JPLs filed an application requesting the Supreme Court's permission for the JPLs to seek confirmation from the Delaware Bankruptcy Court that the proposed Directions Application that the JPLs wish to issue in the Supreme Court as soon as possible does not breach the automatic stay in the Chapter 11 proceedings, or to the extent that it does, to grant relief from the stay in order that there is no risk of the JPLs being accused of breaching US Bankruptcy law. The proposed Directions Application seeks directions from The Supreme Court of The Bahamas on the following issues: 1. The parameters of the FTX Digital Estate 2. The rights and obligations of the JPLs in relation to FTX Digital 3. Who are FTX Digital's customers? 4. The nature of the rights and obligations of FTX Digital's customers 5. The relationship of customers of FTX Digital to each other, to other creditors and stakeholders of FTX Digital Immediately after the Directions Application has been issued, the JPLs will seek preliminary directions from The Supreme Court of The Bahamas on the procedure for determining the issues in the Directions Application, including making orders for representatives of stakeholders of FTX Digital (customers, creditors and others) to appear and make representations to the Supreme Court on the issues raised by the Directions Application. There will also be an opportunity for interested parties to file evidence, if so directed by the Supreme Court.

Intended Sale of Depreciating Assets
The JPLs also intend to shortly file an application seeking the sanction of The Supreme Court of The Bahamas to sell depreciating assets of the Company, namely, vehicles and office furniture and equipment.

7.2. Chapter 11 proceedings

Since the First Interim Report, the JPLs have filed various motions, declarations and notices with the Delaware Bankruptcy Court with respect to the Chapter 11 proceedings commenced by the Chapter 11 Debtors. Details of these motions are set out below.

With respect to the Adversary Proceeding (which were filed after the contents of the Directions Application were made public), the Chapter 11 Debtors allege (without any specificity) that the creation and entire operation of the FTX Digital estate was an intentionally fraudulent scheme and that therefore, neither the recognized JPLs nor the Bahamian Court should be entitled to any deference, comity or good standing before the Delaware Bankruptcy Court. The JPLs' US Counsel have advised that the Adversary Proceeding are, among other things, in direct violation of the Cooperation Agreement and FTX Digital's own automatic stay which came into effect when the Delaware Bankruptcy Court issued the Recognition Order. The JPLs intend to defend the Adversary Proceeding vigorously which the JPLs consider to be in the best interest of the Estate. Indeed, as discussed in section 3.1 and more in-depth herein, the JPLs have already begun this process by moving to dismiss the Adversary Proceeding. The JPLs expect a hearing to take place on such motion to be held sometime in July.

On 29 March 2023 (after receiving the sanction of The Supreme Court of The Bahamas to do so), the JPLs filed a Motion before the Delaware Bankruptcy Court for a determination that the Chapter 11 automatic stay does not apply

to, or in the alternative for relief from the stay in order that the Directions Application could be filed, unhindered, in The Bahamas. The JPLs regard the Directions Application as particularly critical and at this stage will file the Directions Application in The Bahamas once the appropriate order is received from the Delaware Bankruptcy Court to do so. The Chapter 11 Debtors have filed an objection to this Motion and the JPLs have filed a reply in support of their motion, further discussed below. The hearing on this Motion is scheduled to take place on 8 June 2023.

Since the First Interim Report, the JPLs have filed the following declarations and motions with respect to the Chapter 15 proceedings:

US Court filing/hearing	**Description**
Chapter 15 Proceedings	**Recognition of the Provisional Liquidation of FTX Digital Markets** On 25 January 2023, the JPLs filed a *Notice of Hearing on their Chapter 15 Petition to Recognize the Provisional Liquidation of FTX Digital Markets as a Foreign Main Proceeding* [Case No. 22-11217, Docket No. 122]. On 15 February 2023, the US Bankruptcy Court held a hearing on the JPLs' Chapter 15 Petition. The US Bankruptcy Court granted recognition of the Provisional Liquidation of FTX Digital Markets as a foreign main proceeding and entered an order to that effect [Docket No. 129].
The United States Trustee's Examiner Motion	Since the JPL's first report, the JPLs participated in the adjudication of the United States Trustee's *Motion to Appoint an Examiner*, seeking an order from the Delaware Bankruptcy Court to appoint an examiner who would investigate the allegations of fraud and the circumstances surrounding the Chapter 11 Debtors' collapse (the "Examiner Motion") [Docket No. 176]. The JPLs filed a limited objection and response to the Examiner Motion, arguing that the appointment of an examiner was not in the best interests of the Chapter 11 Debtors' estates as it would be extremely costly, but if an examiner were needed to be appointed, his or her appointment should be strictly limited [Docket No. 572]. The Delaware Bankruptcy Court scheduled an evidentiary hearing on the Examiner Motion – after the appointment of the Official Committee of Unsecured Creditors (the "Committee")[5] on 6 February 2023. After hearing arguments, in which the JPLs participated through counsel, the US Bankruptcy Court took the matter under advisement and shortly thereafter entered an Order Denying the Examiner Motion [Docket No. 746]. On 6 March 2023, the United States Trustee filed a Notice of Appeal of the US Bankruptcy Court's denial of the Examiner Motion [Docket No. 809]. The United States Trustee's appeal is currently pending.
The Chapter 11 Debtors Adversary Proceeding against FTX Digital and the JPLs	On 19 March 2023, the Chapter 11 Debtors filed a complaint, initiating an Adversary Proceeding against FTX Digital Markets and the JPLs [Adv. Pro. No. 23-50145]. That filing was never substantively discussed with the JPLs, and instead was filed on one hour's notice to one of the JPLs' attorneys. The complaint seeks declaratory judgment on the same issues that the JPLs had identified and sought to discuss with the Chapter 11 Debtors for months. Among other things, the complaint asks the US Bankruptcy Court to declare that no customers migrated from FTX Trading to FTX Digital Markets under the 2022 Terms of Service and that FTX Digital Markets has no ownership interest of any kind in any cryptocurrency, fiat currency, customer information, or intellectual property associated with the FTX International Platform. It also alleges, without any specificity, that every transaction that FTX Digital was involved in during its existence was fraudulent and is subject to avoidance. The complaint seeks an order that the Chapter 11 Debtors may recover from the FTX Digital estate all such transfers, and interest thereon to the date of payment, as well as the costs of the Adversary

[5] The US Bankruptcy Court has authorized the retention of Paul Hastings LLP as Lead Counsel to the Committee [Docket No. 635]; Young Conaway Stargatt & Taylor, LLP as Co-Counsel to the Committee [Docket No. 657]; Jefferies LLC as Investment Banker to the Committee [Docket No. 729]; and FTI Consulting, Inc., as Financial Advisor to the Committee [Docket No. 730].

	Proceeding. The complaint specifically references recovering from FTX Digital's accounts at Moonstone Bank and Silvergate Bank, both of which are located in the U.S. Most inflammatory, the complaint alleges, in contradiction of the Chapter 11 Debtors' prior statements to the US Bankruptcy Court, that SBF moved the FTX enterprise to The Bahamas for the sole purpose of funnelling customer deposits and valuable property to The Bahamas, "out of the reach of American regulators and courts." Bizarrely, the Chapter 11 Debtors also allege, for the first time, that FTX Digital's "formation and existence" was in furtherance of FTX's criminal conspiracy, despite the fact that SBF was the same individual who hired the Chapter 11 Debtors' counsel and turned his enterprise over to Mr. John Ray III. Finally, despite the fact that the Securities Commission of the Bahamas was the first regulator to take action against any FTX entity, the Chapter 11 Debtors allege that SBF and those he directed "maintained a close accommodating relationship with Bahamian law enforcement agencies"; that FTX Digital was only "ostensibly regulated by The Bahamas" and that when operating in The Bahamas, SBF and his cohorts were "outside of the reach of any independent and effective regulatory authority." The JPLs filed a response on 8 May 2023 seeking to dismiss the Adversary Proceeding and abstain from the declaratory judgment counts in favor of the proceeding that would be commenced by the Directions Application, making many of the arguments outlined above. More specifically the JPLs' argued that the Complaint should be dismissed for a number of reasons. As an initial matter, the Adversary Proceeding cannot move forward because it constitutes a direct and willful violation of the automatic stay established in the order recognizing FTX Digital's chapter 15 proceeding. As an obvious intentional stay violation, the filing of the Complaint is void ab initio. The JPLs argued that even if the Delaware Bankruptcy Court were to look past the Chapter 11 Debtors' transgressions, the Complaint still fails as a matter of law because each of the requested declaratory judgments regarding the contractual relationships between the U.S. Debtors, FTX Digital, and all of the International Customers cannot stand for the simple but critical reason that none of the International Customers have been joined to this action. Next the JPLs argue that none of the avoidance claims come close to meeting the pleading standards applicable in the United States and, therefore, all should be dismissed with prejudice. Finally, the JPLs respectfully requested that should the Delaware Bankruptcy Court allow the declaratory judgment claims to proceed, the Delaware Bankruptcy Court should abstain from hearing those claims in favor of adjudication in this Court, which is best suited to reaching a rapid, comprehensive, and efficient result. A copy of the motion to dismiss is attached to this report.
The JPLs' Stay Relief Motion	After first obtaining relief from this Court to do so, on 29 March 2023, the JPLs filed a *Motion for a Determination that the Chapter 11 Debtors' Automatic Stay does not Apply to, or in the Alternative for Relief from the Stay for Filing of the Application in the Supreme Court of the Commonwealth of the Bahamas Seeking Resolution of Non-US Law and Other Issues* (the "JPL Lift Stay Motion") [Docket No. 1192]. Given that none of the Non-U.S. Law Customer Issues involve U.S. law, and none of the parties affected are U.S. entities or citizens, the JPLs have requested the Delaware Bankruptcy Court to declare that the Chapter 11 Debtors' automatic stay does not apply to the filing of the Directions Application. In the alternative, the JPLs have requested that the Delaware Bankruptcy Court grant relief from the Chapter 11 Debtors' automatic stay to allow the JPLs to file the Directions Application in order to, inter alia, provide the grounds to start the process of a cross-border protocol for judicial cooperation, between the US Bankruptcy Court and this Court. The Chapter 11 Debtors have responded to the JPL Lift Stay Motion arguing that the Directions Application would violate the automatic stay and that under no circumstances should the stay be lifted to afford the JPLs the opportunity to file the Directions Application because it would create confusion and duplicative proceedings. Additionally, the Chapter 11 Debtors claim that everything the JPLs seek in the Directions Application

	can be addressed in prosecuting the Adversary Proceeding. In their objection, they claim, for the first time, that *all* customers of the International Platform are customers of the FTX Trading and *none* are customers of FTX Digital. On 12 May, the JPLs in turn filed a pleading in response, reiterating that their motion should be granted. More specifically, the JPLs argued that as the only court-appointed estate fiduciaries, the JPLs cannot abdicate their obligation to administer the FTX Digital estate to the Chapter 11 Debtors. Nor can the JPLs simply accept the Chapter 11 Debtors' assumption that all customers of FTX were, at all times, customers of the Chapter 11 Debtors and that all assets held by the Chapter 11 Debtors from customers belong to the Chapter 11 Debtors. Thus, the JPLs ask that they be allowed to submit the Directions Application to The Supreme Court so that the Delaware Bankruptcy Court and the Supreme Court can work together in order to ensure an efficient and cooperative path to resolution of these questions. The JPLs reiterate that filing the Directions Application is not a violation of the Chapter 11 Debtors' stay and, if it is, it should be lifted. A copy of the JPLs' reply is attached to this report. The JPL Lift Stay Motion is currently set to be heard by the US Bankruptcy Court on 8 June 2023 following the postponement of the omnibus hearing that had been scheduled for 17 May 2023.

7.3. The Chapter 11 Case Administration

Recently, the Chapter 11 Debtors filed the First Interim Report of John J. Ray III to the Independent Directors on Control Failures at the FTX Exchanges (the "First Interim Report") [Docket No. 1242]. The First Interim Report details the prepetition (i) lack of management and government controls; (ii) lack of financial and accounting controls; and (iii) lack of digital asset management, information security, and cybersecurity controls. In conjunction with the First Interim Report, the Chapter 11 Debtors highlighted that they had recovered over $6.2B of assets thus far. Included in these recovery efforts, the Chapter 11 Debtors have obtained:

- Turnover of approximately $350 million in assets held in brokerage accounts in the name of Chapter 11 Debtors Alameda Research Ltd. and FTX Europe from Interactive Brokers LLC. [Docket No. 616];
- Transfer approximately $460M to the Chapter 11 Debtors to settle any and all claims the Chapter 11 Debtors may have against Modulo Capital, Inc., Modulo Capital Alpha Fund LP, Xiaoyun Zhang, and Duncan Rheingans-Yoo related to certain prepetition transfers amounting to $475M by the Alameda Debtors, as directed by SBF, to the Modulo Parties between May 2022 and the Chapter 11 Petition Date. [Docket No. 1244].
- Turnover of approximately $168M of assets held in the name of Chapter 11 Debtors Alameda Research LLC and Alameda Research Ltd., by Aux Cayes FinTech Co. Ltd. and OKcoin USA Inc. [Docket No. 1245].
- Turnover of a $50M promissory note purportedly executed between Chapter 11 Debtor Alameda Research Ltd. and Deltec International Group. [Docket No. 1267].

The Chapter 11 Debtors have also commenced a number of sales of certain assets including:

- The sale of a series of Mysten Labs Inc. ("Mysten") preferred stock and Sui Token Warrants back to Mysten for $96.25M. Chapter 11 Debtors Cottonwood Grove Limited, FTX Trading Ltd., and FTX Ventures Ltd. originally acquired the Mysten preferred stock and warrants in August of 2022 for a total of approximately $102M.
- The sale of the interests in Sequoia Capital Fund, L.P. to Abu Dhabi Global Market for $45M, plus the aggregate amount of any Capital Contributions. Chapter 11 Debtor Clifton Bay Investments LLC originally acquired interests in Sequoia on 11 March 2022, which included an aggregate capital commitment of $100M (as of the Chapter 11 Petition Date, Debtor Clifton Bay Investments LLC had contributed approximately $50M).
- Marketing and sale process for LedgerX LLC ("LedgerX"), owned by Debtor West Realm Shires, resulting in M7 Holdings, LLC agreeing to purchase LedgerX for approximately $50M. The LedgerX Sale was approved before the US Bankruptcy Court on 4 May 2023.

Since the JPLs' first report regarding the administration of their cases, the Chapter 11 Debtors have received a number of orders granting administrative relief in their Chapter 11 Cases. The most notable orders since the JPLs' First Report include:

- Voluntary dismissal of the Chapter 11 cases Turkish FTX Debtors, FTX Turkey Teknoloji ve Ticaret Anonim Şirketi and SNG Investments Yatırım ve Danışmanlık Anonim Şirketi. The Chapter 11 Debtors sought to dismiss these Turkish subsidiaries given their inability to exercise control over their affairs. Both FTX Turkey and SNG Investments are the subject of criminal investigations and have had substantially all of their assets frozen by Turkish authorities. [Docket No. 589]
- Extension of the Chapter 11 Debtors' exclusive time to file a chapter 11 plan and disclosure statement through 7 September 2023 and 6 November 2023, respectively. [Docket No. 844]
- Rejection of approximately 50 different sponsorship and partnership agreements entered into prepetition by the Chapter 11 Debtors. [Docket No. 585] [Docket No. 806]
- Relief for procedures for the Chapter 11 Debtors for selling (i) approximately 300 investments made prepetition by the Chapter 11 Debtors, ranging from $1M to $25M and (ii) 24 investments as limited partner made prepetition by the Chapter 11 Debtors, ranging from $1M to $10M. [Docket No. 702].
- Court authorization to address employee retention needs (the "KERP Order"), which allocates $1,417,833 to 10 identified non-management employees, and $2,109,371 tentatively to allocated roles that are expected to be required to serve over the course of the Chapter 11 cases. The Chapter 11 Debtors are also seeking a similar motion (the "KEIP Motion") to effectively address employee incentive needs for Chapter 11 Debtor FTX Japan K.K. and Chapter 11 Debtor Quoine Pte Ltd. The KEIP Motion is intended to incentivize optimal performance and encourage management to work towards (i) maintaining the entities' licences; and (ii) facilitating a sale or reorganization of the entities. [Docket No. 1359]. The KEIP Motion is scheduled to be heard by the US Bankruptcy Court on 8 June 2023.
- Appointment of a Fee Examiner to review and report on, as appropriate, fee applications submitted by professionals retained in these Chapter 11 cases. [Docket No. 834].

The Alameda-Grayscale Lawsuit

On 6 March 2023, the Chapter 11 Debtors announced that one of their debtor affiliates, Alameda Research Ltd. filed a lawsuit against Grayscale Investments, LLC, in the Court of Chancery in the State of Delaware (the "Grayscale Lawsuit") [Case No. 2023-0276]. The Chapter 11 Debtors also asserted claims against Grayscale's CEO, Michael Sonneshein, and its owners, Digital Currency Group and Barry Silbert. The Grayscale Lawsuit alleges that Grayscale has extracted over $1.3B in exorbitant management fees, prevented shareholder redemptions, and has caused the Grayscale Bitcoin and Ethereum Trusts to trade at approximately a 50% discount to Net Asset Value. The Chapter 11 Debtors are seeking injunctive relief to allow the Chapter 11 Debtors to realize more than $250M in asset value.

The Alameda-Voyager Adversary Proceeding

On 30 January 2023, the Chapter 11 Debtors filed a complaint, initiating an adversary proceeding (the "Voyager Adversary Proceeding") against Voyager Digital, LLC ("Voyager Digital", and with its debtor-affiliates, "Voyager") and HTC Trading Inc. ("HTC") [Adv. Pro. No. 23-50084]. Voyager Digital is a debtor in its own chapter 11 proceedings in the United States Bankruptcy Court for the Southern District of New York (the "SDNY Bankruptcy Court"). HTC is not a debtor in the Voyager Chapter 11 cases. The Chapter 11 Debtors seek to recover approximately $445.8M worth of loans that were repaid to Voyager, from Chapter 11 Debtor Alameda Research LLC, within the preference period under the United States Bankruptcy Code, in September and October 2022.

On 27 February 2023, the Chapter 11 Debtors, the Committee, Voyager, and the Voyager Committee filed a Stipulation, providing a framework to potentially mediate, and litigate the Voyager Adversary Proceeding (the "Voyager Stipulation") [Docket No. 769]. The JPLs filed a Reservation of Rights to the Voyager Stipulation, due to the fact that the Voyager Stipulation would grant the Chapter 11 Debtors with total control over the global resolution of all claims related to Voyager, even though the capital at issue in the Voyager Adversary Proceeding may have originated from FTX Digital accounts or cash directly deposited by FTX Digital customers [Dkt. 819].[6] The JPLs were also concerned about Voyager's allegations of past bad acts by the Chapter 11 Debtors' legal counsel, Sullivan

[6] To date, the JPLs have identified at least $5.6B of transfers from FTX Digital's custodial accounts to FTX Trading, and $2.1B of transfers from FTX Digital's custodial accounts to Alameda Research LLC.

& Cromwell, who would be leading litigation efforts on behalf of the Chapter 11 Debtors, and the impact of those allegations on settlement negotiations.

Thereafter, the Chapter 11 Debtors agreed to amend the Voyager Stipulation to reflect that nothing contained in the Voyager Stipulation would impact or compromise the rights, claims or defences of the JPLs (the "Revised Voyager Stipulation"). Accordingly, the 8 March 2023 hearing was cancelled and the US Bankruptcy Court entered an Order granting the Revised Voyager Stipulation [Docket No. 833].

7.4. Moonstone and Silvergate Bank Account Seizure by the DOJ

Approximately $143M of fiat funds were seized from bank accounts in the name of FTX Digital held at Farmington State Bank d/b/a Moonstone Bank ("Moonstone") and Silvergate Bank ("Silvergate"). In relation to Sam Bankman-Fried's pending criminal case, the DOJ obtained a seizure warrant for the above-mentioned accounts under the criminal and civil forfeiture statutes. The DOJ also named these bank accounts held in the name of FTX Digital in forfeiture allegations in the Bankman-Fried criminal indictment.

There are currently no civil proceedings in relation to these FTX Digital bank accounts. The DOJ is only proceeding against the accounts under the criminal statute, purporting to forfeit Mr Bankman-Fried's personal interests in the accounts. To the knowledge of the JPLs, Mr Bankman-Fried, however, has no interest in the accounts and has never had or claimed any personal interest in the accounts. The JPLs are advised that they have grounds to challenge the government's seizures of the accounts. For several months, the JPLs have engaged patiently and constructively with the DOJ to discuss a protocol for the release of the seized funds. In accordance with their statutory powers, The JPLs continue to take advice from legal counsel in respect of the options available to them to recover FTX Digital's funds, including filing a potential motion for a hearing to challenge the seizure and release the funds on the basis that they belong in the estate of FTX Digital for the benefit of the creditors of FTX Digital rather than in the hands of the DOJ.

Under the Cooperation Agreement between the JPLs and the Chapter 11 Debtors, the JPLs have the right to recover all funds held in the name of FTX Digital with these banks. Despite the Chapter 11 Debtors' commitments in the Cooperation Agreement, the JPLs have evidence that the Chapter 11 Debtors have actively sought to frustrate the JPLs' efforts to recover the seized funds and have reason to believe they were instrumental in the funds being seized in the first place.

The JPLs believe that the Chapter 11 Debtors' improper conduct gives rise to significant post-petition claims against them for violation of the Bankruptcy Code and the Cooperation Agreement and potential violations of the moratorium established in the Provisional Liquidation proceeding of FTX Digital.

The JPLs are taking legal advice in relation to the issues set out above and will pursue recoveries as appropriate.

8. Next steps

8.1. Consider formation of Ad hoc committee

The JPLs are in the process of contacting larger customers and creditors and may invite a representative group to form an ad hoc committee to oversee the JPLs in the discharge of their duties.

8.2. Obtain the remaining FTX Digital information

The JPLs still do not have access to key records that would be considered as core business records of FTX Digital. The JPLs are in the first instance seeking a consensual resolution of data sharing with the Chapter 11 Debtors, but will seek court remedies if no further progress can be made.

8.3. Application for Directions

Subject to approval of the Delaware Bankruptcy Court to the Motion to Lift Stay, the JPLs will file the Directions Application in The Supreme Court of The Bahamas. The Directions Application seeks Court directions in the resolution of key matters to the FTX Digital estate.

8.4. Discussion with the DOJ in relation to seized funds

The JPLs remain open to continuing a constructive dialogue with the DOJ in relation to funds in the name of FTX Digital subject to criminal forfeiture by the DOJ. At the time of this report however it appears that the likelihood of an agreed resolution is becoming more remote, and as such the JPLs will consider the other remedies available.

8.5. Examination of Directors and employees

The JPLs are empowered to examine former Directors and employees to assist with the ongoing investigations. The JPLs will continue to review the prospects of claims against third parties and consider whether there are avenues for further asset recoveries for the benefit of customers and creditors.

8.6. Recovery of employee loans

The JPLs have identified that certain employees have received employee loans from FTX Digital. The Company provided $20.9m in loans to 6 employees related to property purchases, as well as $850k to 3 employees in non-property related loans and salary advances. The JPLs are initiating recovery actions in respect of these loans/payments.

8.7. Investigation of antecedent transactions

Subject to when access to the electronic company data stored on public cloud servers is granted to the JPLs by the Chapter 11 Debtors, the JPLs will review antecedent transactions in relation to FTX Digital. The JPLs will consider whether any such transactions could be subject to clawback actions in order to maximise recoveries for customers and creditors.

8.8. Commence sale of motor vehicles and chattels

The JPLs require Court sanction in order to commence selling assets. As substantially all of the motor vehicles, IT and office equipment are depreciating, the JPLs will shortly file an application for leave from The Supreme Court of The Bahamas to sell these assets.

8.9. Continue to explore platform reorganisation

The JPLs continue to explore whether efforts to restructure the FTX International Platform are feasible, despite being excluded by the Chapter 11 Debtors from ongoing multilateral discussions in this regard in breach of the Cooperation Agreement.

8.10. Next Court Report

The JPLs note that statute does not require them to conduct periodic hearings or reporting to the Supreme Court of The Bahamas, but in acknowledgement of the significant public interest in this case, it is proposed that the JPLs next report is submitted to the Supreme Court of The Bahamas by no later than 9 August 2023, the return date for the winding up petition.

Appendix I – Glossary

Term/Abbreviation	Description
Affiliates	In relation to a party, any person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such party. A person shall be deemed to control another person if such person possesses directly or indirectly, the power to direct, or cause the direction of, the management and policies of such other person, whether through the ownership of voting securities, by contract or otherwise.
Alameda	Collectively; Alameda Research LLC, Alameda Research Limited and North Dimension Inc.
AML	Anti-money laundering
AWS	Amazon Web Services
CEO	Chief executive officer
Chapter 11 Debtors	Collective group of FTX affiliated entities filing for Chapter 11 relief under case number 22-11068
Chapter 15 Recognition	Recognition by the US Delaware Bankruptcy Court of the Provisional Liquidation in The Bahamas as a foreign main proceeding for FTX Digital pursuant to section 1517 of the Bankruptcy Code, and all relief included therewith as provided in section 1520 of the Bankruptcy Code
Company / FTX Digital	International Business Company incorporated in The Bahamas and licensed and registered under the DARE Act.
Cooperation Agreement	An agreement between the Chapter 11 Debtors and the JPLs dated 6 January 2023, setting out the shared goal in maximising recoveries for customers and creditors of each estate, which includes maximising the recoverable assets at each estate, using the most effective legal mechanisms for recovery and returning value to the appropriate estate
CRS	Common Reporting Standard
DAB	Digital Assets Business
DARE Act	Digital Assets and Registered Exchanges Act, 2020 (as amended).
Delaware Bankruptcy Court	United States Bankruptcy Court for the District of Delaware
Digital Assets	BTC, ETH, FTT and any other digital asset, cryptocurrency, virtual currency, token (fungible or not), leveraged token, stable coin, tokenised stock, volatility token, tokenised futures contract, tokenised option or other tokenised derivatives product that is supported by and/or made available from time to time to transact in using the FTX International Platform.
DOJ	United States Department of Justice
Emergency motion	Emergency Motion for (i) relief from the automatic stay and (ii) to compel turnover of electronic records
FATCA	Foreign Account Tax Compliance Act
FBO	For-Benefit-Of, referring to the labelling of bank accounts
FTX campus	FTX Corporate headquarters in Nassau, The Bahamas
FTX Digital / Company	International Business Company incorporated in The Bahamas and licensed and registered under the DARE Act.
FTX Group	FTX International group of companies, together with the FTX US group of companies.
FTX International	FTX Trading and its subsidiaries (especially including FTX Digital) that operate, maintain and administer the FTX International Platform.
FTX International Platform	The digital assets trading platform and exchange and network infrastructure, that consists of a User Interface ("UI") through the FTX international website (FTX.com) or any mobile application and order matching engine, through which customers, outside of the United States of America ("US") and certain other jurisdictions may transact, or exchange, Digital Assets

FTX Property	FTX Property Holdings Ltd.
FTX Trading	A company incorporated in Antigua and Barbuda
FTX US	West Realm Shires Inc. and its subsidiaries, that operate, maintain and administer the FTX.us platform
FTX Ventures	A company incorporated in the British Virgin Islands
JPL Orders	Appointment orders for the JPLs of the Company issued by the Supreme Court of The Bahamas
JPLs	Joint Provisional Liquidators of FTX Digital, Mr Brian Simms, KC, of Lennox Paton, Mr Kevin Cambridge of PwC Bahamas, and Mr Peter Greaves of PwC Hong Kong.
JPLs' Accounts	Operating accounts in the name of FTX Digital at Fidelity Bank and Scotiabank in The Bahamas
KC	King's Counsel
May terms of service	The updated Terms of Service was published to FTX.com's website, and mobile platforms, on 13 May 2022
Professional parties	Professional advisers or agents
PwC	PwC Bahamas, PwC Hong Kong or a member firm of PricewaterhouseCoopers International Limited (each a member firm of which is a separate legal entity)
PwC Bahamas	PricewaterhouseCoopers Advisory (The Bahamas) Limited
PwC Cayman	PwC Corporate Finance & Recovery (Cayman) Limited
PwC Hong Kong	PricewaterhouseCoopers Limited, an entity incorporated in Hong Kong
PwC UK	PricewaterhouseCoopers LLP, a UK limited liability partnership
Related Parties	Any entity within the group of companies owned and operated by SBF and his Co-founders, Nishad Singh, Gary Wang and other investors, including West Realm Shires Inc, and its Subsidiaries, Alameda Research LLC, and its subsidiaries, Paper Bird, Inc and its subsidiaries, including FTX Trading.
SBF	Samuel Bankman-Fried, the founder and Chairman of the Group.
SCB	Securities Commission of The Bahamas
SoA	Statement of Affairs
The Supreme Court of The Bahamas	The Commercial Division of the Supreme Court of The Commonwealth of The Bahamas
The Group	The collective ecosystem that includes Alameda, the FTX Group, and any Related Party.
UK	United Kingdom
US	United States of America
USD / $	United States dollar currency
USDC	Stablecoin
USDT	Tether
W&C	White & Case LLP
Winding Up Act	Companies (Winding Up Amendment) Act 2011

TAB 1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 15
FTX DIGITAL MARKETS LTD.,[1]	)	Case No. 22-11217 (JTD)
Debtor in a Foreign Proceeding.	)	**Re: Dockets Nos. 1, 2, 5, 25, 26, 122 & 124**

ORDER GRANTING RECOGNITION OF FOREIGN MAIN PROCEEDING AND CERTAIN RELATED RELIEF

This matter was brought before the Court by Brian C. Simms, Kevin G Cambridge, and Peter Greaves (the "**Joint Provisional Liquidators**"), in their capacities as the joint provisional liquidators of FTX Digital Markets Ltd. ("**FTX Digital**"), in provisional liquidation in the Commonwealth of The Bahamas (the "**Bahamian Provisional Liquidation**") pursuant to the Companies (Winding Up Amendment) Act, 2011 (the "**CWUA Act**").

The Joint Provisional Liquidators filed a *Verified Petition for Recognition of Foreign Main Proceeding and Certain Related Relief* (together with the Official Form 401 Chapter 15 Petition for Recognition of a Foreign Proceeding filed therewith, the "**Petition**")[2] on November 15, 2022, commencing the above-captioned case (the "**Chapter 15 Case**") under chapter 15 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (as amended, the "**Bankruptcy Code**"),[3] for entry of an Order (this "**Order**") (a) granting the Petition and recognizing the Bahamian Provisional

[1] FTX Digital Markets Ltd. (in Provisional Liquidation) was incorporated in the Commonwealth of The Bahamas as an International Business Company, registered number 207269B.

[2] All capitalized terms not otherwise defined shall have the meanings ascribed to them in the Petition.

[3] The Petition was filed on November 15, 2022 with the United States Bankruptcy Court for the Southern District of New York (the "**SDNY Bankruptcy Court**"). On November 22, 2022, this Court entered an agreed order [Docket No. 25] transferring venue of the Chapter 15 Case from the SDNY Bankruptcy Court to this Court.

Liquidation as the "foreign main proceeding" for FTX Digital pursuant to section 1517 of the Bankruptcy Code, and all relief included therewith as provided in section 1520 of the Bankruptcy Code; (b) recognizing the Joint Provisional Liquidators as the "foreign representatives" of FTX Digital, as defined in 11 U.S.C. § 101(24) of the Bankruptcy Code, in respect of the Bahamian Provisional Liquidation; (c) granting the Additional Relief (as defined below); and (d) granting such other and further relief as the Court deems just and proper; and it appearing that this Court has jurisdiction to consider the Petition pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States Court for the District of Delaware, dated February 29, 2012 (Sleet, C.J.) (the "**Amended Standing Order**"); and venue for this proceeding being proper before this Court under to 28 U.S.C. § 1410; and this being a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P); and the Court having reviewed (i) the Petition, (ii) the Simms Declaration and the exhibits thereto, (iii) the STR Declaration and the exhibits thereto, and (iv) the statements of counsel and any evidence adduced with respect to the Petition at a hearing, if any, before this Court (the "**Hearing**"); and appropriate and timely notice of the Petition and the Hearing having been given, and no other or further notice being necessary or required; and upon the record of the Hearing and all of the proceedings had before the Court; and the Court having determined that the relief sought in the Petition is in the best interest of FTX Digital and all parties in interest; and that the legal and factual bases in the Petition establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

THE COURT HEREBY FINDS AND DETERMINES THAT:

A. The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To

the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order.

C. This is a core proceeding under 28 U.S.C. § 157(b)(2)(P).

D. Venue for this proceeding is proper before this Court pursuant to 28 U.S.C. § 1410.

E. The Joint Provisional Liquidators properly commenced this Chapter 15 Case pursuant to sections 1504, 1509, and 1515 of the Bankruptcy Code.

F. The Joint Provisional Liquidators have satisfied the requirements of section 1515 of the Bankruptcy Code, Bankruptcy Rules 1007(a)(4), 2002(q), and 7007.1, and Rule 2002-1(h) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**").

G. FTX Trading Ltd. and its affiliated debtors and debtors-in-possession (the "**Chapter 11 Debtors**") have objected to the recognition of the Bahamian Provisional Liquidation and the Joint Provisional Liquidators, and such objection has been consensually resolved pursuant to the Settlement and Cooperation Agreement, dated January 6, 2023 (the "**Cooperation Agreement**"), among the Chapter 11 Debtors and the Joint Provisional Liquidators, and the Chapter 11 Debtors have consented to the entry of this Order solely on the terms and conditions set forth herein, including without limitation Paragraph 9 of the Order.

H. The Chapter 11 Debtors have sought recognition of certain Chapter 11 cases pending before this Court in respect of the Chapter 11 Debtors (the "**Chapter 11 Cases**") in The Bahamas, and the Chapter 11 Debtors and the Joint Provisional Liquidator have agreed in the

Cooperation Agreement that entry of this Order shall be subject to and effective only upon the entry of an order providing analogous relief to the Chapter 11 Debtors in The Bahamas in form and substance reasonably satisfactory to the Chapter 11 Debtors (a "**Bahamian Recognition Order**").

I. The Bahamian Provisional Liquidation is a "foreign proceeding" as defined in section 101(23) of the Bankruptcy Code and is entitled to recognition by this Court pursuant to section 1517 of the Bankruptcy Code.

J. FTX Digital's center of main interests is located in the Commonwealth of The Bahamas, which is also where the Bahamian Provisional Liquidation is pending. Accordingly, the Bahamian Provisional Liquidation is the "foreign main proceeding" of FTX Digital, as that term is defined in section 1502(4) of the Bankruptcy Code, and is entitled to recognition as such pursuant to section 1517(b)(1) of the Bankruptcy Code.

K. The Joint Provisional Liquidators are the duly appointed "foreign representatives," within the meaning of section 101(24) of the Bankruptcy Code, of the Bahamian Provisional Liquidation for FTX Digital.

L. FTX Digital and the Joint Provisional Liquidators are entitled to the additional relief set forth in Paragraphs 6 through 7 below (the "**Additional Relief**") pursuant to sections 1521(a)(4), 1521(a)(5), and 1521(b) of the Bankruptcy Code.

M. The relief granted hereby will not cause undue hardship or inconvenience to any party in interest and, to the extent that any hardship or inconvenience may result to such parties, it is outweighed by the benefits of the requested relief to the Joint Provisional Liquidators, FTX Digital, its estate, and all of its creditors.

N. The relief granted hereby is necessary and appropriate to effectuate the purposes and objectives of chapter 15 of the Bankruptcy Code and to protect FTX Digital, its creditors, and other parties in interest, is in the interests of the public and international comity, is not manifestly contrary to the public policy of the United States, and is warranted pursuant to sections 1517, 1520, and 1521 of the Bankruptcy Code.

O. The Additional Relief is necessary to protect and preserve the value of the assets of FTX Digital and the interests of their creditors as required by section 1521(a) of the Bankruptcy Code.

P. The Additional Relief is warranted pursuant to section 1521(e) of the Bankruptcy Code.

Q. The interests of FTX Digital's creditors and other interested entities, including FTX Digital, are sufficiently protected in the Court's grant of the Additional Relief, as required by sections 1521(b) and 1522(a) of the Bankruptcy Code.

R. The Joint Provisional Liquidators have demonstrated that there is a material risk that FTX Digital will suffer irreparable harm in the absence of the Additional Relief.

S. For purposes of this Order and the relief granted herein, the balance of harms favors granting the Additional Relief.

T. For purposes of this Order and the relief granted herein, the Additional Relief granted serves the public interest.

U. No security is required under Rule 65(c) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7065, or otherwise.

V. Appropriate notice of the filing of, and the Hearing on, the Petition was given. Such notice is deemed adequate for all purposes, and no further notice need be given.

For all of the foregoing reasons, and upon the record of the Hearing, if any, and all of the proceedings had before the Court, and after due deliberation and sufficient case appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Petition is granted as set forth herein.

2. All objections, if any, to the Petition or the relief requested therein that have not been waived or settled, and all reservations of rights included therein, are hereby overruled on the merits, subject to the terms and conditions of this Order.

3. The Bahamian Provisional Liquidation is granted recognition as the foreign main proceeding of FTX Digital pursuant to section 1517 of the Bankruptcy Code.

4. All relief and protection afforded to foreign main proceedings under section 1520 of the Bankruptcy Code is hereby granted to the Bahamian Provisional Liquidation, FTX Digital, FTX Digital's property located in the United States, and the Joint Provisional Liquidators, as applicable, including application of the sections 1520(a) and 362 of the Bankruptcy Code stay to bar actions against FTX Digital and/or property of FTX Digital located within the territorial jurisdiction of the United States upon entry of this Order, subject in each case to Paragraphs 9 and 15 below.

5. The Joint Provisional Liquidators are the duly appointed foreign representatives of the Bahamian Provisional Liquidation with respect to FTX Digital, within the meaning of section 101(24) of the Bankruptcy Code, and are authorized to act on behalf of FTX Digital in this Chapter 15 Case, including pursuant to section 1509(b) of the Bankruptcy Code.

6. All of the property of FTX Digital within the territorial jurisdiction of the United States is entrusted to the Joint Provisional Liquidators, and the Joint Provisional Liquidators are

appointed as the exclusive representatives of FTX Digital pursuant to sections 1521(a)(5) and 1521(b) of the Bankruptcy Code, subject to applicable U.S. law (including, without limitation, the Bankruptcy Code) and Paragraphs 9 and 15 below.

7. The Joint Provisional Liquidators shall have the ability to seek authority from the Court to examine witnesses, take evidence, and seek the production of documents from parties located in the United States concerning the assets, affairs, rights, obligations, or liabilities of FTX Digital to the full extent provided to a debtor in possession under Bankruptcy Rule 2004 and Local Rule 2004-1, as deemed appropriate in the Joint Provisional Liquidators' discretion pursuant to section 1521(a)(4) of the Bankruptcy Code, subject in each case to Bankruptcy Rule 2004 and Local Rule 2004-1 and to Paragraphs 9 and 15 below.

8. No action taken by the Joint Provisional Liquidators, FTX Digital, or their respective successors, agents, representatives, advisors, or counsel in preparing, disseminating, applying for, implementing, or otherwise acting in furtherance of, or in connection with, the Bahamian Provisional Liquidation, this Order, this Chapter 15 Case, or any adversary proceeding herein, or any further proceeding commenced hereunder, shall be deemed to constitute a waiver of the rights or benefits afforded such persons under sections 306 and 1510 of the Bankruptcy Code.

9. Nothing in this Order or any relief granted hereby: (a) shall constitute a determination that any property constitutes property or assets of FTX Digital; (b) constitutes relief from the automatic stay in the Chapter 11 Cases; (c) requires the Court in the Chapter 11 Cases to defer to any decision in the Bahamian Liquidation Proceeding with respect to (or alter the Court's *de novo* or other applicable standard of review of) any matter raised by the Chapter 11 Debtors before the Court in the Chapter 11 Cases with respect to property of the estate of the Chapter 11 Debtors (including without limitation the scope of property of the estate, the application or

extension of the automatic stay or the compromise or discharge of estate or third party claims in connection with a plan of reorganization); or (d) affects, limits or modifies the effectiveness of sections 362(b), 1519(d) or 1521(d) of the Bankruptcy Code.

10. A copy of this Order shall be served by the Joint Provisional Liquidators within seven business days of entry of this Order by facsimile, electronic mail, where available, or overnight express delivery on the parties listed on **Exhibit 1** attached hereto (the "**Notice Parties**"), and such service shall be good and sufficient service and adequate notice for all purposes.

11. The Court shall retain jurisdiction to hear and determine all matters arising from or related to implementation of this Order, including, but not limited to (a) the enforcement, amendment or modification of this Order; (b) any requests for additional relief or any adversary proceeding brought in or through this Chapter 15 Case; and (c) any request by an entity for relief from the provisions of this Order, for cause shown, as to any of the foregoing, and provided the same is properly commenced and within the jurisdiction of this Court.

12. This Order is without prejudice to the Joint Provisional Liquidators requesting any additional relief in the Chapter 15 Case, including seeking enforcement in the United States of any orders issued by a court in the Commonwealth of The Bahamas with jurisdiction over the Bahamian Provisional Liquidation, or the right of any party in interest to object to such additional relief.

13. Notwithstanding anything to the contrary contained herein or provision in the Bankruptcy Rules to the contrary, including, without limitation, Bankruptcy Rule 6004(h): (a) the terms and conditions of this Order shall be immediately effective and enforceable upon its entry and shall constitute a final order within the meaning of 28 U.S.C. § 158(a); (b) the Joint Provisional

Liquidators are not subject to any stay in the implementation, enforcement, or realization of the relief granted in this Order; and (c) the Joint Provisional Liquidators are authorized to take all actions necessary to effectuate the relief granted by this Order.

14. To the extent that the Bahamian Recognition Order has not been entered, then the Chapter 11 Debtors (and only the Chapter 11 Debtors) may move the Court to rescind the recognition of the Bahamian Provisional Liquidation for FTX Digital based on any arguments or grounds that could have been asserted at the Hearing or otherwise, provided that any such motion must be made by the Chapter 11 Debtors within 30 days of entry this Order.

15. For the avoidance of doubt, nothing in this Order limits (1) the effectiveness of sections 362(b), 1519(d) or 1521(d) of the Bankruptcy Code or (2) the ability of the United States to assert any rights or powers it might have under applicable law, including, without limitation, its criminal, police or regulatory powers, with respect to any property or assets of FTX Digital located within the territorial jurisdiction of the United States.

16. The rights of the United States and the Joint Provisional Liquidators are preserved to assert any argument relating to the Court's jurisdiction in connection with any action or proceeding related to FTX Digital or its current or former management, officers, directors, affiliates or related parties.

Dated: February 15th, 2023
Wilmington, Delaware

JOHN T. DORSEY
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Notice Parties

Chapter 11 Debtors	
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Party	**Service Address**
FTX US Customer Declaratory Class Action (Adv. Pro. No. 22-50513) Chimicles Schwartz Kriner & Donaldson-Smith LLP	Robert J. Kriner, Jr. (Del. Bar. No. #2546) Scott M. Tucker (Del. Bar. No. #4925) 2711 Centerville Rd, Suite 201 Wilmington, Delaware 19808 Tel. (302) 656-2500 robertkriner@chimicles.com

FTX US Customer Declaratory Class Action (Adv. Pro. No. 22-50513) Entwistle & Cappucci LLP	Andrew J. Entwistle (pro hac vice pending) 500 W. 2nd Street, Suite 1900 Austin, Texas 78701 Tel: (512) 710-5960 aentwistle@entwistle-law.com Robert N. Cappucci (pro hac vice pending) Joshua K. Porter (pro hac vice pending) 230 Park Avenue, 3rd Floor New York, NY 10169 Tel: (212) 894-7200 Fax: (212) 894-7272 rcappucci@entwistle-law.com jporter@entwistle-law.com
FTX Non-US Customer Declaratory Class Action (Adv. Pro. No. 22-50514) EVERSHEDS SUTHERLAND (US) LLP	Peter A. Ivanick Sarah E. Paul Philip H. Ehrlich Lynn W. Holbert The Grace Building, 40th Floor 1114 Avenue of the Americas New York, New York 10036 Telephone: (212) 389-5000 Facsimile: (212) 389-5099 peterivanick@eversheds-sutherland.com sarahpaul@eversheds-sutherland.com philipehrlich@eversheds-sutherland.com lynnholbert@eversheds-sutherland.com Erin E. Broderick 227 West Monroe Street, Suite 6000 Chicago, Illinois 60606 Telephone: (312) 724-9006 Facsimile: (312) 724-9322 erinbroderick@eversheds-sutherland.com Mark D. Sherrill 1001 Fannin Street, Suite 3700 Houston, Texas 77002 Telephone: (713) 470-6100 Facsimile: (713) 654-1301 marksherrill@eversheds-sutherland.com Andrea L. Gordon 700 Sixth Street NW, Suite 700, Washington, District of Columbia Telephone: (202) 383-0100 Facsimile: (202) 637-3593 andreagordon@eversheds-sutherland.com

FTX Non-US Customer Declaratory Class Action (Adv. Pro. No. 22-50514) MORRIS, NICHOLS, ARSHT & TUNNELL LLP	Eric D. Schwartz (No. 3134) Matthew B. Harvey (No. 5186) Paige N. Topper (No. 6470) Brian Loughnane (No. 6853) 1201 North Market Street, 16th Floor Wilmington, Delaware 19801 Telephone: (302) 658-9200 Facsimile: (302) 658-3989 eschwartz@morrisnichols.com mharvey@morrisnichols.com ptopper@morrisnichols.com bloughnane@morrisnichols.com
Media Interveners (Bloomberg, L.P., Dow Jones & Company, The New York Times Inc., and the Financial Times, Ltd.) Finger & Slanina, LLC	David L. Finger (ID #2556) Finger & Slanina, LLC One Commerce Center 1201 N. Orange St., 7th fl. Wilmington, DE 19801 (302) 573-2525
Warren Winter and Richard Brummond Ferry Joseph, P.A.	John D. McLaughlin, Jr. Delaware Bar No. 4123 1521 Concord Pike, Suite 202 Wilmington, DE 19803 Tel: (302) 575-1555, ext. 107 Fax: (302) 575-1714 jmclaughlin@ferryjoseph.com
Warren Winter and Richard Brummond The Hoda Law Firm	Marshal J. Hoda Texas Bar No. 24110009 (Admitted pro hac vice) 12333 Sowden Road, Suite B, PMB 51811 Houston, TX 77080 Tel: (832) 848-0036 marshal@thehodalawfirm.com
Warren Winter and Richard Brummond Foster Yarborough, PLLC	Patrick Yarborough, Esq. Texas Bar No. 24084129 (Admitted pro hac vice) 917 Franklin Street, Suite 220 Houston, TX 77002 Tel: (713) 331-5084 patrick@fosteryarborough.com

Samuel Bankman-Fried Montgomery McCracken Walker & Rhoads LLP	Gregory T. Donilon (No. 4244) 1105 North Market Street, 15th Floor Wilmington, DE 19801 Telephone: (302) 504-7800 gdonilon@mmwr.com Edward L. Schnitzer, Esq. (pro hac vice application to be filed) David M. Banker, Esq. (pro hac vice application to be filed) 437 Madison Avenue, 24th Floor New York, NY 10022 Telephone: (212) 867-9500 eschnitzer@mmwr.com dbanker@mmwr.com
John Mallon Pro Se	John Mallon Heath Lodge Square Belfast United Kingdom BT13 3WG (914) 650-6782 john@onbrinkcapital.com
Leslie Stuart Pro Se	Leslie Stuart Telephone: (242)-810-5291 Email: lsassociates@outlook.com

TAB 2

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
FTX TRADING LTD., *et al.*,[1]	Case No. 22-11068 (JTD)
Debtors.	(Jointly Administered)
	Ref No. 578

ORDER (A) APPROVING THE COOPERATION AGREEMENT BETWEEN THE DEBTORS AND THE JOINT PROVISIONAL LIQUIDATORS OF FTX DIGITAL MARKETS LTD., AND (B) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of FTX Trading Ltd. and its affiliated debtors and debtors-in-possession (collectively, the "Debtors"), for entry of an order (this "Order") (a) approving the Cooperation Agreement pursuant to sections 105(a) and 363(b) of Bankruptcy Code, and (b) granting related relief; and this Court having jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court being able to issue a final order consistent with Article III of the United States Constitution; and venue of these Chapter 11 Cases and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that proper and adequate notice of the Motion and the relief requested therein has been provided in accordance with the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and the Local Rules of Bankruptcy Practice and Procedure

[1] The last four digits of FTX Trading Ltd.'s and Alameda Research LLC's tax identification number are 3288 and 4063 respectively. Due to the large number of debtor entities in these Chapter 11 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.

[2] Capitalized terms not otherwise defined herein are to be given the meanings ascribed to them in the Motion.

of the United States Bankruptcy Court for the District of Delaware, and that, except as otherwise ordered herein, no other or further notice is necessary; and objections (if any) to the Motion having been withdrawn, resolved or overruled on the merits; and a hearing (if any) having been held to consider the relief requested in the Motion and upon the record of the hearing and all of the proceedings had before this Court; and this Court having found and determined that the relief set forth in this Order is in the best interests of the Debtors and their estates; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

2. The entry into and performance by the Debtors of their obligations under the Cooperation Agreement annexed as an Exhibit hereto is hereby approved in all respects.

3. The Debtors will use their best efforts to consult with the Committee regarding any proposed agreement or understanding between FTX DM and the Debtors pursuant to the Cooperation Agreement, including sharing on a "professionals eyes only" basis with the Committee information shared between FTX DM and the Debtors (subject to appropriate confidentiality arrangements and approval of the same by the Bahamas Court); *provided that* it shall not be a violation of this Order if the Debtors fail to so consult or share such information.

4. Nothing in the Cooperation Agreement or this Order shall exempt or relieve the Debtors or FTX DM of their obligations to obtain all necessary court approvals required under applicable law for specific actions contemplated under the Cooperation Agreement, from this Court or the Bahamas Court, as applicable.

5. Nothing in the Cooperation Agreement or this Order shall exempt or relieve the Debtors of their obligations or fiduciary duties to any stakeholder under applicable law.

6. Notwithstanding anything in the Cooperation Agreement to the contrary, nothing in this Order authorizes or permits the Debtors to: (a) seal any document or redact any information from any filings in these Chapter 11 Cases; (b) sell any of their property outside the ordinary course of business pursuant to section 363 of the Bankruptcy Code; (c) obtain postpetition financing pursuant to section 364 of the Bankruptcy Code; (d) pay or reimburse fees or expenses of professionals for any parties to the Cooperation Agreement; (e) enter into any settlement or compromise in respect of the ownership of property of any Chapter 11 Debtor that requires approval of this Court under Rule 9019; or (f) implement any joint claims process applicable in the Chapter 11 Cases and the Bahamian Proceeding. The rights of any party-in-interest to object to any such relief, or to any plan of reorganization reflecting any matter contemplated by the Cooperation Agreement, are fully preserved.

7. Other than the insolvency proceedings expressly contemplated in the Cooperation Agreement, no additional insolvency proceedings shall be subject to the Cooperation Agreement absent further order of this Court.

8. The requirements set forth in Bankruptcy Rule 6004(a) are waived with respect to the Motion.

9. This Order is immediately effective and enforceable, notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or otherwise.

10. This Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the Motion or the implementation of this Order.

Dated: February 9th, 2023
Wilmington, Delaware

JOHN T. DORSEY
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT

Cooperation Agreement

EXECUTION COPY

Settlement and Cooperation Agreement

This Settlement and Cooperation Agreement, dated January 6, 2023 (this "*Agreement*"), between the Chapter 11 Debtors, as debtors and debtors in possession (the "*Chapter 11 Debtors*"), and FTX DM, in provisional liquidation, acting by its Joint Provisional Liquidators without personal liability ("*FTX DM*" and, together with the Chapter 11 Debtors, the "*Parties*"), will be effective when approved by the United States Bankruptcy Court for the District of Delaware (the "*U.S. Bankruptcy Court*") in respect of the Chapter 11 Debtors and sanctioned by the Supreme Court of the Commonwealth of The Bahamas (the "*Bahamas Court*") in respect of FTX DM. Once this Agreement is approved by each of the U.S. Bankruptcy Court and the Bahamas Court, it shall (a) constitute the entire agreement between the parties; (b) supersede any and all prior written and/or oral agreements among the parties; and (c) shall be enforceable pursuant to its terms. To the extent not so approved, this document and any communications, oral or written, regarding the subject matter hereof constitute (a) settlement communications within the meaning of U.S. Federal Rule of Evidence 408 and any equivalent rule in any relevant jurisdiction and (b) without prejudice discussions under the laws of The Commonwealth of The Bahamas.

Goals

1. The shared goal of the Parties is maximizing the recovery to the customers and creditors of each estate, which includes maximizing the recoverable assets at each estate and properly returning value to the appropriate estate.

2. The Parties also share the goals of avoiding redundant work, minimizing expense and respecting the sovereignty of different legal systems.

3. Accordingly, the Parties have determined to proceed with parallel proceedings in the U.S. Bankruptcy Court and the Bahamas Court, and to coordinate in so far as possible the prosecution of parallel proceedings to accomplish these goals.

Agreed Primary Recovery Functions

4. The Parties agree that FTX DM shall be primarily responsible for recovering value from (a) the assets and property in the name of FTX DM, including without limitation, all real and personal property and bank and security accounts in the name of FTX DM, regardless of where located; (b) the approximately $45 million of USDT currently frozen in The Bahamas; (c) the sale or reorganization of FTX DM; (d) claims to the extent belonging to FTX DM under applicable law; (e) intercompany accounts and claims of FTX DM against any of the Chapter 11 Debtors or their affiliates; and (f) the sale of any businesses or investments in the name of FTX DM.

5. The Parties agree that the Chapter 11 Debtors shall be primarily responsible for recovering value from all assets and property not reserved in paragraph 4 above, including without limitation (a) assets and property not in the name of FTX DM; (b) the sale of businesses and investments of the Chapter 11 Debtors; (c) the sale or reorganization of the Chapter 11 Debtors; (d) cryptocurrency (subject to provisions hereof); (e) intercompany accounts and claims of any of the Chapter 11 Debtors or their affiliates against FTX DM; and (f) all claims to the extent belonging to the Chapter 11 Debtors under applicable law.

6. The Parties will work together in good faith during the next six months (commencing on the date hereof) in coordination with appropriate stakeholders in their respective proceedings to develop alternatives for the potential sale, reorganization or other monetization of (a) the international FTX.com platform (the "*International Platform*") and (b) cryptocurrency held or managed by the Chapter 11 Debtors in accordance with this Agreement and associated with the International Platform (and not traceable to customers of FTX US). In order to allow for the foregoing, the Chapter 11 Debtors will not sell or otherwise monetize the cryptocurrency associated with the International Platform (other than stablecoins) during this period without prior consultation with the JPLs and either (x) the approval of the U.S. Bankruptcy Court or (y) the approval of the

JPLs, not to be unreasonably withheld, conditioned or delayed.

7. Save for the arrangements concerning PropCo that are provided for below, the Parties will discuss whether there may be cooperation or other arrangements between the JPLs and the Chapter 11 Debtors organized under U.S. law or the laws of The Commonwealth of The Bahamas that further the goals and objectives of this Agreement.

8. In furtherance of the shared goals described above, the Parties will consult reasonably and in good faith with respect to (a) claims in which there is a dispute as to which Party is the appropriate plaintiff or litigant and (b) litigation in which both Parties have, or may have, claims against the same defendant.

9. Each Party acknowledges that the other Party is a stakeholder and a party-in-interest in the Chapter 11 cases pending in respect of the Chapter 11 Debtors (collectively, the "*Chapter 11 Cases*"), any Bahamian proceedings related to FTX or the International Platform (the "*Bahamas Proceedings*") or any related proceedings in other jurisdictions. Each Party shall consult reasonably and in good faith with the other Party and assist where requested in supporting the appearance of either Party at motions/directions or other requested relief in any such proceedings in connection with the asset recovery functions relating to the International Platform for which it has primary responsibility, including without limitation to exercise the rights of a party-in-interest with respect to: (a) the reasonableness of the asset recovery decisions for which it has primary responsibility; (b) the settlement of intercompany claims; (c) the desirability or viability of a potential reorganization of the International Platform; and (d) the relative recovery of International Platform customers versus other creditors (including without limitation in connection with plan formation or distribution schemes in any jurisdiction). FTX DM will reasonably limit its involvement in the Chapter 11 Cases to matters where it has a bona fide interest affecting recoveries by the Parties for the benefit of customers of the International Platform.

10. This Agreement does not address or compromise any rights or obligations of any Party arising out of or related to the user agreements or other arrangements relating to the International Platform or any other matter not specifically addressed in this Agreement.

11. The Parties will work together in good faith to determine ownership of assets that are subject to competing claims and to ensure that any court process(es) relating to an adjudication of any dispute is conducted as efficiently as is possible. Where one Party wishes to resolve a dispute among the Parties as to any matter (including without limitation relating to the ownership of any asset, standing to pursue claims or the nature of customer claims), such Party may upon reasonable notice to the other party proceed with litigation in either the U.S. Bankruptcy Court or The Bahamas Court with respect to the applicable matters. Pending resolution of such matters, property will be administered as provided in paragraphs 4 and 5. Upon agreement by the Parties (or a final and binding court determination by both the U.S. Bankruptcy Court and the Bahamas Court) that one Party owns an asset the primary responsibility for which has been allocated to the other Party pursuant to paragraphs 4 and 5 above, this Agreement will be deemed modified such that the Party owning the asset will have primary responsibility to monetize such asset, with the Other Party having the rights set forth in this Agreement for a party that does not have primary responsibility for such asset.

Court Process

12. To implement the forgoing, the Parties agree to proceed as follows. First, the Chapter 11 Debtors shall support the continuation of FTX DM's provisional liquidation through Chapter 15 recognition in the U.S. Court and the enforcement and/or the recognition in the U.S. of all orders of the Bahamas Court and elsewhere that are consistent with the Agreement, on mutually agreed and reasonable terms, *provided* that recognition under Chapter 15 would not require the U.S. Bankruptcy Court to defer to the decisions of any foreign court (or alter a *de novo* standard of review) relating to any matter raised by the Chapter 11 Debtors in the Chapter 11 Cases with respect to property of the estate of the Chapter 11 Debtors (including without limitation the scope of property of the estate, the application or extension of the automatic stay or the compromise or discharge of estate or

third party claims in connection with a plan of reorganization). Recognition in the United States shall be subject to and effective only upon the entry of orders providing analogous relief to the Chapter 11 Debtors in the Bahamas Proceedings in form and substance reasonably satisfactory to the Chapter 11 Debtors.

13. Second, the JPLs shall support the continuation of the Chapter 11 Cases and the enforcement and/or recognition in the Commonwealth of The Bahamas of the Chapter 11 cases and all orders of the U.S. Bankruptcy Court and elsewhere that are consistent with the Agreement, on mutually agreed and reasonable terms, *provided* that recognition in The Bahamas would not require the Bahamas Court to defer to the decisions of any foreign court (or alter a *de novo* standard of review) relating to any matter raised by the JPLs in the Bahamas Proceedings with respect to property of the estate of FTX DM (including without limitation the scope of property of the estate, the application or extension of the automatic stay or the compromise or discharge of estate or third party claims in connection with a plan of reorganization). Recognition in The Bahamas shall be subject to and effective only upon the entry of a Chapter 15 recognition order in form and substance reasonably satisfactory to FTX DM.

14. Third, the JPLs agree that they will not seek dismissal of the Chapter 11 case of any Chapter 11 Debtor.

15. Fourth, the Parties agree that the value in the properties owned by FTX Property Holdings Ltd. ("*PropCo*") will be realized over time in one or more arm's-length marketing processes utilizing the services of one or more mutually acceptable independent brokers in a manner and on a timeframe designed to maximize the recovery. The Parties agree that either a liquidation proceeding with respect to PropCo will be opened in the Bahamas Court to run concurrently with the pending Chapter 11 case of PropCo or the Parties will determine another mutually acceptable arrangement for the sale of the applicable properties free and clear of claims against such properties. The JPLs' motion to dismiss the Chapter 11 case of Propco will be dismissed with prejudice. The JPLs (or any other person appointed as liquidator of Propco reasonably acceptable to

the Chapter 11 Debtors), shall take the lead in managing the properties, determining the appropriate strategy for the monetization of the properties, identifying buyers and conducting the marketing process, *provided* that the strategy, as well as the buyers and deal terms recommended by the JPLs, will be subject to approval by the Chapter 11 Debtors (such approval not to be unreasonably withheld or delayed).

16. Subject to the sanction of the Bahamas Court in respect of FTX DM and the approval of the U.S. Bankruptcy Court in respect of the Chapter 11 Debtors, as necessary, the Parties shall fund the carrying costs of PropCo (to the extent not funded from cash flow of the properties) by mortgage loans from third parties, the Chapter 11 Debtors and/or FTX DM. Such loans shall be fully collateralized and repaid from the first available sale proceeds.

17. Each Party shall bear its own expenses in all proceedings out of the unencumbered assets of its own estate. However, with respect to PropCo, each Party's reasonable and documented costs and expenses with respect to PropCo (including, without limitation, reasonable costs and expenses relating to Propco that were incurred prior to the date hereof, and including the reasonable and documented fees of the professionals to the unsecured creditors committee in the Chapter 11 cases and any analogous creditors committee in the Bahamas Proceedings) shall be disclosed to all interested parties and charged to PropCo (and not to FTX DM or the other Chapter 11 Debtors) and paid or reserved for at sale from first available net sale proceeds. 100% of the proceeds from the sale of PropCo net of such reasonable costs and expenses shall be deposited in an escrow account under arrangements reasonably acceptable to the Parties and not released unless the Parties agree or such release is approved by each of the U.S. Bankruptcy Court and The Bahamas Court.

Claims and Distributions

18. The Chapter 11 cases and the provisional liquidation of FTX DM shall proceed in parallel. The Parties will propose procedures for court-to-court communication based on

international best practices and acceptable to each of the U.S. Bankruptcy Court and The Bahamas Court.

19. The Parties shall work in good faith to arrange matters so that, to the extent practicable under applicable law and consistent with each Party's fiduciary duties,

    a. the proceedings reach, in parallel, substantially similar conclusions as to common questions of fact and law, including the allowance and ranking of FTX.com customer claims and the nature of customer claims segregated, commingled and other property;
    b. the applicable Chapter 11 plan in the United States and winding up or distribution plan in The Bahamas each involve a global settlement of all claims of the Parties arising out of or relating to the ownership of assets and property and the matters contemplated by this Agreement;
    c. no FTX.com customer receives, in total, more than the allowed amount of their claim; and
    d. no FTX.com customer receives greater or less total rateable distributions than any other FTX.com customer.

20. The Parties shall in good faith coordinate the timing of the prosecution of the applicable proceedings such that distributions are not made to any FTX.com customer in one proceeding prior to a determination of whether such claims are allowed in the other proceeding.

21. The Parties shall consider the feasibility of a joint claims process in which FTX.com customers are only required to file one claim that would be applicable in both the U.S. Chapter 11 Cases and the Bahamas Proceedings.

Information Sharing

22. The Parties will share information in their possession concerning the matters contemplated by this Agreement, subject to mutually satisfactory arrangements to

preserve confidentiality and any privilege of any party, and to respect the requests of their applicable regulators or law enforcement, *provided* that nothing in this Agreement shall oblige a Party to share privileged material with any other Party. Each Party will ensure that the other Party receives copies of any pleading, report, or information filed in the Chapter 11 Cases or the Bahamas Proceedings, subject to appropriate confidentiality arrangements for any sealed materials.

Dispute Resolution

23. In the event of a dispute as to the meaning or operation of this Agreement or the orders entered to give it effect in the applicable jurisdictions, each Party may, upon reasonable advance notice to the other party, seek relief from either the U.S. Bankruptcy Court or The Bahamas Court separately without any requirement to commence concurrent proceedings. Prior to commencing any action for relief, the Parties will consult in good faith whether mediation is appropriate and the place and manner of such mediation.

24. Neither Party waives any right, obligation, claim, or cause of action against any other Party, except as expressly provided in this Agreement.

Dated: January 6, 2023

THE CHAPTER 11 DEBTORS

By: _____
Name: John J. Ray III
Title: Chief Executive Officer

THE JOINT PROVISIONAL LIQUIDATORS OF FTX DIGITAL MARKETS, LTD.

By: _____
Name: Brian Cecil Simms KC
Title: Joint Provisional Liquidator of FTX Digital Markets Ltd.

By: _____
Name: Peter Greaves
Title: Joint Provisional Liquidator of FTX Digital Markets Ltd.

By: _____
Name: Kevin G. Cambridge
Title: Joint Provisional Liquidator of FTX Digital Markets Ltd.

TAB 3

COMMONWEALTH OF THE BAHAMAS **2022**

IN THE SUPREME COURT **COM/com/00060**

COMMERCIAL DIVISION

IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020 (as amended)

AND IN THE MATTER OF the Companies (Winding Up Amendment) Act, 2011

AND IN THE MATTER OF FTX DIGITAL MARKETS LTD.
(A Registered Digital Asset Business)

ORDER
(Sanction Application)

Before His Lordship, the Honourable Chief Justice, Sir Ian Winder

Dated the **20th** day of **March, A.D., 2023**

UPON THE APPLICATION by way of Ex-Parte Summons filed herein on 15th March 2023 on behalf of the Joint Provisional Liquidations **("the JPLs")** of FTX Digital Markets Ltd. **("the Company")**.

AND UPON READING the Fourth Affidavit of Brian Simms KC **("the Fourth Simms Affidavit")** filed herein on 15th March 2023.

AND UPON HEARING Mrs. Sophia T. Rolle-Kapousouzoglou with Mr. Valdere J. Murphy of Counsel for the JPLs.

AND UPON HEARING Mr. Jason Maynard on behalf of Mr. Kurt Knipp **("the Foreign Representative")**, the Foreign Representative of seven (7) Chapter 11 Debtors, namely: West Realm Shires Inc., West Realm Shires Services Inc., Alameda Research LLC, Alameda Research Ltd., Maclaurin Investments Ltd., Clifton Bay Investments LLC and FTX Trading Ltd.

AND UPON THIS HONOURABLE COURT finding that the determination by this Honourable Court of the issues raised by its officers, the JPLs, in the proposed Directions Application (referred to in paragraph 1 of the Order below) is fundamental to the progress of the provisional liquidation of FTX Digital Markets Ltd in this Honourable Court.

IT IS HEREBY ORDERED that: -

1. The JPLs are hereby sanctioned to seek confirmation and/or approval from the Delaware Bankruptcy Court in the Chapter 11 Proceedings that the JPLs' proposed directions application **("the Directions Application")** to be issued in this Honourable Court in the form as exhibited to the Fourth Affidavit of Brian Simms KC filed herein on 15th March 2023 will not constitute a breach of the automatic stay in the Chapter 11 Proceedings in favour of the Chapter 11 Debtors.

2. Alternatively, if the Delaware Bankruptcy Court is of the view that the Directions Application, would, if issued, constitute a breach of the automatic stay, sanction of this Honourable Court to make an application to the Delaware Bankruptcy Court for relief from the automatic stay in order to avoid any risk of a finding by the Delaware Bankruptcy Court that the JPLs and/or the Company are in breach of the automatic stay in favour of the Chapter 11 Debtors.

3. An Order that the costs of and occasioned by this application be paid out of the assets of the Company and/or trust assets.

4. Such further or other relief as the Court may deem necessary.

BY ORDER OF THE COURT

REGISTRAR

This Order was drawn up by Lennox Paton, Chambers, 3 Bayside Executive Park, West Bay Street and Blake Road, Nassau, The Bahamas, Attorneys for the Joint Provisional Liquidators

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Commercial Division

IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020 (as amended)

AND IN THE MATTER OF
FTX DIGITAL MARKETS LTD.
(A Registered Digital Asset Business)

AND IN THE MATTER OF the Companies (Winding Up Amendment) Act, 2011

ORDER
(Sanction Application)

2022
COM/com/00060

Lennox Paton
LENNOX PATON
Chambers
No. 3 Bayside Executive Park
Blake Road and West Bay Street
Nassau, New Providence
The Bahamas
Attorneys for the Joint Provisional Liquidators

TAB 4

COMMONWEALTH OF THE BAHAMAS **2022**

IN THE SUPREME COURT **COM/com/00060**

COMMERCIAL DIVISION

IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020 (as amended)

AND IN THE MATTER OF the Companies (Winding Up Amendment) Act, 2011

AND IN THE MATTER OF FTX DIGITAL MARKETS LTD.
(A Registered Digital Asset Business)

SUMMONS

LET ALL PARTIES concerned attend before **His Lordship the Honourable Chief Justice Sir Ian Winder Chief Justice** of the Supreme Court of the Commonwealth of The Bahamas, in Chambers at the Supreme Court of The Bahamas, Annex 1, Nassau, The Bahamas on _____ the _____ day of _____A.D., **2023** at _____o'clock in the _____-noon or as soon thereafter as Counsel can be heard on an application on behalf of the Joint Provisional Liquidators (the "**JPLs**") of FTX Digital Markets Ltd ("**FTX DM**") pursuant to *the* ***Companies (Winding Up Amendment) Act 2011, section 199(4)*** and ***the Companies Liquidation Rules 2012, O.4, r.5(2)***, *and* ***Supreme Court Act, section 15*** and/or under the inherent jurisdiction of the Court for binding directions and declarations as to the following matters:

1. How the amendment of the applicable FTX Terms of Service (the "**ToS**") dated 28 February 2022 (the "**Feb ToS**") was effected (if it was) into the form of the ToS dated

13 May 2022 (the "**May ToS**"), and if so from what date did such amendment take effect?

2. What is the applicable governing law by which the questions set out at paragraph 1 fall to be determined?

3. Whether, in the events that have happened, on a proper construction of the applicable FTX ToS, and applying the applicable governing law:

   a. Users of the FTX International Platform were migrated to FTX DM as from the effective date of the May ToS for each such User (or any other date, and if so which);

   b. those Services listed in Schedules 2, 3, 4, 5 6 and 7 to the May ToS (the "**Schedules**") were from that effective date (or any other date, and if so which) provided by FTX DM under the May ToS;

   c. the rights and/or obligations in respect of the Account(s) for each User (each as defined in the relevant ToS) were from that effective date (or any other date, and if so which) rights and/or obligations of FTX DM under the May ToS (in whole or in part, and if in part, in what part);

   d. digital assets and/or fiat transferred by Users to the FTX International Platform were from that effective date (or any other date, and if so which) assets and/or fiat of FTX DM in law (whether transferred before or after that date); and

   e. digital assets and/or fiat presently held, or as may be held in the future, in the name of FTX DM are assets and/or fiat of FTX DM in law?

4. In what capacity does FTX DM hold any digital assets and/or fiat ("asset"). In particular:

a. what is applicable governing law ;

b. does FTX DM hold such assets for its own account or on trust;

c. if FTX DM holds any such assets on trust:

i. what assets are subject to the trust;

ii. how much flexibility does FTX DM as trustee have, for example:

1. is there a requirement to segregate that asset;

2. is there a right to use that asset for any purpose;

iii. is the trust over a fluctuating pool of assets for the benefit of all Users of FTX DM as co-owners as well as FTX DM itself to the extent that any of its assets are within such pool;

iv. does each User have the right to trace their property into specific assets held on trust; and

v. what rights do Users have against FTX DM in respect of shortfalls in the assets held on trust; and

d. can cryptocurrency and/or fiat be held by FTX DM as bailee?

5. Whether the counterparty in respect of perpetual future contracts who transacted on the FTX International Platform on or after 13 May 2022 was FTX DM, a User or someone else (and if so who)?

6. For the purposes of determining the questions set out at paragraphs 1 to 5, a direction pursuant to **CPR Part 21.4**, that one or more persons who have an interest in the determination of the questions in this Summons be appointed for the purposes of making representations to the Court.

7. An order that the costs of and occasioned by this Summons be provided for.

DATED this **[x]** day of **March** A.D., **2023**

REGISTRAR

This Summons was taken out by Lennox Paton, Chambers, 3 Bayside Executive Park, West Bay Street and Blake Road, Nassau, The Bahamas, Attorneys for the Joint Provisional Liquidators

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Commercial Division

IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020 (as amended)

AND IN THE MATTER OF
FTX DIGITAL MARKETS LTD.
(A Registered Digital Asset Business)

AND IN THE MATTER OF the Companies (Winding Up Amendment) Act, 2011

SUMMONS

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TAB 5

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
FTX TRADING LTD., *et al.*,[1]	Case No. 22-11068 (JTD)
Debtors.	(Jointly Administered)
ALAMEDA RESEARCH LLC, ALAMEDA RESEARCH LTD., FTX TRADING LTD., WEST REALM SHIRES, INC., and WEST REALM SHIRES SERVICES, INC.,	
Plaintiffs,	
-against-	Adv. Pro. No. 23-_____(JTD)
FTX DIGITAL MARKETS LTD., BRIAN C. SIMMS, KEVIN G. CAMBRIDGE, and PETER GREAVES, and J. DOES 1–20	
Defendants.	

COMPLAINT

Plaintiff-Debtors Alameda Research LLC ("Alameda Research"), Alameda Research Ltd., FTX Trading Limited ("FTX Trading"), West Realm Shires, Inc., West Realm Shires Services, Inc. (a/k/a, FTX US and "FTX US"; collectively, "Plaintiffs" or "Debtors"), which have each filed a bankruptcy petition in the above-captioned bankruptcy cases, bring this complaint (the "Complaint") against FTX Digital Markets Ltd. ("FTX DM"), Brian C. Simms,

[1] The last four digits of Alameda Research LLC's tax identification number is 4063. Due to the large number of debtor entities in these Chapter 11 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.

Kevin G. Cambridge, and Peter Greaves, in their capacity as the joint provisional liquidators of FTX DM (collectively, the "Joint Provisional Liquidators" or "JPLs"), and certain currently unidentified individuals or entities identified for the time being as J. Does 1–20 who have either directed and/or aided and abetted the actions of FTX DM or others in the formation of FTX DM, (the "Does"; together with FTX DM and the JPLs, the "Defendants") and allege the following based upon personal knowledge as to themselves and their acts based upon their investigation to date, and upon information and belief as to all other matters.

NATURE OF THE CASE

1. This adversary proceeding (the "Adversary Proceeding") is, among other things, about venue. It is brought by Plaintiffs pursuant to sections 541, 544, 548, 550, and 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"), the Declaratory Judgment Act, 28 U.S.C. § 2201, and sections 1304 and 1305 of Delaware Code title 6, in response to serial threats by the JPLs to attempt to relocate these global bankruptcy cases (the "Chapter 11 Cases") to The Bahamas. Lacking any basis to dismiss these Chapter 11 Cases or transfer venue, the JPLs instead claim that FTX DM—a non-Debtor—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. Since FTX DM is the subject of proceedings in The Bahamas, the JPLs insist that the question of ownership be resolved in The Bahamas. Indeed, they have claimed to the FTX Debtors that it is their fiduciary duty under the laws of The Bahamas to do so.

2. FTX DM did not succeed to *any* property owned by FTX.com. Yet the JPL's assertions continue to balloon in size and volume (though never attaining substance), with the JPLs making public statements, statements to third parties outside of The Bahamas, statements to government officials outside of The Bahamas, and filings in this Court—all asserting that FTX

DM is somehow the owner of the entire FTX.com exchange. More recently, the JPLs have threatened avoidance actions against even direct recipients of preferential payments made by Debtor Alameda Trading Ltd.

3. Without this Court's prompt intervention, the JPLs—fiduciaries with no constituency but themselves—will continue to assert baseless claims that will harm FTX.com customers and all other creditors of the FTX Debtors. In this adversary proceeding, the Debtors seek a declaratory judgment that FTX DM has no ownership interest in any of the Debtors' property and that the transactions (and all documents and structures supporting such transactions) that Sam Bankman-Fried and his co-conspirators used in an attempt to hide assets behind the veil of FTX DM are avoidable as fraudulent transfers under sections 544, 548, and 550 of the Bankruptcy Code, and sections 1304 and 1305 of Delaware Code title 6. If the FTX Debtors succeed in this Adversary Proceeding, there will be no property of FTX DM for local proceedings in The Bahamas to resolve.

4. The JPLs' claim to ownership of FTX.com's property is based largely on constructive, equitable, and other *non-documentary* arguments that depend upon the false premise that FTX DM was the center of the FTX Group.[2] Nothing could be further from the truth. FTX DM was no more than a short-lived provider of limited "match-making" services for customer-to-customer transactions, on the cryptocurrency exchange built, owned, and operated by Debtor FTX Trading, its immediate corporate parent. Over 90% of customers who used the FTX.com exchange were customers before FTX DM even became operational in May 2022 and, once operational,

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[2] As set forth in the Declaration of John J. Ray III in Support of Chapter 11 Petitions and First Day Pleadings (the "Declaration") [Chapter 11 D.I. 24], the Debtors' affairs are comprised broadly of four groups of business, also known as "silos." [*Id.* at ¶¶ 9–10.] The Debtors refer collectively to all four silos as the "FTX Group". [*Id.*] As used in this Complaint, the term "FTX Group" has only the meaning set forth in the Declaration.

FTX DM never earned a dollar of third-party revenue. FTX DM was an economic nullity within the FTX Group.

5. FTX DM was a legal nullity as well. The peculiar history of FTX DM is a classic example of abuse of the corporate form. It was created as a front to facilitate a conspiracy to defraud the Debtors' customers—a conspiracy to which three individuals have already pled guilty and for which a fourth, Mr. Bankman-Fried, is under indictment—rendering any and all transactions related to FTX DM avoidable. FTX DM was part of the mature phase of that conspiracy. It was formed and functioned as an offshore haven for a continuous fraudulent scheme, as well as a conduit through which the fruits of that fraudulent scheme could be channeled to insiders and third parties outside of the reach of any independent and effective regulatory authority. Fortunately, Mr. Bankman-Fried and his cohorts were unable to spirit away *all* of the Debtors' property, both practically and as a matter of law, because these Chapter 11 Cases were commenced and Mr. Bankman-Fried and his Bahamian supporters lost the first stage of what Mr. Bankman-Fried described as the "jurisdictional battle vs. Delaware." [Chapter 11 D.I. 24 ¶ 76.] Mr. Bankman-Fried can no longer fight that battle now that the U.S. District Court for the Southern District of New York has imposed strict pretrial release conditions upon him.

6. The JPLs inherited the corporate shell that Mr. Bankman-Fried and his co-conspirators built to harbor their fraudulent enterprise in The Bahamas and now use it to continue the jurisdictional battle. In doing so, they continue to cast confusion over the true ownership of the Debtors' property and waste the Debtors' assets in the process. Most recently, the JPLs have insisted on filing in The Bahamas an application that seeks "binding directions and declarations" from a Bahamian court that the FTX Debtors and their global stakeholders do not own core assets—in advance of this Court deciding the same issues. The FTX Debtors will respond to any

request to lift the stay to proceed with the JPLs' application when filed by the JPLs. But enough is enough. The FTX Debtors seek a merits determination from this Court as promptly as the matter can be litigated and resolved.

JURISDICTION AND VENUE

7. This Adversary Proceeding relates to Plaintiffs' Chapter 11 Cases filed with this Court on November 11 and 14, 2022 (the "Petition Date").[3]

8. Plaintiffs bring this Complaint pursuant to Rules 7001(2) and 7001(9) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), sections 541, 544, 548 and 105(a) of the Bankruptcy Code, and sections 1304 and 1305 of Delaware Code title 6. Declaratory relief is appropriate pursuant to Bankruptcy Rule 7001(9) and the Declaratory Judgment Act, 28 U.S.C. § 2201.

9. This Adversary Complaint is a "core" proceeding within the meaning of 28 U.S.C. §§ 157(b)(2)(A), (B), (O) and (P).

10. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012.

11. Venue is proper in this Court under 28 U.S.C. §§ 1408 and 1409, and venue in this Court is consistent with the interests of justice, judicial economy, and fairness. Courts typically defer to a plaintiff's choice of forum. In addition, this Adversary Proceeding asserts claims by Plaintiffs as debtors-in-possession in a chapter 11 proceeding, and therefore should be heard by the Bankruptcy Court overseeing its chapter 11 proceedings. This Court's extensive

[3] November 11, 2022 is the Petition Date for all of the above-captioned debtors and debtors-in-possession, except for Debtor West Realm Shires Inc., whose Petition Date is November 14, 2022.

familiarity with the facts and background of these Chapter 11 Cases, and with the Chapter 15 proceeding filed by FTX DM in this Court, supports this Court adjudicating this action. Accordingly, Plaintiff submits that this Court is the proper venue for this Adversary Proceeding.

12. Pursuant to rule 7008-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), Plaintiff consents to the entry of a final order or judgment by the Court on these claims to the extent it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

PARTIES

13. Plaintiffs in this case are Debtors Alameda Research, Alameda Research Ltd., FTX US, West Realm Shires, Inc., and FTX Trading, all of which are debtors-in-possession in the above-captioned chapter 11 case. Plaintiffs Alameda Research, West Realm Shires, Inc., and FTX US are incorporated under Delaware law. Plaintiff Alameda Research Ltd. is incorporated under the law of the British Virgin Islands. Plaintiff FTX Trading is incorporated under the law of Antigua and Barbuda.

14. No trustee has been appointed for Plaintiffs in the Chapter 11 Cases and Plaintiffs continue to operate their businesses and manage their properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. Accordingly, Plaintiffs have the authority to file this Complaint commencing, and thereafter to prosecute, this Adversary Proceeding.

15. Defendant FTX DM is an international business company incorporated in the Commonwealth of The Bahamas, which operated for a short period of time as a digital assets business under the Digital Assets and Registered Exchanges Act, 2020 (the "DARE Act") as

amended, Statute Laws of The Bahamas. The principal address and office for FTX Digital is Building 27, Veridian Corporate Centre West Bay Street, Nassau, N.P.

16. The Defendant JPLs were appointed as joint provisional liquidators pursuant to a Petition for Winding Up Order application by the Securities Commission of The Bahamas and an Order for Appointment of Provisional Liquidator issued on November 10, 2022 by the Commercial Division of the Supreme Court of the Commonwealth of The Bahamas (the "Bahamian Court").

17. Acting on behalf of FTX DM, the JPLs filed a Chapter 15 Petition for Recognition of a Foreign Proceeding on November 15, 2023. *In re FTX Digital Markets Ltd.*, No. 22-11217 (Bankr. D. Del) ("Chapter 15") D.I. 1 (the "Chapter 15 Petition") ¶ 47. This Court granted the Chapter 15 Petition on February 15, 2023, finding that it had jurisdiction over the Petition and the Defendants.

18. Defendants J. Does 1–20 are certain currently unidentified individuals or entities who have either directed and/or aided and abetted the actions of FTX DM or others in the formation of FTX DM. Plaintiffs reserve the right to amend this Complaint to specify the identities of J. Does 1–20 as they become identified.

FACTUAL BACKGROUND

A. The FTX Entities Are Founded

19. Mr. Bankman-Fried and Zixiao "Gary" Wang founded Alameda Research in November 2017. Mr. Bankman-Fried, Mr. Wang, and Nishad Singh founded FTX Trading (a/k/a FTX.com) in April 2019 and West Realm Shires, Inc. and FTX US in January 2020. Caroline Ellison became co-CEO of Alameda Research in 2021, and the sole CEO of Alameda Research upon the resignation of Samuel Trabucco in August 2022. Ms. Ellison's employment was terminated in November 2022.

20. Upon its creation in April 2019, FTX Trading operated an exchange and trading platform which allowed customers to buy, sell, exchange, hold, or otherwise transact in digital assets, use the FTX Application Programming Interface (the "API"), and use any other services through the FTX.com website (the "Site").

21. FTX DM existed as a corporate entity for just over 16 months. It was incorporated in the Commonwealth of The Bahamas ("The Bahamas") on July 22, 2021. Its registration to operate as a Digital Asset Service Provider (but not a Digital Token Exchange) was approved by the Securities Commission of The Bahamas (the "Commission") on September 20, 2021. FTX DM began operations on May 13, 2022 and operated for just under six months, from May 13, 2022 to November 10, 2022. As explained below, FTX DM's entire existence fell within the scope of the criminal conspiracy, to which Mr. Bankman-Fried's co-conspirators have already pled guilty. Indeed, its very formation and existence was in furtherance of that conspiracy.

B. The Co-Conspirators Begin to Use the FTX Entities to Perpetrate Fraud

22. From at least 2019 and through November 2022, Mr. Bankman-Fried, Mr. Wang, Mr. Singh, and Ms. Ellison (the "Co-Conspirators"), variously used Alameda Research, FTX Trading, and FTX DM to engage in a colossal criminal conspiracy. The aim of much of this improper activity was to use funds from various other FTX entities to prop up Alameda Research, which sustained billions of dollars in trading losses under Ms. Ellison's and Mr. Bankman-Fried's direction.

- As he admitted by guilty plea, from at least in or about 2019 and through November 2022, Mr. Wang conspired to and actually did defraud the customers of FTX Trading by misappropriating customers' deposits and lending customers' deposits to Alameda Research, conspired to commit commodities fraud by implementing changes to the code of FTX.com to permit Alameda Research to incur a negative balance on FTX.com, and conspired to commit securities fraud by lying to investors regarding FTX Trading's financial condition. Information & Waiver of Indictment, *United*

States v. *Wang*, No. 22-cr-00673 (LAK) (S.D.N.Y. Dec. 19, 2022), ECF Nos. 6–7.

- As he admitted by guilty plea, from at least in or about 2019 and through November 2022, Mr. Singh conspired to and actually did defraud the customers of FTX Trading by misappropriating customers' deposits and lending customers' deposits to Alameda Research, conspired to commit commodities fraud by misappropriating their FTX Trading's customers' deposits, conspired to commit securities fraud by lying to investors about FTX Trading's financial condition and the relationship between FTX Trading and Alameda Research, conspired to commit money laundering, and conspired to make unlawful political contributions and to defraud the Federal Election Commission (the "FEC"). Superseding Information & Waiver of Indictment, *United States* v. *Singh*, No. 22-cr-00673 (LAK) (S.D.N.Y. Feb. 28, 2023), ECF Nos. 90–91.

- As she admitted by guilty plea, from at least in or about 2019 and through November 2022, Ms. Ellison conspired to and actually did defraud the customers of FTX Trading by misappropriating customers' deposits and lending customers' deposits to Alameda Research, conspired to and actually did defraud lenders regarding Alameda Research's financial condition, conspired to commit commodities fraud by misappropriating customers' deposits, conspired to commit securities fraud by lying to investors regarding FTX Trading's financial condition, and conspired to commit money laundering. Information & Waiver of Indictment, *United States* v. *Ellison*, No. 22-cr-00673 (LAK) (S.D.N.Y. Dec. 19, 2022), ECF Nos. 8–9.

- As alleged in a pending superseding indictment, for the period beginning at least in or about 2019 and running through November 2022, Mr. Bankman-Fried conspired to and actually did commit wire fraud, conspired to and actually did defraud FTX Trading customers, conspired to and actually did commit securities fraud on FTX Trading investors, conspired to and actually did commit fraud on Alameda Research's lenders, conspired to and actually did commit bank fraud, conspired to operate an unlicensed money transmitting business, conspired to commit money laundering, and conspired to make unlawful political contributions and to defraud the FEC. Superseding Indictment, *United States* v. *Bankman-Fried*, No. 22-cr-00673 (LAK) (S.D.N.Y. Feb. 23, 2023), ECF No. 80.

23. In addition to committing fraud to directly sustain Alameda Research, Mr. Bankman-Fried (and/or others acting at his direction) used FTX DM as the centerpiece of a fraudulent scheme ancillary to the first, this one to funnel FTX Trading customer deposits and

other valuable property and rights to The Bahamas, out of the reach of American regulators and courts.

24. Mr. Bankman-Fried, and others at his direction, maintained a close, accommodating relationship with Bahamian law enforcement agencies, including, among others, the Commission, and with the Attorney General and Prime Minister of The Bahamas. Indeed, Mr. Bankman-Fried aimed to leverage that relationship to minimize his criminal and civil exposure should the massive fraud be discovered.

25. To accomplish the fraudulent scheme, Mr. Bankman-Fried (and/or others acting at his direction) planned to transfer property and rights from FTX Trading to FTX DM, ostensibly regulated by The Bahamas. At no time were the Co-Conspirators authorized to do so by the law of any jurisdiction or the corporate charters of either FTX Trading or FTX DM.

26. For example, after founding FTX DM, Mr. Bankman-Fried (and/or others acting at his direction) transferred approximately $143 million of fiat currency belonging to FTX Trading and Alameda into accounts in FTX DM's name at Farmington State Bank (d/b/a Moonstone Bank, "Moonstone") and Silvergate Bank ("Silvergate"). Mr. Bankman-Fried and those acting on his behalf obtained no reasonably equivalent value for FTX Trading or Alameda in exchange for these transfers. And the transfer of such a significant sum to a shell entity was not within the ordinary course of business for FTX Trading or Alameda. The true purpose of the transfers were to defraud creditors of FTX or Alameda and to benefit insiders, including the Co-Conspirators themselves.

27. In additional furtherance of the scheme, in May 2022, Mr. Bankman-Fried (and/or others acting at his direction) secretly introduced new terms of service (*see infra*, ¶¶ 38–42), without altering the front page of the document that FTX Trading's customers reviewed on a

click-through basis (if at all) or otherwise distinguishing the new terms from the old. Those new terms of service altered the annexed schedules to allegedly give FTX DM a role as a "service provider" in the day-to-day operations of FTX Trading. But at no point in this scheme did FTX DM ever provide services for FTX Trading commensurate with the magnitude of the Co-Conspirators' transfers on its behalf.

28. When FTX DM was created, and at all times since, Mr. Bankman-Fried (and/or others acting at his direction) knew or should have known that Alameda and FTX Trading were not solvent and, nevertheless, made the transfers with the intent to avoid U.S. regulators and to remove assets from the reach of their creditors in the event of inevitable bankruptcy proceedings.

29. The Co-Conspirators were unable to implement their ancillary fraudulent scheme before the Debtors and FTX DM entered bankruptcy and liquidation, respectively.

C. The FTX Entities Enter Bankruptcy

30. On November 10, 2022, the Commission filed a petition for provisional liquidation of FTX DM with the Supreme Court of The Bahamas. The Bahamian Court granted the petition and appointed Brian Simms as the provisional liquidator. On November 14, 2022, the Bahamian Court entered an order appointing Kevin G. Cambridge and Peter Greaves as additional liquidators. Collectively, Simms, Cambridge, and Greaves are the JPLs.

D. FTX DM and the JPLs Begin Wrongfully Claiming the Debtors' Property

31. From the moment of their appointment, the JPLs have repeatedly claimed their ownership of the Debtors' property and have attempted to relocate these proceedings to The Bahamas. Indeed, on November 15, 2022, the JPLs filed the Chapter 15 Petition that incorrectly averred, among other things, that FTX Digital's "creditors include all account holders with assets stored in the exchange's custodial wallets." Chapter 15 Petition at ¶ 47. Moreover, in his

declaration in support of the Chapter 15 Petition, Brian Simms averred that "the FTX network of companies that established the FTX Brand (the "FTX Brand"), . . . were managed and operated by FTX Digital [Markets] in The Bahamas . . . ," and that "[d]espite the seemingly complex structure of the FTX Brand companies, the entire FTX Brand was ultimately operated from a single location: The Bahamas." [D.I. 2 at ¶¶ 33, 37.]

32. Since then, the JPLs have continued to assert those same baseless claims to the Debtors' property in the following filings and their accompanying declarations:

- An emergency motion for provisional relief filed on November 16, 2022. [Chapter 15 D.I. 7.]
- A *second* emergency motion for provisional relief, sought before obtaining a ruling on the first, filed on December 9, 2022. [Chapter 15 D.I. 27.]
- A motion to dismiss the chapter 11 case of FTX Property Holdings, filed on December 12, 2022. [Chapter 11 D.I. 213.]
- A *third* motion for provisional relief filed on December 23, 2022. [Chapter 15 D.I. 55.]

33. The JPLs then asserted at their chapter 15 recognition hearing that billions of dollars held by the Debtors in the United States were the property of FTX DM. [Chapter 15 D.I. 103.]

E. FTX DM Never Obtained Claims or Interests in the Debtors' Property

34. Despite the JPLs' baseless assertions, FTX DM never obtained claims or interests in the Debtors' property.

i. FTX DM Had No Interests Under the Original FTX Trading Terms of Service

35. The JPLs' central—and mistaken—theory is that the Co-Conspirators' efforts to transfer the property of Debtor FTX Trading to FTX DM, including by introducing new terms of service, in fact effectuated a transfer of that property. That theory is fatally flawed; neither

the new terms nor any other action in fact effectuated a transfer of FTX Trading property to FTX DM.

36. The relationship between customers and FTX Trading was governed by the 2019 and 2020 Terms of Service (the "Original Terms of Service"), and later by the Terms of Service dated May 13, 2022 (the "New Terms of Service"). Under both the Original Terms of Service and the New Terms of Service, the customer relationship was solely between FTX Trading and the customer.

37. The Original Terms of Service and other records identified by the Debtors during their ongoing investigation demonstrate that:

- FTX Trading owns, and for all relevant periods has owned, the API.
- FTX Trading owns, and for all relevant periods has owned, the Site.
- At all times, through and including the present date, all customer accounts for the Site were maintained in the AWS cloud environment, which was managed by FTX Trading.
- At all times, through and including the present date, all fee income generated by customers using the Site (other than those for FTX Japan and Singapore) was paid to FTX Trading.
- No customer that opened an account on the Site prior to May 13, 2022 ever had a relationship with FTX DM, whether contractual, service, or otherwise.
- No customer that opened an account on the Site prior to May 13, 2022 ever effectively transferred or novated any part of its contractual relationship with FTX Trading to FTX DM.
- During calendar year 2021, FTX Trading generated over $1 billion in third-party revenue.
- During the first three quarters of 2022, FTX Trading generated over $700 million in third-party revenue.

ii. FTX DM Obtained No Interests Under the New FTX Trading Terms of Service

38. During its six-month operational lifespan, FTX DM had a limited mandate and a limited balance sheet, merely providing certain "Specified Services" as a "Service Provider" under the New Terms of Service. At all times during FTX DM's lifespan, FTX Trading continued to own and operate the exchange and platform.

39. To that end, the New Terms of Service demonstrate that FTX Trading is and was the *sole* custodian of funds provided by customers and the *sole* issuer and redeemer of e-money (*i.e.*, converted fiat currency deposited by customers) on FTX.com. Under those terms, FTX DM never obtained any interests in the underlying property.

40. The New Terms of Service demonstrate the following:

- FTX Trading was the sole owner and operator of the FTX.com exchange.
- FTX Trading is the named counterparty to the New Terms of Service, just as it was for the Original Terms of Service.
- FTX Trading was therefore in privity of contract with every customer. The New Terms of Service never transferred or novated the Original Terms of Service to FTX DM.
- In fact, FTX DM did not exist, or was not licensed to conduct business, for those customers who signed the Original Terms of Service.
- Under the New Terms of Service, FTX DM is not the named party, but is identified as one of several "Service Providers" that provides "Specified Services."
- Section 1.3 and the Service Schedules of the New Terms of Service explain that the "Specified Services" to be provided by FTX DM all involve providing technology to facilitate certain transactions on the FTX.com platform "*with other users*." The Specified Services did not include trading as principal or entering into privity of contract with any customer with respect to any trade.
- Section 8.3 of the New Terms of Service expressly contemplates bilateral transactions between *FTX Trading* and each customer with respect to transactions in fiat currency.

- Likewise, Section 8.3.2 of the New Terms of Service provides for a transaction directly between *FTX Trading* and the customer. This transaction is not a Specified Service; indeed, it is not a match-making function at all, but a direct transaction between FTX Trading and the customer.

- The receipt of fiat currency and issuance of e-money is not a Specified Service, necessarily excluding FTX DM from inclusion as a party to that term.

41. Additionally, the Debtors' review of other records from their ongoing investigation demonstrates the following:

- FTX DM is 100% owned by FTX Trading.

- FTX DM was licensed by the Commission as a Digital Assets Service Provider ("DASP") under section 6(d) of the DARE Act, and not as a Digital Token Exchange ("DTO"), under section 6(a) of the DARE Act.

- As a DASP, FTX DM was not in the business of providing, and not authorized to provide, distinct custodial services.

- $10 million was deposited into an account in FTX DM's name with Fidelity Bank and Trust (Bahamas) Limited ("Fidelity Bahamas"), which sum represented the estimated cost of an orderly wind-down of FTX DM's business over a six-month period.

- The $10 million deposited in FTX DM's name with Fidelity Bahamas was provided by FTX Trading.

- All FTX.com accounts opened after May 13, 2022 that held digital assets or e-money were maintained in the AWS cloud environment of which Alameda Research was the account owner, not FTX DM.

- The AWS cloud environment was and is located outside of the Bahamas.

- FTX DM never generated revenue from third parties or customers.

- All transactional fees earned under the New Terms of Service were paid to FTX Trading.

- FTX DM only generated intercompany or related-party revenue, which was paid to it primarily by FTX Trading, as well as other related parties.

- FTX DM earned approximately $604,000 net income during calendar year 2021 and approximately $5.17 million net income through the first three quarters of 2022.

- In the first three quarters of 2022, FTX DM had total operating expenses of approximately $73 million, including over $40 million labeled "other expenses." [Chapter 11 D.I. 337 Exs. E, F.] These "other expenses" include over $15 million for "Hotels and Accommodation" paid primarily to three hotels in The Bahamas: the Albany ($5.8 million), the Grand Hyatt ($3.6 million), and the Rosewood ($807,000). [Chapter 11 D.I. 337 ¶ 17.]

42. Under both the Original and New Terms of Service, *only* FTX Trading was listed on the first page that customers would have viewed—and *only* FTX Trading was the contractual counterparty facing any customers or entering into any transactions with any customer to receive or return cash. Neither FTX DM nor any other subsidiary exercised ownership or control over any currency on the FTX Trading platform.

43. Moreover, in early 2022, Mr. Bankman-Fried, Mr. Wang, Mr. Singh, and certain others (the "Executive Employees") each signed offers of employment with FTX DM. Each of the Executive Employees also executed an Invention Assignment Agreement, which was affixed to their offers of employment. The Invention Assignment Agreement defines "Company" as "FTX Digital Markets Ltd" and "FTX" as "FTX Trading Limited, an entity organized under the laws of Antigua and Barbuda."

44. The Invention Assignment Agreement provides, in pertinent part:

> **Relationship to FTX Trading.** I understand that all Inventions and other work product that I develop are being developed by the Company for FTX. Accordingly, I consent to the assignment of all such works by the Company to FTX, and I understand and acknowledge that ***FTX is the owner of all of the Inventions or other intellectual property created by me in my course of employment***. I further understand that FTX is a third party beneficiary to this Agreement and has the full right to directly enforce any rights of the Company under this Agreement.
>
> (emphasis added).

45. Indeed, it was standard practice for all offers of employment at FTX DM to append an Invention Assignment Agreement. When signing any such offers of employment at FTX DM, employees expressly agreed to and acknowledged FTX Trading's ownership of all intellectual property and inventions created while they were employed by FTX DM.

46. Accordingly, any intellectual property regarding the API or the Site belonged to Debtor FTX Trading Ltd., and never to FTX DM.

47. The design of the FTX.com trading system, the Original and New Terms of Service, and the Debtors' investigation to date of FTX DM demonstrate that FTX DM was never more than a mere interchangeable sub-custodian or agent for FTX Trading. It never acquired an interest in any underlying property.

iii. Even If There Were Transfer or Novation, Any and All Transfers of Property Undertaken to FTX DM Are Avoidable

48. As alleged in the indictment of Mr. Bankman-Fried, "from at least in or about 2019, up to and including in or about November 2022," FTX Trading and Alameda Research co-founder Sam Bankman-Fried "corrupted the operations of the cryptocurrency companies he founded and controlled . . . through a pattern of fraudulent schemes . . . ." Superseding Indictment ¶ 1, *United States* v. *Bankman-Fried*, No. 22-cr-00673 (LAK) (S.D.N.Y. Feb. 23, 2023), ECF No. 80.

49. In particular, "this multi-billion-dollar fraud" was executed "through a series of systems and schemes that allowed" Mr. Bankman-Fried, "through Alameda, to access and steal FTX customer deposits without detection." *Id.* ¶ 4.

50. As set forth above (*see infra*, ¶¶ 38–42), Mr. Bankman-Fried and his agents devised the New Terms of Service, among other things, in furtherance of this scheme. In doing so, they intended, at least in part, to facilitate the transfer of FTX Trading property to FTX DM to

hinder, delay, or defraud its creditors. They had no power to do so under their operative corporate charters or under any law.

51. Further, any transfer of FTX Trading property to or through FTX DM by the Co-Conspirators, whether attempted or actually consummated, was fraudulent because it was not made in exchange for *any* value, let alone *reasonably equivalent* value.

52. At all relevant times since 2019, Mr. Bankman-Fried, at a minimum, was well aware that the transfers of FTX Trading property to or through FTX DM were made or attempted while FTX Trading was already insolvent and for the sole purpose of avoiding and/or frustrating independent regulatory oversight and hindering repayment of the FTX Group's creditors.

CAUSES OF ACTION

COUNT I
DECLARATORY JUDGMENT THAT FTX DM HAS NO OWNERSHIP INTEREST IN THE DEBTORS' CRYPTOCURRENCY (AGAINST ALL DEFENDANTS EXCEPT J. DOES)

53. The allegations in paragraphs 1 through 52 are adopted as if fully set forth herein.

54. This claim for relief arises under 28 U.S.C. § 157(b), the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, Bankruptcy Code sections 541 and 105(a), and Bankruptcy Rules 7001(2) and (9).

55. At all times, FTX Trading was the party to the terms of service governing the relationship with FTX customers.

56. The New Terms of Service, dated May 13, 2022, did not constitute a novation or otherwise transfer or grant any ownership interest to FTX DM.

57. Under the New Terms of Service, FTX DM, at most, operated as a sub-agent of FTX Trading.

58. In any event, the New Terms of Service were devised as a part of Mr. Bankman-Fried's conspiracy to defraud the Debtors' customers.

59. FTX DM has no ownership interest of any kind in any cryptocurrency owned by or in the custody of Plaintiffs.

60. Plaintiffs are entitled to declaratory judgment that FTX DM has no ownership interest of any kind in any cryptocurrency owned by or in the custody of Plaintiffs.

COUNT II
DECLARATORY JUDGMENT THAT FTX DM HAS NO INTEREST IN THE DEBTORS' FIAT CURRENCY
(AGAINST ALL DEFENDANTS EXCEPT J. DOES)

61. The allegations in paragraphs 1 through 522 are adopted as if fully set forth herein.

62. This claim for relief arises under 28 U.S.C. § 157(b), the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, Bankruptcy Code sections 541 and 105(a), and Bankruptcy Rules 7001(2) and (9).

63. At all times, FTX Trading was the party to the terms of service governing the relationship with FTX customers.

64. The New Terms of Service, dated May 13, 2022, did not constitute a novation or otherwise transfer or grant any ownership interest to FTX DM.

65. Under the New Terms of Service, FTX DM, at most, operated as a sub-agent of FTX Trading.

66. In any event, the New Terms of Service were devised as a part of Mr. Bankman-Fried's conspiracy to defraud the Debtors' customers.

67. FTX DM has no ownership interest of any kind in any fiat currency owned by or in the custody of Plaintiffs.

68. Plaintiffs are entitled to declaratory judgment that FTX DM has no ownership interest of any kind in any fiat currency owned by or in the custody of Plaintiffs.

COUNT III
DECLARATORY JUDGMENT THAT FTX DM HAS NO INTEREST IN THE DEBTORS' INTELLECTUAL PROPERTY (AGAINST ALL DEFENDANTS EXCEPT J. DOES)

69. The allegations in paragraphs 1 through 52 are adopted as if fully set forth herein.

70. This claim for relief arises under 28 U.S.C. § 157(b), the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, Bankruptcy Code sections 541 and 105(a), and Bankruptcy Rules 7001(2) and (9).

71. At all times, FTX Trading was the party to the terms of service governing the relationship with FTX customers.

72. The New Terms of Service, dated May 13, 2022, did not constitute a novation or otherwise transfer or grant any ownership interest to FTX DM.

73. Under the New Terms of Service, FTX DM, at most, operated as a sub-agent of FTX Trading.

74. In any event, the New Terms of Service were devised as a part of Mr. Bankman-Fried's conspiracy to defraud the Debtors' customers.

75. FTX DM has no ownership interest of any kind in any intellectual property owned by or in the custody of Plaintiffs.

76. Plaintiffs are entitled to declaratory judgment that FTX DM has no ownership interest of any kind in the intellectual property owned by or in the custody of Plaintiffs.

COUNT IV
DECLARATORY JUDGMENT THAT FTX DM HAS NO INTEREST IN THE DEBTORS' CUSTOMER INFORMATION (AGAINST ALL DEFENDANTS EXCEPT J. DOES)

77. The allegations in paragraphs 1 through 522 are adopted as if fully set forth herein.

78. This claim for relief arises under 28 U.S.C. § 157(b), the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, Bankruptcy Code sections 541 and 105(a), and Bankruptcy Rules 7001(2) and (9).

79. At all times, FTX Trading was the party to the terms of service governing the relationship with FTX customers.

80. The New Terms of Service, dated May 13, 2022, did not constitute a novation or otherwise transfer or grant any ownership interest to FTX DM.

81. Under the New Terms of Service, FTX DM, at most, operated as a sub-agent of FTX Trading.

82. In any event, the New Terms of Service were devised as a part of Mr. Bankman-Fried's conspiracy to defraud the Debtors' customers.

83. FTX DM has no ownership interest in any customer information owned by or in the custody of Plaintiffs.

84. Plaintiffs are entitled to declaratory judgment that FTX DM has no ownership interest of any kind in any customer information owned by or in the custody of Plaintiffs.

COUNT V
IN THE ALTERNATIVE, ANY TRANSFERS TO OR THROUGH FTX DM WERE FRAUDULENT AND AVOIDABLE PURSUANT TO 11 U.S.C. §§ 544, 548(A)(1)(B) AND OTHER APPLICABLE LAW (AGAINST ALL DEFENDANTS)

85. The allegations in paragraphs 1 through 52 are adopted as if fully set forth herein.

86. This alternative claim for relief arises under 28 U.S.C. § 157(b), Bankruptcy Code sections 541, 544, 548(a)(1)(B), and 105(a), Bankruptcy Rules 7001(2) and (9), and sections 1304 and 1305 of Delaware Code title 6.

87. At all times, Mr. Bankman-Fried (and/or others acting at his direction) were without legal power or authority to transfer or attempt to transfer Plaintiffs' property, including contractual rights, to or through FTX DM.

88. The Plaintiffs did not receive reasonably equivalent value in exchange for the transfers of Plaintiffs' property to or through FTX DM by Plaintiffs. Indeed, Plaintiffs did not receive any discernable value or benefit in exchange for the transfers.

89. At all times, any transfers of Plaintiffs' property to or through FTX DM were made when Plaintiffs were insolvent. In the alternative, (i) the Plaintiffs became insolvent as a result of the transfers; (ii) Plaintiffs were caused by Mr. Bankman-Fried (and/or others acting at his direction) to engage in a business or a transaction for which they had unreasonably small capital; (iii) Plaintiffs were caused by Mr. Bankman-Fried (and/or others acting at his direction) to incur debts intended or believed to be beyond the Plaintiffs' ability to pay as such debts matured; or (iv) Plaintiffs were caused by the Co-Conspirators to undertake transfers for the benefit of insiders—including the Co-Conspirators themselves—outside of the ordinary course Plaintiffs' businesses.

90. Specifically, before, on, and after the dates of the transfers, the sum of Plaintiffs' debts exceeded the fair value of its assets, and the fair value of its assets was less than the amount required to pay its liabilities on existing debts as they became due. Indeed, the Plaintiffs knew, or should have known, that at the time of the transfers they could not reasonably satisfy their liabilities and indebtedness, as they matured or accrued, with either existing assets or with revenue they could reasonably generate as a going concern.

91. The transfers were made within two years of the Petition Date.

92. Based upon the foregoing, any transfers of Plaintiffs' property to or through FTX DM by the Co-Conspirators, and by any of the J. Doe Defendants, are avoidable as constructive fraudulent transfers.

COUNT VI
IN THE ALTERNATIVE, ANY TRANSFERS TO OR THROUGH FTX DM WERE FRAUDULENT AND AVOIDABLE PURSUANT TO 11 U.S.C. §§ 544, 548(a)(1)(A) AND OTHER APPLICABLE LAW
(AGAINST ALL DEFENDANTS)

93. The allegations in paragraphs 1 through 522 and 88 through 90 are adopted as if fully set forth herein.

94. This alternative claim for relief arises under 28 U.S.C. § 157(b), Bankruptcy Code sections 541, 544, 548(a)(1)(A), and 105(a), Bankruptcy Rules 7001(2) and (9), and sections 1304 and1305 of Delaware Code title 6.

95. At all times, Mr. Bankman-Fried (and/or others acting at his direction) were without legal power or authority to transfer or attempt to transfer Plaintiffs' property, including contractual rights, to or through FTX DM.

96. At all times, any transfers of Plaintiffs' property to or through FTX DM by Mr. Bankman-Fried (and/or others acting at his direction) were made or attempted with actual

intent to hinder, delay, or defraud Plaintiffs' creditors, as further demonstrated by, *inter alia*, the following indicia of fraud:

i. any transfers of Plaintiffs' property to or through FTX DM by Mr. Bankman-Fried (and/or others acting at his direction), whether attempted or consummated, were *not* for reasonably equivalent value in exchange from FTX DM;

ii. any transfers of Plaintiffs' property to or through FTX DM by Mr. Bankman-Fried (and/or others acting at his direction), whether attempted or consummated, occurred while Plaintiffs' liabilities exceeded their assets and they were insolvent;

iii. any transfers of Plaintiffs' property to or through FTX DM by Mr. Bankman-Fried (and/or others acting at his direction), whether attempted or consummated, were made to or for the benefit of insiders—including the Co-Conspirators themselves;

iv. any transfers of Plaintiffs' property to or through FTX DM by Mr. Bankman-Fried (and/or others acting at his direction), whether attempted or consummated, were done in secret;

v. any transfers of Plaintiffs' property to or through FTX DM by Mr. Bankman-Fried (and/or others acting at his direction), whether attempted or consummated, were made outside of the ordinary course of business;

vi. any transfers of Plaintiffs' property to or through FTX DM by Mr. Bankman-Fried (and/or others acting at his direction), whether attempted or consummated, were made in order to facilitate and perpetuate fraud.

97. The transfers were made within two years of the Petition Date.

98. Accordingly, any transfers of Plaintiffs' property to or through FTX DM by the Co-Conspirators, and by any of the J. Doe Defendants, are avoidable as actual fraudulent transfers.

COUNT VII
RECOVERY OF ANY FRAUDULENT AND AVOIDABLE TRANSFERS
PURSUANT TO 11 U.S.C. § 550
(AGAINST ALL DEFENDANTS)

99. The allegations in paragraphs 1 through 52 are adopted as if fully set forth herein.

100. Plaintiffs are entitled to avoid any fraudulent transfers pursuant to 11 U.S.C. § 548(a)(1) (collectively, the "Avoidable Transfers").

101. Defendant FTX DM was the initial transferee of the Avoidable Transfers and one or more of the J. Doe defendants may have been the immediate or mediate transferee of such initial transferee or the person for whose benefit the Avoidable Transfers were made.

102. Pursuant to 11 U.S.C.§ 550(a), Plaintiffs are entitled to recover from Defendants the Avoidable Transfers, plus interest thereon to the date of payment and the costs of this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court grant the following relief against the Defendants:

1. A declaratory judgment that FTX DM has no ownership interest in the Debtors' cryptocurrency;

2. A declaratory judgment that FTX DM has no ownership interest in the Debtors' fiat currency;

3. A declaratory judgment that FTX DM has no ownership interest in the Debtors' intellectual property;

4. A declaratory judgment that FTX DM has no ownership interest in the Debtors' customer information;

5. A finding and order that any transfer or transfers of property or contractual rights to FTX DM are avoidable as fraudulent transfers, either actual or constructive; and

6. An order that Plaintiffs may recover any fraudulent transfers plus interest thereon to the date of payment, as well as the costs of this action.

Dated: March 19, 2023
Wilmington, Delaware

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TAB 6

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: FTX TRADING LTD., *et al.*,[1] Debtors.	Chapter 11 Case No. 22-11068 (JTD) (Jointly Administered)
ALAMEDA RESEARCH LLC, ALAMEDA RESEARCH LTD., FTX TRADING LTD., WEST REALM SHIRES, INC., and WEST REALM SHIRES SERVICES, INC., Plaintiffs, -against- FTX DIGITAL MARKETS LTD., BRIAN C. SIMMS, KEVIN G. CAMBRIDGE, and PETER GREAVES, and J. DOES 1–20 Defendants.	Adv. Pro. No. 23-50145 (JTD) **Re: Adv. Docket Nos. 1, 3 & 4**

MOTION OF FTX DIGITAL MARKETS LTD. AND THE JOINT PROVISIONAL LIQUIDATORS TO DISMISS THE COMPLAINT OR, IN THE ALTERNATIVE, TO ABSTAIN FROM RULING ON COUNTS I-IV

FTX Digital Markets Ltd. ("**FTX Digital**"), Brian C. Simms KC, Kevin G. Cambridge, and Peter Greaves, in their capacity as the duly appointed joint provisional liquidators of FTX Digital and foreign representatives of the Provisional Liquidation of FTX Digital (the "**JPLs**" and, together with FTX Digital, the "**Defendants**"), submit this motion (the "**Motion**") requesting that the Court (i) dismiss the entirety of the complaint [Adv. Docket No. 1] (the "**Complaint**") filed in

[1] The last four digits of FTX Trading Ltd.'s tax identification number are 3288. Due to the large number of debtor entities in these Chapter 11 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 Chapter 11 Debtors' claims and noticing agent at https://cases.ra.kroll.com/FTX.

the above captioned adversary proceeding by Alameda Research LLC, Alameda Research Ltd., FTX Trading Limited, West Realm Shires, Inc., and West Realm Shires Services, Inc., or (ii) in the alternative, abstain from ruling on Counts I-IV of the Complaint pursuant to 28 U.S.C. § 1334(c). In support of this Motion, the Defendants rely upon the accompanying *Memorandum in Support of Motion of FTX Digital Markets Ltd. and the Joint Provisional Liquidators to Dismiss the Complaint or, in the Alternative, to Abstain from Ruling on Counts I-IV* (the "**Memorandum**"), filed contemporaneously herewith.

Pursuant to Rule 7012 and Local Rule 7012-1, the Defendants consent to the entry of a final order or judgment by the Court in connection with this Motion if it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

WHEREFORE, for the reasons set forth in the Memorandum, the Defendants respectfully request that the Court grant this Motion and enter an order substantially in the form attached hereto as **Exhibit A** dismissing the Complaint in its entirety with prejudice and granting any such other and further relief as the Court deems just and proper.

Dated: May 8, 2023
Wilmington, Delaware

/s/ Kevin Gross

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Exhibit A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: FTX TRADING LTD., *et al.*,[1] Debtors.	Chapter 11 Case No. 22-11068 (JTD) (Jointly Administered)
ALAMEDA RESEARCH LLC, ALAMEDA RESEARCH LTD., FTX TRADING LTD., WEST REALM SHIRES, INC., and WEST REALM SHIRES SERVICES, INC., Plaintiffs, -against- FTX DIGITAL MARKETS LTD., BRIAN C. SIMMS, KEVIN G. CAMBRIDGE, and PETER GREAVES, and J. DOES 1–20 Defendants.	Adv. Pro. No. 23-50145 (JTD) **Re: Adv. Docket Nos. 1, 3, 4 & ___**

ORDER GRANTING MOTION OF FTX DIGITAL MARKETS LTD. AND THE JOINT PROVISIONAL LIQUIDATORS TO DISMISS THE COMPLAINT OR, IN THE ALTERNATIVE, TO ABSTAIN FROM RULING ON COUNTS I-IV

Upon the *Motion of FTX Digital Markets Ltd. and the Joint Provisional Liquidators to Dismiss the Complaint or, in the Alternative, to Abstain from Ruling on Counts I-IV* (the "**Motion**");[2] and due and proper notice of the Motion having been provided; and the Court having reviewed the Motion, the Memorandum, any responses to the Motion, and any reply in further support of the Motion; and the Court having determined that the legal and factual bases set forth

[1] The last four digits of FTX Trading Ltd.'s tax identification number are 3288. Due to the large number of debtor entities in these Chapter 11 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 Chapter 11 Debtors' claims and noticing agent at https://cases.ra.kroll.com/FTX.

[2] Capitalized terms used but not defined herein have the meanings ascribed to them in the Motion.

in the Motion and Memorandum establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.

2. The Complaint is dismissed with prejudice.

3. The Defendants are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

4. This Court shall retain jurisdiction with respect to all matters arising from or relating to the implementation of this Order.

TAB 7

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
FTX TRADING LTD., *et al.*,[1]	)	Case No. 22-11068 (JTD)
Debtors.	)	(Jointly Administered)
	)	**Hearing Date:** **April 12, 2023 1:00 p.m.** **Obj. Deadline:** **April 5, 2023 4:00 p.m.**

MOTION OF THE JOINT PROVISIONAL LIQUIDATORS FOR A DETERMINATION THAT THE U.S. DEBTORS' AUTOMATIC STAY DOES NOT APPLY TO, OR IN THE ALTERNATIVE FOR RELIEF FROM STAY FOR FILING OF THE APPLICATION IN THE SUPREME COURT OF THE COMMONWEALTH OF THE BAHAMAS SEEKING RESOLUTION OF NON-US LAW AND OTHER ISSUES

[1] The last four digits of FTX Trading Ltd.'s tax identification number are 3288. Due to the large number of debtor entities in these Chapter 11 Cases, a complete list of the debtors (the "**U.S. Debtors**") and the last four digits of their federal tax identification numbers is not provided here. A complete list of such information may be obtained on the website of the U.S. Debtors' claims and noticing agent at https://cases.ra.kroll.com/FTX.

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Brian C. Simms KC, Kevin G. Cambridge, and Peter Greaves, the Joint Provisional Liquidators and Foreign Representatives (the "**the JPLs**") of FTX Digital Markets Ltd. ("**FTX Digital**") submit this motion (the "**Motion**") seeking (i) a determination that the automatic stay does not apply to the proposed filing of the directions application (the "**Application**") to be issued in the Supreme Court of The Bahamas (the **"Bahamas Court**") or in the alternative, (ii) granting relief from the automatic stay pursuant to Section 362(d)(1) of the Bankruptcy Code in order to allow the JPLs to file the Application in the Bahamas Court. The JPLs request that this Court enter the Order, substantially in the form attached hereto as **Exhibit 1.** In support of the Motion, the JPLs rely upon and incorporate by reference the *Declaration of Metta MacMillan-Hughes KC* ("**MacMillan-Hughes Declaration**") and the *Declaration of Peter Greaves* ("**Greaves Declaration**") filed simultaneously herewith. A copy of the Application is attached as Exhibit A-1 to the Greaves Declaration.

PRELIMINARY STATEMENT

1. On November 10, 2022 (the day before these Chapter 11 Cases were filed), FTX Digital became a debtor in provisional liquidation under the control and supervision of the Bahamas Court (the "**Provisional Liquidation**"). On February 15, 2023, this Court recognized FTX Digital's Provisional Liquidation as the "foreign main proceeding" and the JPLs as the duly appointed "foreign representatives" of the FTX Digital estate in the United States. *See* Case No 22-11217, Order Granting Recognition, Docket No. 129. In connection with that recognition, this Court granted, among other things, "all relief and protection" afforded to foreign main proceedings under section 1520 of the Bankruptcy Code, including but not limited to section 362 of the Code.

2. In their now-recognized Provisional Liquidation, the JPLs are tasked with, among other duties, the duty to maintain the value of the assets of FTX Digital for the benefit of all of

FTX Digital's customers and creditors. Of course, given the admitted "complete absence of trustworthy financial information" for the FTX enterprise, determining which assets and which creditors map to which FTX entity is far from an easy task. *Declaration of John J. Ray III in Support of the Chapter 11 Petitions and First Day Pleadings* [Docket No. 24] ("**First Day Declaration**") ¶ 5. Thus, from the outset of their appointments, the JPLs have actively sought (i) to identify which persons or entities were or are FTX Digital's accountholders, customers, and creditors, (ii) to determine the legal relationship between FTX Digital and those who are identified as such, and (iii) to recover assets for all FTX Digital's stakeholders to be distributed in accordance with Bahamian law and procedure. Greaves Decl. ¶ 8. These issues relating to the identification and protection of FTX Digital's accountholders, customers, and creditors, (the "**Non-U.S. Law Customer Issues**"), are highly complex and turn on key questions of the laws of the Bahamas, Antigua & Barbuda ("**Antigua**") and England. Indeed, the Provisional Liquidation cannot materially progress further unless the Non-U.S. Law Customer Issues are resolved.

3. To that end, the JPLs now seek to file the Application in the Bahamas Court to provide the Bahamas Court with the predicate jurisdiction to answer those Non-U.S. Law Customer Issues necessary to advance FTX Digital's Provisional Liquidation. Because none involve U.S. law, and none of the parties affected are U.S. entities or citizens, the JPLs believe these issues are most efficiently resolved by the Bahamas Court, which routinely considers and applies the Non-U.S. laws at issue. But, the issue of exactly which court is the best court to decide exactly what question is an issue for another day. For now, the JPLs seek only to invoke the jurisdiction of the Bahamas Court to allow for the process of cross-border judicial coordination and resolution to unfold.

4. Importantly, the answers to the Non-U.S. Law Customer Issues are not monolithic. Certain customers and accountholders of the FTX enterprise were indisputably FTX Digital's customers, as the U.S. Debtors admitted in their first day hearing. *See, Hr'g Tr. November 22, 2022*, 26:13-18. ("[A]pproximately 6 percent [of International Customers] were customers of FTX Digital Markets Limited, the Bahamian entity that is under the jurisdiction of the joint provisional liquidators.").[2] Certain other customers of the FTX enterprise might be accountholders or customers of FTX Trading Ltd. (**"FTX Trading"**), which is a U.S. Debtor before this Court. The ultimate legal question is how to sort the entire FTX international account holder and customer constituency – do they map to FTX Digital, to FTX Trading, or to both? But the question at bar is not even who will decide those issues but how we will go about deciding who will decide.

5. In accordance with the court-approved cooperation agreement between the JPLs and the U.S. Debtors (the **"Cooperation Agreement"**),[3] the JPLs sought for months to jointly tee up that issue with the U.S. Debtors. Having had no engagement on the topic, the JPLs sent the U.S. Debtors' counsel a draft of the Application on March 9, 2023 (*see* Greaves Decl. Ex. E.) They then held a telephonic conference with Mr. Ray and his counsel on March 15 in an attempt to discuss a cooperative framework for resolution to all the Non-U.S. Law Customer Issues, in accordance with this Court's Local Rules and the Cooperation Agreement. By these efforts, the JPLs intended to frame a process, described more fully below, in which the two courts with uncontested jurisdiction over the issues – this Court and the Bahamas Court – can resolve which

[2] For the avoidance of doubt, and as discussed further below, the JPLs do not agree that only 6% of the International Customers are customers of FTX Digital.

[3] *See* Settlement And Cooperation Agreement dated January 6, 2023, Case No. 22-11068, Docket No. 402, Exhibit 1.

questions would be addressed in which court, as is common practice in cross-border insolvencies like these.

6. The reaction of the U.S. Debtors to that concept has been, regrettably, frosty. During the meet and confer, they asserted that the mere filing of the Application in the Bahamas would be viewed as a wilful breach of FTX Trading's automatic stay and a material breach of the Cooperation Agreement, both of which would entitle the U.S. Debtors to relief in this Court. At the same time, the U.S. Debtors asserted that (1) none of the Non-U.S. Law Customer Issues could or should ever be litigated, given that in their view the FTX enterprise operated as one economic entity and (2) any litigation over the Non-U.S. Law Customer Issues would be so severely value-destructive that it would "torpedo" the U.S. cases. Days later, the U.S. Debtors immediately made an abrupt unexplained about-face on both of these points and, without ever having had a discussion with the JPLs on the topic, filed an adversary proceeding against FTX Digital, each of the JPLs, and John Does 1-20 (the "**Adversary Proceeding**"). In that Adversary Proceeding, the U.S. Debtors allege (without any specificity) that the creation and entire operation of the FTX Digital estate was an intentionally fraudulent scheme and that therefore, neither the recognized JPLs nor the Bahamas Court in the recognized foreign main proceeding should ever be entitled to any deference, comity, or indeed good standing in this Court. Adv. Pro. No. 23-50145 (JTD). The U.S. Debtors' campaign to disenfranchise the JPLs and the Bahamas Court needs to stop.

7. To be clear, the filing of the Adversary Proceeding was made in direct violation of the Cooperation Agreement and FTX Digital's own automatic stay which came into effect when this Court issued FTX Digital's recognition order. The JPLs will address the consequences of the U.S Debtors' breaches in subsequent pleadings. But for now, and as discussed below, the U.S.

Debtors, in advancing the most un-comitous of agendas in their own cases, seriously misunderstand the extent of section 362 of the Code.

8. ***First***, as set forth in Section I, *infra*, the filing of the Application is merely the expected predicate for any cooperation between this Court and the Bahamas Court regarding the resolution of Non-U.S. Law Customer Issues. Far from portending doom, as the U.S. Debtors have decried, the filing of the Application only begins the legal proceedings in the Bahamas so that this Court and the Bahamas Court may then start to coordinate on deciding legal issues critical to both FTX Digital and FTX Trading's respective proceedings, if agreeable to both Courts. A subsequent comprehensive protocol may then be adopted which will allow for a coordinated claims-distribution process to achieve the goals of both the JPLs and the U.S. Debtors consistent with how the two courts decide. In all cases, both courts will be involved in the restructuring of the FTX enterprise, likely for years to come, so establishing an initial judicial protocol to coordinate between the proceedings (once the Bahamian Application is filed) is necessary if only to manage costs that are already spiralling out of control and to ensure judicial efficiency.

9. ***Second,*** as set forth in Section II, *infra*, the automatic stay in the Chapter 11 Case of FTX Trading does not apply to the filing of the Application. While section 362 is broad, it does not reach so far as to ban the recognized JPLs from asking their own court, which oversees their own recognized foreign main proceeding for guidance on issues central to their insolvency process. This is exactly what the JPLs are seeking to do by the Application – to invoke the jurisdiction of the Bahamas Court, which has the control and supervision of the JPLs and the Provisional Liquidation, to determine the issues of (a) whether the contracts entered into by "FTX customers" using the FTX International Platform prior to the U.S. Debtors' petition date, were novated from FTX Trading to FTX Digital, (b) whether these customers therefore migrated to FTX Digital;

(c) whether digital assets or fiat transferred by customers of the FTX International Platform or presently held in the name of FTX Digital were virtual assets or fiat of FTX Digital in law and, if so, (d) whether such digital assets or fiat are held by FTX Digital in trust for the benefit of its customers, and (e) who is the counterparty in respect of perpetual futures contracts. That's it. None of these issues are deserving of the U.S. Debtors' histrionic allegations that the JPLs' views are "baseless" and only are being interposed to serve "fiduciaries with no constituency but themselves." Adv. Pro. No. 23-50145 (JTD), Docket No. 1 ¶ 3.

10. ***Third***, as discussed in Section III, *infra*, even if the U.S. automatic stay were found to apply to bar the JPLs' seeking to determine for whom they serve as fiduciaries, the Court should lift the stay in the Chapter 11 Cases to allow the JPLs to file the Application and invoke the jurisdiction of the Bahamas Court. There is no legitimate reason for the U.S. Debtors to prevent the Bahamas Court from ever obtaining jurisdiction over any of the threshold Non-U.S. Law Customer Issues, particularly while the U.S. Debtors are spending tens of millions of dollars a month on professionals based on the untested legal assumption that the money that they are spending is benefitting their own customers. In short, lifting the stay would allow the Bahamas Court presiding over the Provisional Liquidation, which regularly considers similar issues of English, Antiguan, and Bahamian law, to begin to address fundamental questions in a timely and efficient manner to the benefit of all stakeholders, without impinging on this Court's jurisdiction over the U.S. Debtors' cases.

11. When one moves past the inevitable and unfortunate rhetoric that has emanated (and will presumably continue to emanate) from the U.S. Debtors' counsel in New York, the U.S. Debtors cannot possibly be prejudiced by the Bahamas Court answering any of the Non-U.S. Law Customer Issues. It is the only court which has both the U.S. Debtors and FTX Digital in

proceedings before it and which is familiar with the applicable law. By contrast, the FTX Digital estate and the JPLs would be significantly prejudiced if this Court were to maintain a stay (to the extent it even applies), effectively stopping FTX Digital's Provisional Liquidation until the JPLs learn from this Court the identity of their own creditors or their own estate's assets via application of non-U.S. law in a cumbersome, foreign-law-expert-driven process. Plainly, considerations of comity and judicial economy support lifting the stay by allowing the key issues of English, Antiguan, or Bahamian law to be resolved by the court that regularly applies those substantive laws particularly where its rulings will have far-reaching implications for bankruptcies of cryptocurrency companies across the entire Commonwealth.

12. ***Finally***, and contrary to the U.S. Debtors' threats, the Cooperation Agreement does not prevent the JPLs from advancing the Provisional Liquidation of FTX Digital by submitting the Application to the Bahamas Court. On the contrary, it expressly identifies and prescribes a known, disclosed dispute over customer mapping. Three months ago, at the first day hearing, counsel for the U.S. Debtors represented to the Court that (1) "94% of the customers on the FTX international platform" were customers of FTX Trading Limited; (2) the remaining 6% were customers of FTX Digital, and (3) while FTX Trading "planned" to migrate its customers to the Bahamian debtor FTX Digital, it failed to do so prior to filing. *Hr'g Tr. November 22, 2022*, 26:13-27:1. At that same hearing, FTX Digital's JPLs flagged for this Court that they did not agree with the U.S. Debtors' factual assertions regarding the migration. *Id.* 57:3-8.[4] With those positions staked out,

[4] Noting the problem of non-engagement, the JPLs raised the customer migration issue again on February 15, 2023, at the hearing about the recognition of FTX Digital's Provisional Liquidation as FTX Digital's foreign main proceeding. *Hr'g Tr. February 15, 2023*, 27:25-28:7 (noting that "determining whether customers were customers of U.S. debtors or Digital is going to be critical to any distribution scheme . . . [And that] . . . There are unresolved legal and factual issues as to the nature of the customers' deposits whether they're held in trust, [and] whether they're general unsecured claims . . . ."). Counsel for the U.S. Debtors acknowledged that, "the issues as to whether assets belong in the Bahamian estate or in the U.S. estate are open issues . . . ." about which the parties have a live dispute. *See id.* 30:10-24 ("And so, the

the Cooperation Agreement expressly provides that the parties "will work together and in good faith to determine ownership of assets that are subject to competing claims and to ensure that any court process(es) relating to an adjudication of any dispute are conducted as efficiently as possible." Cooperation Agreement ¶ 11. For months, the JPLs, through counsel, in good faith, sought to engage the U.S. Debtors to address an efficient legal mechanism for resolving the Non-U.S. Law Customer Issues. The U.S. Debtors have never actually engaged, and instead have simply proceeded to administer their cases and expend material resources as if no accountholder or customer ever migrated, ultimately initiating a litigation in breach of FTX Digital's chapter 15 stay and the Cooperation Agreement.

13. In sum, the JPLs submit that the proper procedure here, involving two affiliated debtor estates in separate bankruptcy proceedings in two jurisdictions both of whom need intervention to resolve common legal and factual issues affecting the proceedings, is for the respective debtors to invoke the jurisdiction of each of their courts and have the two courts resolve which court will answer which issues under which procedures. It is not, as the U.S. Debtors posit, to simply have this Court ignore all concepts of comity based on veiled insinuations that the JPLs and their Bahamas Court cannot be trusted with interpreting non-U.S. laws in a proceeding that this Court has already recognized as legitimate.

14. The JPLs therefore ask this Court to declare that the automatic stay does not apply to the Application, or, alternatively, to lift the stay and allow the JPLs to file the Application in The Bahamas without prejudice to entry of a judicial protocol whereby the two involved courts –

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statement that Mr. Shore has made in that regard are statements that the U.S. debtors reserve all their rights on and, frankly, disagree with many of them.").

the U.S. and The Bahamas – jointly and collaboratively determine which court will address which of the many Non-U.S. Law Customer Issues that are framed below.

JURISDICTION, VENUE, AND PREDICATES FOR RELIEF

15. This Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012 (Sleet, C.J.). This is a core proceeding under 28 U.S.C. § 157(b)(2).

16. Under Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, the JPLs consent to the entry of a final judgment or order with respect to this Motion if it is determined that this Court lacks Article III jurisdiction to enter such final order or judgment absent consent of the parties.

17. Venue in this district for this proceeding and for this Motion is proper under 28 U.S.C. §§ 1408 and 1409.

18. The statutory predicates for this relief are 11 U.S.C. § 362(d), Federal Rule of Bankruptcy Procedure 4001, and Rule 4001-1 of the Local Rules.

BACKGROUND

19. By the Application, the JPLs seek to invoke the jurisdiction of the Bahamas Court to obtain directions as to the Non-U.S. Law Customer Issues. We set forth below those facts most relevant to the Application in particular to make clear just why the Non-U.S. Law Customer Issues are so important for FTX Digital's Provisional Liquidation and just why the Bahamas Court must be involved.

A. History of the FTX International Platform

20. FTX Trading was incorporated on April 2, 2019, and is a company organized under the International Business Company Act, CAP. 222 of Antigua. Greaves Decl. ¶ 9. Immediately

following its formation, FTX Trading was headquartered, along with the rest of the FTX group of companies ("**FTX Group**"), in Hong Kong, China. *Id.* The FTX International Platform never carried on any business in a market served by FTX U.S. Greaves Decl. ¶ 11.

21. Initially, FTX Trading was responsible for running FTX's international digital asset exchange platform — the platform through which FTX did business with somewhere between 2.5 million to upwards of 7.4 million customers, all located outside the United States ("**International Customers**"). Greaves Decl. ¶ 10. U.S. persons were not permitted to trade on FTX.com, and therefore the JPLs believe that none of the customers affected by the Application are U.S. citizens.[5] Greaves Decl. ¶ 11. So, again, the Application does not affect the rights of any customer of FTX who was bound by a customer agreement governed by U.S. law.

22. At first, most of the International Customers entered into contracts with FTX Trading accepting FTX Trading's terms of service (the "**2019 Terms of Service**"). Greaves Decl. Exhibit C. Antiguan law governs the 2019 Terms of Service.[6] 2019 Terms of Service ¶ 27.

23. The migration of International Customers from FTX Trading was a direct product of the shifting regulatory environment facing FTX. As the U.S. Debtors' counsel stated at the first day hearings, "[i]n November of 2020, the Bahamas passes the DARE Act, a digital assets act, which is intended to encourage the relocation of crypto businesses to the Bahamas. In July of 2021, FTX Digital Markets, the Bahamian single debtor, is formed. And in September of 2021,

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[5] *See* Wall Street Journal, 'This Company Was Uniquely Positioned to Fail:' FTX Group CEO John Ray Testimony, YOUTUBE, at 21:25-22:00 (Dec. 13, 2022), https://www.youtube.com/watch?v=YQdvfBZ0VbQ&t=5172s. ("**Ray Testimony**"); *see also* First Day Declaration ¶ 33 ("The FTX.com platform is not available to U.S. Users").

[6] As discussed further below, Antigua, like the Bahamas, is a legal system based on the English system, with the ultimate appeal court being the Judicial Committee of the Privy Council consisting of a five-judge panel of justices of the Supreme Court of the United Kingdom.

Mr. Bankman-Fried announces that FTX Digital Markets is going to be registered with the Securities Commission of the Bahamas."). *Hr'g Tr. November 22, 2022*, 23:10-17. To explain further, at FTX's inception, no jurisdiction had a sufficiently regulated exchange system for the sought-after institutional funds that FTX's founders wished to attract. Greaves Decl. ¶ 10. Then, on December 14, 2020, the Commonwealth of The Bahamas enacted a licensing and regulatory regime for the digital asset industry pursuant to the Digital Assets and Registered Exchanges Act of 2020 ("**DARE Act**"). Greaves Decl. ¶ 12.

24. Following the enactment of the DARE Act, the FTX Group openly moved the headquarters of its business operations from Hong Kong to The Bahamas. Greaves Decl. ¶¶ 12-14. Up until the filing of the Adversary Proceeding, there was never any insinuation that the movement of the FTX enterprise to The Bahamas was anything other than a legitimate attempt to take advantage of a new regulatory scheme. Indeed, that movement was from a market that was largely unregulated as to virtual assets (Hong Kong) to one with a detailed regulatory regime (The Bahamas).

25. By July 22, 2021, FTX Digital had been incorporated in the Bahamas. Greaves Decl. ¶ 12. That same month, at least 38 individuals, including the co-founders, senior management, and key employees from entities that employed FTX International Platform employees started the transition to move from Hong Kong to The Bahamas and their employment contracts were transferred to FTX Digital. Greaves Decl. ¶ 14. Before the appointment of the JPLs, FTX Digital employed 83 individuals, most of whom resided in The Bahamas. *Id.* It was suggested that 700 FTX employees would eventually work and live in The Bahamas.[7]

[7] *See* Neil Hartnell, *FTX to hire more than 100 Bahamians for Crypto Work*, The Tribune (October 19, 2022) ("**Bahamas Tribune Article**").

26. In August 2021, more than a year prior to the FTX bankruptcies, FTX Digital prepared a document called "FTX Digital Markets Limited Customer Migration Plan" ("**Migration Plan**") approved by FTX Digital's then-CEO, Ryan Salame, stating an objective "*to migrate customers to its [i.e. FTX Digital's] business from FTX* [Trading]." Greaves Decl. Ex. B.

27. The Migration Plan envisioned that users of the FTX international exchange platform (the "**FTX International Platform**") would accept new terms of service, and that the migration would be complete by 2023, with all "institutional" users being migrated by Q2 2022. Migration Plan at p 5. The Migration Plan's staged transfer of International Customers started with high volume users and ended with lower volume users. *Id.* High volume institutional users were to be migrated under the Migration Plan by Q1 2022, other institutional users by Q2 2022, "low risk" (i.e., users with low know your customer ("KYC") risk profiles) individual users by Q3 2022, and "medium risk" and "high risk" individual users by Q4 2022 and Q1 2023, respectively. *Id.* Explicit in the Migration Plan is that users' entire experience would be controlled and overseen by FTX Digital. *Id.* ("The ultimate objective is a ***smooth transition from a user experience perspective***. Front end and back end systems ***should also reflect a shift of activity to FDM as smoothly as possible***, subject to regulatory considerations.") (emphasis added).[8]

[8] *See id.* at p 4 ("The CEO and CO will engage with FTX customer support and marketing in order to ensure both FTX and FDM are aligned on the transition, from messaging to the operational execution."); *id.* at p 4-5 ("Customers who will be migrated from FTX to FDM will be required to accept new terms of service and the sharing of information from FTX to FDM prior to onboarding. As the migration commences, customers will be notified of the change and will be given a period of 90 days to raise any queries, comments, or concerns to the centralised customer support team, before accepting the new terms of service and sharing of information or withdrawing their funds. If customers do not actively accept the new terms of service or the sharing of information within 90 days and do not remove all of their funds, they will be assumed to have accepted the new terms of service and be migrated."); *id.* at p 4("This policy outlines FDM's approach to the migration of customers from FTX Trading Limited (FTX). In developing this policy, FDM has considered the operational, technical and regulatory aspects of its approach to the migration.").

28. On September 10, 2021, in advance of the Migration Plan, FTX Digital was registered as a digital asset business under the DARE Act, becoming the only FTX Group entity regulated to run the FTX International Platform for most of the products on the platform. Greaves Decl.¶ 15. FTX Digital remains the only FTX entity that was ever licensed as such. *Id.* ¶ 12. By September 24, 2021, FTX Trading officially confirmed that it had moved its headquarters from Hong Kong to the Bahamas.[9]

29. A month later, The Bahamas Tribune reported on the FTX Group's expansive, long term plans to center its enterprise in The Bahamas. Bahamas Tribune Article, *supra note* 7. The Tribune reported that FTX's headquarters would be located on a "4.95 acre site…will feature two boutique hotel buildings" and that "[o]ther planned facilities include an athletic and wellness area; a theatre; auditorium; conference centre; café/restaurant; retail; a daycare centre; and 'vertical farm'." *Id.* It further announced that, "Large events will also be held at the conference centre and auditorium on a quarterly basis, which are expected to draw up to 800 additional guests to the site. The campus is expected to be fully built-out by 2025." *Id.*

30. Between November 2021 and June 2022, FTX Digital opened bank accounts in its name ("**FTX Digital Accounts**") that were used to receive and send fiat currency from and to International Customers. Greaves Decl. ¶ 17. Starting in January 2022, it was clear that International Customers were using the FTX Digital Accounts to deposit and withdraw fiat to and from their accounts on the International Platform. *Id.* From January 20, 2022 through November 12, 2022, the FTX Digital Accounts maintained in FTX Digital's name had receipts of $13.4 billion

[9] Nelson Wang, *FTX Moves Headquarters From Hong Kong to Bahamas*, Coindesk (Sept. 27, 2021), https://www.coindesk.com/business/2021/09/24/ftx-moves-headquarters-from-hong-kong-to-bahamas-report/.

and outflows of the same amount. *Id.* From January 20, 2022 through October 31, 2022, the institutional International Customer account in FTX Digital's name had receipts of $9.2 billion and withdrawals of $8.9 billion. *Id.*

31. On May 13, 2022, six months before any FTX bankruptcy, new International Customer terms of service ("**2022 Terms of Service**") were uploaded to the FTX.com site. Greaves Decl. Ex. D. The governing law of the 2022 Terms of Service is English law. 2022 Terms of Service ¶ 38.11. Customers' acceptance of those terms – like many terms of service in a digital age – were automatic upon use. By logging into his, her or its account and using any of the services on the FTX International Platform, an International Customer would be deemed to accept the 2022 Terms of Service. *Id.* ¶ 22.1. These Terms of Service explicitly specified that FTX Digital was the "Service Provider" for nearly all digital asset product lines offered on the FTX International Platform, and permitted FTX Trading to novate its position under the Terms of Service to another party, including FTX Digital.[10] *Id.* ¶ 37.2; Schedules 2-7.[11] Although the U.S. Debtors try to diminish the role of the Service Provider (Adv. Pro. No. 23-50145 (JTD), Docket No. 1 ¶ 38 ("FTX DM had a limited mandate and a limited balance sheet, merely providing certain 'Specified Services' as a 'Service Provider' under the New Terms of Service."), it was actually the Service Provider with control over the accounts according to the "Specified Service description" and

[10] A "Service Provider" is defined as "the entity specified in a Service Schedule as responsible for providing the Specified Service referred to in that Service Schedule." 2022 Terms of Service § 1.1.

[11] Per the 2022 Terms of Service, FTX Trading remained the service provider for the NFT Market (Schedule 11) and the NFT Portal (Schedule 12) (together, the "**Unregulated Services**") because the DARE Act did not permit the Unregulated Products to be migrated to FTX Digital. Greaves Decl. ¶ 16. FTX Trading also remained the service provider for the leveraged tokens spot market (Schedule 8), the BVOL/iBVOL volatility market (Schedule 9) (the "**Other Services**" and together with the Unregulated Services, the "**Remaining FTX Trading Services**"). Based on the information available to the JPLs to date, the Remaining FTX Trading Services that stayed with FTX Trading represented no more than 10% of the business on the FTX International Platform.

"Service Provider" descriptions in each of the Schedules. 2022 Terms of Service, Schedules 2-7; *see e.g.* Schedule 6 ("The Volatility Market is a trading platform on which you can trade Daily MOVE Volatility Contracts, Weekly MOVE Volatility Contracts and Quarterly MOVE Volatility Contracts (collectively, MOVE Volatility Contracts) with other Users, with or without leverage…This Specified Service forms part of the Services and is provided by FTX Digital Markets Ltd."). In other words, if an International Customer accessed his account on or after May 13, 202, FTX Digital became the Service Provider for a customer on the FTX International Platform and was the entity with control over that customer's account and its deposits.

32. Further, any new International Customers who registered with the FTX International Platform after May 13, 2022 became customers of FTX Digital with respect to most of the services offered on the FTX International Platform. *Id.*¶ 1.3.

B. The SCB Revokes FTX Digital's License and Commences FTX Digital's Provisional Liquidation

33. On November 10, 2022, the Securities Commission of The Bahamas ("**SCB**") suspended the registration of FTX Digital under section 19 of the DARE Act. Greaves Decl. ¶ 6. The SCB was, in fact, the only regulatory body worldwide that took any enforcement action against any FTX entity prior to the U.S. Debtors' petition date. On November 10, the SCB petitioned the Bahamas Court for the Provisional Liquidation of FTX Digital, which the Bahamas Court granted. *Id.* The Bahamas Court appointed Brian Simms KC as provisional liquidator. *Id.* On November 14, 2022, the Bahamas Court also appointed Kevin G. Cambridge and Peter Greaves as joint provisional liquidators. *Id.* Pursuant to the Provisional Liquidation order, the JPLs displaced FTX Digital's officers and directors. *Id.*

34. The next day, FTX Trading, along with the other U.S. Debtors, commenced these chapter 11 cases. To date, FTX Trading has listed over 9 million International Customers on its

creditor matrix, more than 7 million of which they allege used the FTX International Platform.[12] As noted above, the issue of which customers would be mapped to which debtor has been a topic of discussion since the first day hearings, with all parties having reserved all rights to claim a customer as either a FTX Trading or FTX Digital customer. *See supra* ¶ 12.

C. Non-U.S. Law Customer Issues

35. As also noted above, the sorting of account holders or customers will involve a series of legal determinations involving the various terms of service under non-U.S. laws, and then when it comes to customer recoveries, U.S. and Bahamian insolvency laws. All of the legal issues raised by the Application turn on questions of non-U.S. law. MacMillan-Hughes Decl. ¶ 5; Greaves Decl. Ex. A. In general, the Application concerns two overarching questions: 1) whether and to what extent the International Customer contracts were novated/migrated to FTX Digital prior to November 2022; and 2) whether and to what extent assets are held in trust by FTX Digital for the benefit of certain or all of its International Customers. Both issues are critical to the proper administration of FTX Digital's estate, and each raises a host of non-U.S. legal issues; including:

Illustrative Foreign Law Customer Issues	Governing Law
1. Interpretation of the customer Terms of Service governing the FTX International Platform, both prior to and subsequent to May 13, 2022.[13]	Antiguan/English[14]

[12] *See* Verification of Creditor Matrix, Case No. 22-11068-JD, Docket No. 574, Jan. 25, 2023; Ray Testimony at 1:17:30-1:19:00 (Dec. 13, 2022), https://www.youtube.com/watch?v=YQdvfBZ0VbQ&t=5172s.

[13] Application ¶¶ 1-3.

[14] 2019 Terms of Service ¶ 27; 2022 Terms of Service ¶ 38.11.

Illustrative Foreign Law Customer Issues	Governing Law
2. Applicable law regarding the novation/migration of customers from FTX Trading to FTX Digital.[15]	Antiguan/English[16]
3. Whether the plan for novation/migration of the exchange business from FTX Trading to FTX Digital was implemented or legally effective.[17]	Bahamian, English or Antiguan[18]
4. The legal terms of commercial arrangements and documents used in connection with the novation/migration and the enforceability thereof.[19]	Antiguan/English[20]
5. The enforceability of the International Customers' advance consent in the applicable Terms of Service to the novation/migration and transfer of customers.[21]	Antiguan/English[22]
6. The enforceability and effectiveness of amendments to the Terms of Service purportedly effective upon next login and use of the services.[23]	Antiguan/English[24]

[15] Application ¶ 2.

[16] 2019 Terms of Service ¶ 27; 2022 Terms of Service ¶ 38.11.

[17] Application ¶¶ 3(a)-(b).

[18] MacMillan-Hughes Decl. ¶ 5; 2019 Terms of Service ¶ 27; 2022 Terms of Service ¶ 38.11.

[19] Application ¶¶ 1-3(a)-(c).

[20] 2019 Terms of Service ¶ 27; 2022 Terms of Service ¶ 38.11.

[21] Application ¶¶ 2-3(a)-(c).

[22] 2019 Terms of Service ¶¶ 27, 29; 2022 Terms of Service ¶¶ 37, 38.11.

[23] Application ¶¶ 1-3(a)-(c).

[24] 2019 Terms of Service ¶¶ 27-28; 2022 Terms of Service ¶¶ 22, 38.11.

Illustrative Foreign Law Customer Issues	Governing Law
7. Whether a partial novation of certain Specified Services to FTX Digital (e.g. in respect of the provision of "futures market") while leaving other Specified Services behind (e.g. "leveraged tokens") was permissible under the applicable Terms of Service. [25]	Antiguan/English[26]
8. In what capacity does FTX Digital hold any digital assets or fiat (including what is the applicable law and whether FTX Digital holds these assets/currency as the legal owner for its own account or on trust).[27]	Bahamian/English[28]
9. If FTX Digital holds any digital assets or fiat currency on trust, what assets are subject to the trust; whether FTX Digital, as trustee, had obligations with respect to the segregation or use of the assets); whether the trust is over a fluctuating pool of assets for the benefit of all International Customers of FTX Digital as co-owners; whether International Customers have any rights to trace their property into specific assets held on trust; what if any rights do International Customers have against FTX Digital in respect of shortfalls in the assets held on trust.[29]	Bahamian/English[30]
10. Whether cryptocurrency or fiat can be held by FTX Digital as bailee[31]	English/Antiguan law/Bahamas[32]

[25] Application ¶¶ 3(a)-(c)

[26] 2019 Terms of Service ¶¶ 27-29, 2022 Terms of Service ¶¶ 1.3, 38.11, Schedules 2-7.

[27] Application ¶¶ 4(a)-(b).

[28] MacMillan-Hughes Decl. ¶ 5; 2019 Terms of Service ¶¶ 22, 27; 2022 Terms of Service ¶¶ 8.2.6., 38.11.

[29] Application ¶ 4(c).

[30] MacMillan-Hughes Decl. ¶ 5; 2019 Terms of Service ¶ 27; 2022 Terms of Service ¶ 38.11.

[31] Application ¶ 4(d).

[32] MacMillan-Hughes Decl. ¶ 5; 2019 Terms of Service ¶ 27; 2022 Terms of Service ¶ 38.11.

Illustrative Foreign Law Customer Issues	Governing Law
11. Who is the counterparty to the perpetual futures contracts[33]	English law[34]

D. The English, Bahamas, And Antiguan Laws Applicable To The Non-U.S. Law Customer Issues

36. As depicted in the foregoing chart, one or more of English, Antiguan, or Bahamian law govern all of the issues framed by the Application. The governing law of the 2022 Terms of Service is English Law;[35] the governing law of the terms of the 2019 Terms of Service is Antiguan law.[36] In addition, certain relevant regulatory and insolvency issues are governed by Bahamian law, as FTX Digital is a Bahamian International Business Company ("IBC") in liquidation. MacMillan-Hughes Decl. ¶ 5. Trust issues are also likely to be governed by Bahamas, English or Antiguan law, which is also a question that the Bahamas Court will need to adjudicate. *Id.*

37. What is most relevant (and perhaps most obvious) is that none of the issues framed in the Application are governed by U.S. law. The FTX International Platform was not even available to U.S. users. *See* First Day Declaration, ¶ 33 ("The FTX.com platform is not available to U.S. Users."). Rather, the 2022 Terms of Service explicitly state, "Our services are not offered to Restricted Persons or persons who have their registered office or place of residence in the United States of America or any Restricted Territory." 2022 Terms of Service at 1. *See id.* at 6-7 ("In order to be eligible to open an Account or use the Services you must meet the following eligibility

[33] Application ¶ 5.

[34] 2022 Terms of Service ¶ 38.11

[35] 2022 Terms of Service ¶ 38.11.

[36] 2019 Terms of Service ¶ 27.

criteria . . . 4.1.4 You do not have your registered office or place of residence in the United States of America or any Restricted Territory.").

38. As to the non-U.S. laws that are, in fact, applicable here, The Bahamas and Antigua are members of the Commonwealth of Nations – a political association of 56 states, the majority of which are former territories of the British Empire. MacMillan-Hughes Decl. ¶ 6. The legal systems of both The Bahamas and Antigua are based on English common law. *Id.* Because certain of the legal issues set out in the Application are novel issues (due to the technology surrounding digital assets) of English, Antiguan or Bahamian law, they are likely to generate appeals. *Id.* ¶ 9. The final court of appeal for both countries is the Judicial Committee of the Privy Council of the United Kingdom (the "**Privy Council**"), a five-judge revolving panel sitting in London, England made up of Justices of the Supreme Court of the United Kingdom, the latter court being the final court of appeal for appeals from decisions of the courts of the United Kingdom. *Id.* ¶ 7. The decisions of the Privy Council are binding in the courts of the territory from which the appeal is made and, are of strong persuasive authority in other territories of the Commonwealth that still allow for appeals to the Privy Council (such as The Bahamas and Antigua) and in the United Kingdom. *Id.*

E. The Next Procedural Steps In The Bahamian Liquidation After the Joint Provisional Liquidators File the Application

39. When the JPLs file the Application, the Bahamas Court is expected to schedule a prompt, initial hearing to enter a case management order. MacMillan-Hughes Decl. ¶ 10. Among other things, the case management order will address issues such as case scheduling, the filing of any affidavit evidence (and reply evidence), written submissions, and determining who should be notified of the Application (including customers who have already submitted claims in FTX Digital's Claims Portal). *Id.* All parties who have an interest in the Application will have the right

to appear and be heard individually or in a representative capacity. *Id.* Importantly, if they so choose, the U.S. Debtors may appear and request that the Bahamas Court defer to the U.S. Court for resolution on any issues framed by the Application. *Id.*

40. Absent any abstention, the JPLs expect that the Bahamas Court will address each of the non-U.S. law questions in an efficient manner. *Id.* ¶ 11. And, while it is difficult to say with certainty how long it will take that Court to rule, the return date for FTX Digital's winding up Petition is August 10, 2023, and the JPLs expect the Court to rule on the Application before this date. *Id.*

41. The laws of The Bahamas also provide for a robust appeal process following any ruling. *Id.* ¶ 12. All parties in interest, including the U.S. Debtors, if they engage in the Application, will have the opportunity to appeal (or seek leave to appeal) the decision to the Court of Appeal of the Commonwealth of The Bahamas, and ultimately to the Privy Council. *Id.*

F. The Cooperation Agreement

42. On January 6, 2023, the JPLs and the U.S. Debtors entered into the Cooperation Agreement. The Cooperation Agreement, among other things, (i) provides that the U.S. Debtors and the JPLs will support the Provisional Liquidation of FTX Digital and the Chapter 11 Cases, respectively (¶¶ 12-13); (ii) renders the JPLs responsible for recovering all assets and value of FTX Digital (¶ 4); and (iii) authorizes the JPLs to manage the disposition of property held by Bahamas-based FTX Property Holdings, Ltd. (¶ 15). Both this Court and the Bahamas Court have approved the Cooperation Agreement. Case No. 22-11068, Docket No. 683. Order (Settlement and Co-Operation Agreement), 10, February, 2023, attached hereto as **Exhibit 2.**

43. By design, the Cooperation Agreement does not compromise any rights or obligations arising from the novation/migration of International Customers to FTX Digital. *See*

Cooperation Agreement ¶ 10. All rights of the Parties with respect to those issues are expressly preserved.[37] The Cooperation Agreement also states that "recognition in The Bahamas will not require the Bahamas Court to defer to the decisions of any foreign court (or alter a *de novo* standard of review) relating to any matter raised by the JPLs in The Bahamas Proceedings with respect to property of the estate of FTX Digital (including without limitation the scope of property of the estate, the application or extension of the automatic stay or the compromise or discharge of estate or third party claims in connection with a plan of reorganization)." *Id.* ¶ 13. A corresponding provision addresses the role of this Court: "recognition under Chapter 15 would not require the U.S. Bankruptcy Court to defer to the decisions of any foreign court (or alter a *de novo* standard of review) relating to any matter raised by the Chapter 11 Debtors in the Chapter 11 Cases with respect to property of the estate of the Chapter 11 Debtors (including without limitation the scope of property of the estate, the application or extension of the automatic stay or the compromise or discharge of estate or third party claims in connection with a plan of reorganization)." *Id.* ¶ 12. In other words, the Cooperation Agreement itself contemplates a process by which the two affected courts will themselves have to coordinate on key issues affecting the FTX estates.

G. The U.S. Debtors' Lawsuit Against FTX Digital and the JPLs

44. As discussed above, the JPLs gave the U.S. Debtors advance notice of their intent to file the Application by way of letter dated March 9, 2023. *See* Greaves Decl. Ex. E. The JPLs did this in an effort to cooperate and coordinate with the U.S. Debtors, with the goal of ensuring an efficient resolution of these important legal issues. The JPLs also gave advance notice to the

[37] The Cooperation Agreement states: "This Agreement does not address or compromise any rights or obligations of any Party arising out of or related to the user agreements or other arrangements relating to the International Platform or any other matter not specifically addressed in this Agreement." Cooperation Agreement ¶ 10.

U.S. Debtors that they would be seeking leave from the Bahamas Court to file this Motion, and counsel for FTX Trading appeared and were heard by the Bahamas Court on this issue at a hearing on March 20, 2023. At that hearing, counsel for the U.S. Debtors did not object to the JPLs' request to file this Motion. The Bahamas Court granted leave on March 21, 2023 (the "**Bahamas Lift Stay Order**"), paving the way for this Motion. Greaves Decl. Ex. H. As set forth in the Bahamas Lift Stay Order, the Bahamas Court expressly recognized that "*the issues raised by [FTX Digital's] officers, the JPLs, in the proposed [Application] is fundamental to the progress of the provisional liquidation of FTX Digital Markets Ltd. in this Honorable Court.*" *Id.* at 2. (emphasis added)

45. Given the importance of prompt resolution of the Application the JPLs actively sought to engage the U.S. Debtors in discussions around coordinated, efficient, proceedings to resolve the Non-U.S. Law Customer Issues. After a letter campaign on the issue (*see* Greaves Decl. Exs. E-G), on March 15, 2023, the JPLs, their counsel, Mr. Ray and counsel to the U.S. Debtors held a virtual telephonic conference. The call began constructively, and the JPLs explained what it was that they were seeking to do and why it was important to proceed with filing the Application – to fulfill their duty to make a recommendation to the Bahamas Court on whether liquidation or reorganization of FTX Digital will serve the best outcome for FTX Digital's estate, its customers and its creditors. The JPLs explained that they could not progress towards this goal without an understanding of (i) who FTX Digital's customers and creditors are, and (ii) the scope of FTX Digital's rights to its and its customers' assets. Despite the JPLs' efforts to keep the discussion productive, it soon turned unproductive. The U.S. Debtors noted that FTX Digital was the only FTX entity that was not falling in line with their agenda, that the mere filing of the Application would send a "torpedo" into the Chapter 11 Cases, and that the U.S. Debtors would never consent

to any jurisdiction other than the U.S. to resolve any Non-U.S. Law Customer Issues. While sensitive to the U.S. Debtors' concerns, the JPLs explained that, as court-appointed fiduciaries, they are duty-bound to serve and cannot abdicate their duties in deference to the professionals of an afflicted entity. The JPLs reiterated their view that the best path forward would be to work together and come up with a consensual protocol to resolve all issues as to whose customers were whose. But, because the U.S. Debtors insisted that all Antiguan, Bahamian and English law issues should not be resolved at all, or should all be resolved by this Court at some unspecified future time, there was no engagement on any consensual protocol for a coordinated resolution of outstanding legal issues. The meeting ended with the U.S. Debtors committing only to think further on the issues discussed.

46. Without any further engagement, on March 19, 2023, the U.S. Debtors filed the Adversary Proceeding. Adv. Pro. No. 23-50145, Docket No. 1 ("**Adv. Compl.**"). That filing was never substantively discussed with the JPLs, and instead was filed on one hour's notice to one of the JPLs' attorneys. The complaint seeks declaratory judgment on the same issues that the JPLs had been identifying for months and sought to resolve through a consensual cross-border cooperation protocol between the Bahamas and U.S. courts. Among other things, the complaint asks this Court to declare that no customers ever migrated from FTX Trading to FTX Digital under the 2022 Terms of Service and that FTX Digital has no ownership interest of any kind in any cryptocurrency, fiat currency, customer information, or intellectual property associated with the FTX International Platform *at all*.[38] Adv. Compl. Counts I-IV, ¶¶ 53-87. It also alleges, without any specificity, that every transaction that FTX Digital was involved in during its existence was

[38] The complaint concedes that the 2019 and 2022 Terms of Service govern the relationship between customers and FTX Trading (¶ 36), but fails to mention that those documents are governed by Antiguan and English law, respectively.

fraudulent and is subject to avoidance. *Id.* Counts V-VII, ¶¶ 85-98. The complaint then seeks an order that the U.S. Debtors may recover from the FTX Digital estate all such transfers, and interest thereon to the date of payment, as well as the costs of the Adversary Proceeding. *Id.* at 26 (Prayer for Relief No. 6). The complaint specifically references recovering from FTX Digital's accounts at Moonstone Bank and Silvergate Bank, both of which are located in the U.S.

47. Most inflammatory, the complaint alleges, in contradiction of the U.S. Debtors' prior statements to this Court, that Mr. Sam Bankman-Fried ("**SBF**") moved the FTX enterprise to The Bahamas for the sole purpose of funneling customer deposits and valuable property to The Bahamas, "out of the reach of American regulators and courts." *Id.* ¶ 23. Bizarrely, the U.S. Debtors also allege, for the first time, that FTX Digital's "formation and existence" was in furtherance of FTX's criminal conspiracy (*Id.* ¶ 21) despite the fact that SBF was the same individual who hired the U.S. Debtors' counsel and turned his enterprise over to Mr. Ray. Finally, despite the fact that the SCB was the first regulator to take action against any FTX entity, the U.S. Debtors allege that SBF and those he directed "maintained a close accommodating relationship with Bahamian law enforcement agencies" (*Id.* ¶ 24), that FTX Digital was only "ostensibly regulated by The Bahamas" (*Id.* ¶ 25) and that when operating in The Bahamas, SBF and his cohorts were "outside of the reach of any independent and effective regulatory authority." *Id.* ¶ 5. The JPLs and FTX Digital will respond to the complaint in due course and reserve all rights.

RELIEF REQUESTED

48. By the Motion, the JPLs respectfully request the Court to enter an order ("**Order**") substantially in the form attached as **Exhibit 1** (i) declaring that the automatic stay does not apply to the filing of the Application or in the alternative (ii) granting relief from the automatic stay

under Section 362(d)(1) of the Bankruptcy Code to allow the JPLs to file the Application and thereby start the process of a cross-border protocol for judicial cooperation.

ARGUMENT

I. The Filing and Prosecution Of The Application Is A Normal, Expected Predicate For Cooperation Between This Court And The Bahamas Court Regarding The Resolution Non-U.S. Law Customer Issues

49. As noted above, the resolution of all Non-U.S. Law Customer Issues will require both this Court and the Bahamas Court to coordinate on resolving various legal and factual issues and how they pertain to the estates under their jurisdiction.

50. This is, of course, not the first time that a U.S. bankruptcy court, supervising the chapter 11 case of a U.S. debtor, has had to coordinate with a non-U.S. court to come to closure on issues affecting that U.S. debtor's estate. Indeed, U.S. bankruptcy courts have routinely relied on joint protocols in cross-borders cases such as this one, where coordination is necessary in order to prevent conflicts and the waste of estate resources. This Court's Local Rules expressly provide detailed guidelines for judicial cooperation in parallel cross-border insolvencies, including court-to-court communication in such cases.[39] *See* Local Rules for the United States Bankruptcy Court for the District of Delaware, Effective February 1, 2023, Part X ("Modalities of Court-to-Court Communication); *see also* Appendix A to the Local Rules "Guidelines for Communication and Cooperation Between Courts in Cross-Border Insolvency Matters" (the "**Guidelines**"). The Guidelines, which "should be considered at the earliest practicable opportunity" state, among other things, that "where a court intends to apply these Guidelines . . . it will need to do so by a protocol

[39] While the Local Rules seem to contemplate a single debtor in multiple parallel proceedings, as opposed to closely affiliated debtors in separate proceedings, the same concepts of comity, coordination, and efficiency should apply here, where the U.S. Debtors and FTX Digital were so closely intertwined in their pre-petition operations.

or an order . . ." (Guideline 2) and note that "[i]n the normal case, the parties will agree on a protocol derived from these Guidelines and obtain the approval of each court in which the protocol is to apply." *Id.* n. 3.

51. Three cases are particularly instructive on how U.S. Courts view what should happen in a "normal" cross-border insolvency.

52. In *Nortel Networks Inc.*, the U.S. debtors moved, on the petition date, for entry of a cross-border protocol, which established procedures for the coordination of cross-border hearings between the U.S. and Canadian courts. *In re Nortel Networks, Inc.,* 532 B.R. 494, 501–02 (Bankr. D. Del. 2015). Both the U.S. and Canadian courts approved the protocol and subsequent amendments to the same. *Id.* The protocol provided for communication and cooperation between the two courts, without divesting either court from its respective jurisdictions. *Id.* at 531-532. The protocol provided that the U.S. and Canadian Courts could coordinate to "determine an appropriate process by which the issue of jurisdiction [over specific issues] will be determined" (after submissions from all interested parties). Order Approving Stipulation of the Debtors and the Official Committee of Unsecured Creditors of Nortel Networks Inc., Et Al., Amending the Cross-Border Court-to-Court Protocol at 7, *In re Nortel Networks Inc.*, Case No. 09-10138 (KG) (Bankr. D. Del. Jun 29, 2009) [Docket No. 990-1], attached hereto as **Exhibit 3**. Where one Court had jurisdiction over a matter that required the application of the law of the jurisdiction of the other Court to determine an issue before it, the Court with jurisdiction could, among other things, hear expert evidence or seek the advice and direction of the other Court. *Id.* at 7-8. The protocol further provided that the Courts could communicate with each other to determine whether they could arrive at consistent rulings. *Nortel*, 532 B.R. 494 at 532.

53. Pursuant to the *Nortel* protocol, the two courts held a 21-day cross-border, joint evidentiary trial on a central issue in the case (the allocation of proceeds from the sale of various Nortel assets and business units). *Id.* at 499-500. After the trial, the Courts communicated "in an effort to avoid the travesty of reaching contrary results which would lead to further and potentially greater uncertainty and delay. Based on these discussions, the Courts have learned that although their approaches to the complex issues differ, they agree upon the result." *Id.* at 532. In its decision, the U.S. Court noted that, "one of the reasons the cases have progressed to date is that the Courts have communicated and have arrived at consistent rulings even while exercising their judicial independence." *Id.*

54. In *In re Soundview Elite, Ltd.*, the Court *sua sponte* ordered the parties to work together to create a cross-border protocol for cooperation in a case concerning six U.S. debtors and the Cayman winding-up proceedings of three of those U.S. debtors. *In re Soundview Elite, Ltd.*, 503 B.R. 571, 575 (Bankr. S.D.N.Y. 2014). The Cayman liquidators and certain creditors moved to dismiss the U.S. bankruptcy cases or, alternatively, for relief from the stay. *Id.* The debtors, like the U.S. Debtors here, sought to enforce the stay and prevent any activities in the Cayman proceeding. *Id.* Based on considerations of comity, the U.S. Court instead lifted the automatic stay to allow the existing Cayman proceedings for three of the debtors to continue, and "if necessary, to entertain similar proceedings for the three Debtors in this Court that do not have JOLs[.]" *Id.* at 589. The Court also ordered the parties to create a joint protocol to facilitate the cooperative administration of parallel proceedings in the U.S. and the Cayman Islands. *Soundview*, 503. B.R. at 589. In so doing, Judge Gerber reasoned that "the Cayman and U.S. courts can and should work together cooperatively, with due comity to each other, to address the needs and concerns of stakeholders." *Id.* at 595.

55. In *In re Calpine Corporation,* Case No. 05-60200 (CGM) (Bankr. S.D.N.Y. 2005), Calpine Corporation, and its US affiliates (in chapter 11) were subject to a bond-ownership claim by their Canadian affiliates that were in separate Canadian bankruptcy proceedings. Debtors' Motion for an Order to Approve a Settlement with Calpine Canadian Debtors ("Debtors' Motion to Approve Settlement") at ¶¶ 5-12, *In re Calpine Corp.*, Case No. 05-60200 (CGM) (Jun. 28, 2007) [Docket No. 5113], attached hereto as **Exhibit 4**. Ultimately, a cross-border protocol was negotiated by the parties and entered by both the Canadian and U.S. courts, which was instrumental in settling the bond-ownership issue. Order Approving Cross-Border Court-to-Court Protocol, *In re Calpine Corp.*, Case No. 05-60200 (CGM) (Apr. 12, 2007) [Docket No. 4309], attached hereto as **Exhibit 5**; Court of Queen's Bench of Alberta Approval of Court-to-Court Protocol, *In re Calpine Corp.*, Case No. 05-60200 (CGM) (Apr. 5, 2007) [Docket No. 4242-3], attached hereto as **Exhibit 6**; Debtors' Motion to Approve Settlement at ¶ 25. At a joint hearing to approve the settlement, Judge Lifland (in the U.S. Court) and Justice Romaine (in the Canadian Court) emphasized the importance of the cross-border protocol in helping the parties reach resolution, and the value-draining alternative that the parties would have otherwise faced. Transcript of Joint Hearing with Canadian Judge in re Debtors' Motion for an Order to Approve Global Settlement with Calpine Canadian Debtors and other Relief at 207:20-24, *In re Calpine Corp.*, Case No. 05-60200 (CGM) (Jul. 24, 2007) [Docket No. 5749], attached hereto as **Exhibit 7**. (Judge Lifland noting that the settlement and efforts to achieve it "go[es] to demonstrate the desirability of approaching these cross-border matters through a medium of a protocol to allow us all to get access and recognition to our respective courts that way and to appear and be heard appropriately."); *id.* at 45:13-20 (Judge Lifland discussing "the need to enter into protocols so that we can get to a day like today, where all of those very complex issues could be viewed in a different light and a

different perspective, with coordination and cooperation being the watch word which turned out to be --well, I can't prejudge the hearing today, but it does appear that the parties have, at least those who are in support of the settlement, have come together as a unit"); *id.* at 206:18-207:07 (Justice Romaine emphasizing that "the enormous complexity and highly intertwined nature of the issues in this proceeding. The cross-border nature of many of the issues adds to the delicacy of the matter. Given that complexity, it behooves all parties in this court to proceed cautiously and with careful consideration; nevertheless, we must proceed toward the ultimate goal of achieving resolution of the issues. Without that resolution, the Canadian creditors face protractive litigation in both jurisdictions, uncertain outcomes, and continued frustration in unraveling the guardian [sic] knot of intercorporate and interjurisdictional complexities that plagued these proceedings on both sides of the border.").

56. Each of these cases demonstrates that the overriding principles in successful cross-border disputes should be coordination, comity, and conservation of estate resources. The filing of the Application is just the necessary first step in that process, and that filing should happen now.

II. The Automatic Stay Does Not Apply to Filing or Prosecution of the Application

57. As the foregoing cases show, rather than using their respective automatic stays to mire the progress of parallel bankruptcy proceedings, courts charged with presiding over cross-border insolvencies tend to favor cooperation and coordination, if only to avoid the chaos and uncertainty of inconsistent rulings on issues that affect their debtors. Here, however, the U.S. Debtors have claimed that the JPLs' mere filing of the Application, much less its prosecution, would constitute a willful violation of their automatic stay imposed by Section 362. That is simply not true.

58. Section 362(a) of the Bankruptcy Code imposes an automatic stay prohibiting, among other things, "the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor[,]" and "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C. 362(a)(1), (a)(3). The JPLs' Application is neither.[40]

59. *First*, Section 362(a)(1) does not apply because the Application is not an action *against* the U.S. Debtors. *Mar. Elec. Co., Inc. v. United Jersey Bank*, 959 F.2d 1194, 1204 (3d Cir. 1991) ("Although the scope of the automatic stay is broad, the clear language of section 362(a) indicates that it stays only proceedings against a 'debtor' — the term used by the statute itself."). The Application merely frames for the Bahamas Court the issues of: (i) whether the International Customers were migrated to FTX Digital; (ii) if so, when; (iii) if so, what were FTX Digital's obligations to those International Customers; (iv) if the digital assets or fiat were assets of FTX Digital; legally and beneficially; and (v) whether the perpetual futures contracts (which is part of the Services to which only Digital is named as Service Provider under the 2022 Terms) amounted to a contract between or among customers, or between customers and Digital or someone else. These questions can all be answered without necessarily involving FTX Trading.

60. *Second*, Section 362(a)(3) does not apply because the Application does not seek to "obtain possession of property" of the U.S. Debtors' estates or "to exercise control over property of the estate." Although courts have interpreted 362(a)(3) broadly, its application is not limitless. The JPLs have identified no case holding that the U.S. automatic stay can act to prohibit a foreign

[40] The other subsections of Section 362(a) are inapplicable here: Section 362(a)(2) is not applicable as there is no judgment sought to be enforced; Section 362(a)(4) and (a)(5) are not applicable as there is no lien sought to be created, perfected, or enforced; Section 362(a)(6) is not applicable as there is no act to collect, assess, or recover a claim; Section 362(a)(7) is not applicable as there is no attempt to setoff a debt; Section 362(a)(8) is not applicable as the Application is not a proceeding concerning a tax liability.

debtor from determining the nature and extent of the liabilities and assets of its own estate. Importantly, the Application will not have the effect of transferring or voiding any interest in any property of any U.S. Debtor. Rather, were there to be any asset transfers that are necessitated by a ruling of the Bahamas Court on any of the Non-U.S. Law Customer Issues, those will have to be addressed in subsequent proceedings involving this Court.

61. In addressing overlapping insolvency regimes, courts have acknowledged that a debtor taking actions within its rights under the applicable bankruptcy laws does not violate the stay of another debtor – even if those actions have consequences that flow to the other debtor's estate. Cases involving the rejection of contracts between two debtors help clarify this point. For example, in *In re Old Carco,* the debtor car-manufacturer did not have to seek relief from the automatic stay in another debtor's bankruptcy case before exercising its right to reject a contract in the debtor car-manufacturer's case, even though the counter-party to the rejected contract was another debtor. The court held that rejection of the contract was "a fundamental right" of the debtor to not perform its contractual obligations. *In re Old Carco LLC*, 406 B.R. 180, 211-12 (Bankr. S.D.N.Y. 2009); *see also In re Noranda Aluminum, Inc.*, 549 B.R. 725, 729 (Bankr. E.D. Mo. 2016) (when the debtor sought to reject an executory contract that a debtor in a separate case and court sought to accept, allowing the debtor to reject upon satisfying ordinary business judgment test); *In re Railyard Co.*, 562 B.R. 481, 487 (Bankr. D.N.M. 2016) (following *Old Carco* and *Noranda* and granting stay relief to allow the Chapter 11 Trustee to reject the debtor-landlord's unexpired commercial lease with related company also in bankruptcy, even though related company wished to assume the lease). In a similar vein, one bankruptcy court held that a unilateral price increase by one debtor, did not necessarily violate the automatic stay of another debtor (the counterparty to the contract). *In re Nat'l Steel Corp.*, 316 B.R. 287 (Bankr. N.D. Ill. 2004). *Nat'l*

Steel involved a contract for the supply of steel used to make wheels and both supplier and manufacturer had filed their own chapter 11 petitions. Rather than move to assume or reject the contract, the supplier-debtor unilaterally increased its prices after notifying the debtor-manufacturer that the price increase was necessary to enable it to continue shipping steel. *Id.* at 297-98. The manufacturer-debtor opposed the increase but paid the increased price. *Id.* Thereafter, the manufacturer-debtor moved before the supplier-debtor's court, seeking allowance of an administrative expense and alleging, among other things, that the supplier-debtor had violated the manufacturer-debtor's automatic stay. *Id.* at 299-311. The court held that, although the contract was property of both bankruptcy estates, the supplier-debtor did not violate the manufacturer-debtor's automatic stay. *Id.* at 311. The court reasoned that, because the contract was not assumed, it was not enforceable, and therefore the supplier-debtor's price increase did not constitute an act to obtain possession of or control over property of the estate in violation of Section 362(a)(3). *Id.* Unlike the unilateral financial action that was permitted in *Nat'l Steel*, the Application here merely seeks to obtain clarity on novel issues of Bahamian, Antiguan, and English law that directly affect the FTX Digital estate and its creditors.

62. The same reasoning extends to the JPLs' attempts, by the Application, to identify creditors that may have claims against their estate, and the determination of the extent of their estate's obligations and liabilities. It is within any debtor's rights – indeed, it is paramount to any debtor's bankruptcy proceedings – to determine the extent of the debtor's property and its creditor body. The automatic stay does not function to impede these rights, even if exercising them would "affect" the U.S. Debtors.

63. Finally, the filing of the Application is not an act to control or take possession of the property of the estate of FTX Trading. Ultimately, this Court will decide what is, or is not,

property of FTX Trading's estate whether in its own proceeding or by granting comity to the Bahamas Court's process and rulings either on a prospective or post-hoc basis. *In re SCO Grp., Inc.*, 395 B.R. 852, 858 (Bankr. D. Del. 2007) ("[I]t is the very essence of a bankruptcy court's jurisdiction to decide what is property of the estate."). Asking the Bahamas Court to answer the legal questions that must be resolved before this Court can determine what is and is not property of the U.S. Debtors' estates is not an act to take control over that property. While the JPLs certainly believe that the Bahamas Court's answer will be persuasive and should be adopted by this Court, this Court will ultimately decide for itself what effect the Bahamas Court's order has in these cases. For all of these reasons, the proper view is that the automatic stay does not apply to the Application at all.[41]

III. In the Alternative, The Court Should Lift the Automatic Stay to Allow the JPLs to File the Application and Initiate a Cross-Border Protocol

64. Section 362(d)(1) provides that upon request of a party in interest and after notice and a hearing, the court may grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay — for cause. 11 U.S.C. § 362(d). The Bankruptcy Code does not define "cause." It is a flexible concept that is fact intensive, and must be determined case-by-case upon consideration of the totality of the circumstances. *See In re Scarborough St. James Corp.*, 535 B.R. 60, 67 (Bankr. D. Del. 2015); *see also In re Downey Fin. Corp.*, 428 B.R. 595, 608-09 (Bankr. D. Del. 2010).

65. This Court has developed a three-prong balancing test for determining whether cause exists to lift the stay:

[41] The U.S. Debtors' Adversary Proceeding is a different animal entirely, as it names FTX Digital as a defendant and specifically asserts claims seeking to avoid FTX Digital's interests in its own assets in the United States. As to that violation, FTX Digital and the JPLs reserve all rights.

> (i) Whether any great prejudice to either the bankruptcy estate or the debtor will result from continuation of the civil suit;
>
> (ii) Whether the hardship to the [movant] by maintenance of the stay considerably outweighs the hardship to the debtor; and
>
> (iii) Whether the creditor has a probability of prevailing on the merits.

In re Scarborough-St. James Corp., 535 B.R. at 68.

66. Courts in the Third Circuit also consider general policies underlying the automatic stay in determining whether to lift it. *In re Abeinsa Holding, Inc.*, Case No. 16-10790 (KJC), 2016 WL 5867039, at *3 (Bankr. D. Del. Oct. 6, 2016). These factors can include considerations of comity and the factors supporting mandatory abstention. *Drauschak v. VMP Holdings Ass'n, L.P. (In re Drauschak)*, 481 B.R. 330, 345-46 (Bankr. E.D. Pa. 2012) (explaining that "[i]ssues of comity and economy may dictate that the non-bankruptcy forum conclude the resolution of . . . [a pending] dispute and the bankruptcy stay should be modified for such purpose" and, "[t]he factors supporting mandatory abstention . . . including judicial economy, would also justify applying the aforementioned exception to modify the automatic stay."); *see also In re SCO Grp., Inc.*, 395 B.R. at 857 (discussing the legislative history of Section 362(d)(1) and the "importance of allowing the case to proceed in the original tribunal so long as there is no prejudice to the estate").

A. The Three Prong Balancing Test Weighs In Favor of Lifting the Stay

1. Resolving the Foreign Law Customer Questions in The Bahamas Does Not Prejudice the U.S. Debtors

67. The first factor in the balancing test is "[w]hether any great prejudice to either the bankrupt estate or the debtor will result from" the proceeding. *In re SCO Grp., Inc.*, 395 B.R. at 857-58; *see also In re Scarborough-St. James Corp.*, 535 B.R. at 68.

68. In *Scarborough*, a landlord sought relief from the stay to continue eviction proceedings against the debtor in Michigan state court. The debtor argued that it would suffer

harm if the Michigan litigation continued because (i) a negative determination of the debtor's lease rights would prejudice it in another appeal and, (ii) the Michigan litigation would distract from and interfere with the debtor's reorganization efforts. *In re Scarborough-St. James Corp.*, 535 B.R. at 68. The *Scarborough* court rejected both arguments, finding that there was no prejudice because the issue of "whether or not the lease was terminated prepetition must be decided in order to determine Debtor's interest in the lease . . . [and] . . .the Michigan Court [was] in a position to make that determination and has familiarity with the parties and the facts of the case." *Id.* The court noted that the debtor's rights were not in jeopardy because it could still "raise in the Michigan Court any and all arguments in support of its position." *Id.* The court held that lifting the stay would not cause the debtor great prejudice.

69. Similarly, in the *SCO* litigation, a creditor moved to lift the stay to continue a lawsuit against the debtors concerning software licensing and copyright issues. *In re SCO Grp., Inc.*, 395 B.R. at 856. The court lifted the stay, finding that the debtors would not be prejudiced because, "the Debtors simply cannot file a confirmable plan of reorganization until they know what liability they have to . . . [the creditor]. The resolution of the issues remaining in the District Court litigation will assist the Debtors, not burden them." *Id.* at 859.

70. The facts here compel the same result for four reasons:

71. *First*, the U.S. Debtors cannot be harmed by having the jurisdiction of the Bahamas Court invoked to allow that Court and this Court to decide who decides. The U.S. Debtors consented to jurisdiction in The Bahamas, insisted that they be recognized in that proceeding, and, in fact, have been recognized with full rights of participation. The mere notion, promoted by the U.S. Debtors, that this Court and the Bahamas Court cannot be allowed to talk to one another to explore the contours of an efficient, prompt and coordinated litigation is, frankly, offensive.

72. *Second*, like the *SCO* and *Scarborough* debtors, the U.S. Debtors are not prejudiced by having the Non-U.S. Law Customer Issues submitted to the Court best positioned to resolve them. Indeed, the JPLs submit that the Bahamas Court provides a more appropriate forum for deciding these issues because the Bahamas Court is familiar with the applicable English and Commonwealth laws. This is especially so because the Non-U.S. Law Customer Issues involve largely complex and novel issues of English, Antiguan or Bahamian law relating to cryptocurrency, some of which no court in the Commonwealth has heard before. MacMillan-Hughes Decl. ¶ 9. *See In re DHP Holdings II Corp.*, 435 B.R. 220, 227 (Bankr. D. Del. 2010) (holding that state courts are the best forum to decide novel or unsettled issues of state law); *see also In re A & D Care, Inc.*, 90 B.R. 138, 141-42 (Bankr. W.D. Pa. 1988) (non-bankruptcy court more appropriate especially when the controversy arises on unsettled issue of non-bankruptcy law) (collecting cases).[42] The only alternative – having this Court take jurisdiction over the Non-U.S. Customer Issues – is the least attractive alternative, if only because each party-in-interest on the customer issues, including the JPLs, the U.S. Debtors, the UCC, the Ad Hoc Group of Non-US Customer of FTX, and an unknown number of actual customers would all have to hire and present their own foreign law experts. In contrast, the expert in The Bahamas – the Court – can provide a clear unconflicting depiction of Bahamas law and, unlike almost everyone else in these Cases (save this Court and the U.S. Trustee), will provide its views free of charge.

[42] *See also In re Williams*, 88 B.R. 187, 191 (Bankr. N.D. Ill. 1988) (abstaining from action concerning alleged violation of state insurance laws and reasoning, "[t]he issues are not simple[,]" "[t]he statutes and regulations involved are not clear[,] "[u]nresolved issues of Illinois law are involved[,] and "[s]uch question are best left to the interpretation of an Illinois State judge."); *Railroad Comm'n v. Pullman Co.*, 312 U.S. 496, 501 (1941) (finding Texas state courts were proper forum to determine state law issues that needed to be resolved); *Thompson v. Magnolia Petroleum Co.*, 309 U.S. 478, 483 (1940) (affirming Bankruptcy Court's decision that state court was proper forum to determine oil rights, and therefore, the extent of property of the estate); *In re FairPoint Commc'ns, Inc.*, 462 B.R. 75, 88 (Bankr. S.D.N.Y. 2012) (finding New Hampshire state courts to be better suited to debtor's rights under the New Hampshire Constitution).

73. *Third*, even an ultimate adjudication of the non-U.S. Law Customer Issues in the Bahamas will not prejudice FTX Trading. As noted, FTX Trading's foreign representative was recognized in the Bahamas, can participate in the Application proceedings, has been involved in the proceedings on the Application to date (through appearing before the Bahamas Court with respect to the Bahamas Lift Stay Order),[43] and will be able to appeal if necessary and if they so choose. *Cf. In re Spanish Cay Co., Ltd.*, 161 B.R. 715, 724-727 (Bankr. S.D. Fla. 1993) (granting stay relief to allow commencement of Bahamian insolvency proceeding and noting that "[a]pplying the principle of comity and deferring to the Bahamian courts and Bahamian law to govern any insolvency proceeding with respect to this Debtor [was] appropriate [] since (1) the Debtor [was] a Bahamian company and (2) the Debtor's principal asset [was] real property located in the Bahamas."). The U.S. Debtors will therefore receive notice and will have the right to oppose the Application and be heard on the matter. Additionally, the laws of The Bahamas provide for due process and a robust appeal process. MacMillan-Hughes Decl. ¶ 12. Courts have recognized that the Bahamian bankruptcy laws are in harmony with those of the United States and should be afforded comity. *See In re Northshore Mainland Servs., Inc.*, 537 B.R. 192 (Bankr. D. Del. 2015) (Winding up Proceeding in the Bahamas was the appropriate forum to adjudicate issues involving the Bahamian Debtor.); *see also Matter of Culmer*, 25 B.R. 621 (Bankr. S.D.N.Y. 1982); *Aranha v. Eagle Fund, Ltd. (In re Thornhill Glob. Deposit Fund Ltd.)*, 245 B.R. 1 (Bankr. D. Mass. 2000) ("The provisions of Bahamian law related to liquidation proceedings are in substantial conformity with our own Bankruptcy Code.").

[43] As mentioned in the Greaves Declaration, through counsel, FTX Trading appeared at the hearing on the Bahamas Lift Stay Order and did not oppose the relief sought by the JPLs in getting leave from the Bahamas Court to file this Motion. Greaves Decl. ¶ 21.

74. *Fourth and finally*, the U.S. Debtors and this Court will not be prejudiced by the adjudication of the Application because it will not ultimately determine what cash or other assets are or are not property of FTX Trading's estate. The Application effectively seeks only to have the Bahamas Court determine (1) which customers are mapped to FTX Digital's estate and (2) what right those customers have in the assets of FTX Digital's estate. Again, courts routinely lift the stay where another court is better positioned to address underlying legal issues, while reserving issues as to how that resolution affects the estate. *See In re Tribune Co.*, 418 B.R. 116, 128 (Bankr. D. Del. 2009) (lifting the stay to allow a California Action to proceed, which would determine whether debtors held rights in the published comic strip series entitled "Dick Tracy" as the questions to be addressed in the California Action would determine whatever rights the debtors held and thus what assets are property of the estate); *Thors v. Allen*, Civ. Nos. 16-2224 (RMB), 16-2225 (RMB), 2016 WL 7326076, at *8 (D.N.J. Dec. 16, 2016) (affirming bankruptcy court decision to lift stay where the state court was "the more capable and the more proper venue to resolve" an issue of state law "that was throwing a wrench in the ability of the bankruptcy to proceed"); *In re Breitburn Energy Partners L.P.*, 571 B.R. 59, 68 (Bankr. S.D.N.Y. 2017) (affirming decision to lift stay to allow Texas court to determine an issue of unsettled Texas law which would "assist [the bankruptcy] court and ultimately contribute to a resolution of the dispute."); *In re Mark Scott Constr., LLC*, Case No. 03-36440 (HCD), at *4-5 (Bankr. N.D. Ind. Apr. 23, 2004) (granting stay relief where Michigan was the proper locale for litigation because, among other things "the Michigan state trial courts have more expertise concerning the interpretation of Michigan's [laws and regulations]," and the contracts at issue were signed in Michigan and involved land and projects in Michigan), attached hereto as **Exhibit 8**; *In re PG & E Corp.*, Case No. 19-30088 (DM), 2019 WL 3889247, at *2 (Bankr. N.D. Cal. Aug. 16, 2019)

(granting stay because, "relief from stay [would] definitively bring a resolution as to Debtors' liability [], and provide an important data point that most likely [would] facilitate resolution of . . . claims in this case."); *see also Int'l Tobacco Partners, Ltd. v. Ohio (In re Int'l Tobacco Partners, Ltd.)*, 462 B.R. 378, 393 (Bankr. E.D.N.Y. 2011) (implicitly lifting the stay by abstaining in favor of a Massachusetts state court proceeding because it "appears to be the more appropriate forum for determining the preliminary questions: whether [d]ebtor holds a valid assignment under Massachusetts law, and whether that assignment has priority over Ohio's attachment and levy.").

2. The Hardship to the JPLs by Maintenance of the Stay Considerably Outweighs the Hardship to the U.S. Debtors

75. The second lift-stay factor is "[w]hether the hardship to the [moving] party by maintenance of the stay considerably outweighs the hardship to the debtor." *In re SCO Grp., Inc.*, 395 B.R. at 857.

76. In this case, the hardship to FTX Digital if the JPLs cannot adjudicate the Non-U.S. Law Customer Issues in The Bahamas far outweighs the hardship to the U.S. Debtors if the Court lifts the stay. Indeed, FTX Digital's Provisional Liquidation cannot proceed without resolving:

- the identity of the creditors to whom FTX Digital owes (or does not owe) money or assets;
- which money or assets are FTX Digital's;
- how expansive the FTX Digital estate is;
- whether FTX Digital's assets are held in trust on behalf of customers or not;
- who the real party in interest is in prosecuting clawback actions to recover FTX Digital's assets;
- who the real party in interest is when defending against claims brought by customers; and
- whether FTX Digital has any contractual rights against, or owes obligations to, customers who held perpetual futures.

As the Bahamas Court has already ruled, each of these issues is "fundamental" to the JPLs' mandatory duty to reconcile claims against FTX Digital's estate and affects all aspects of the FTX Digital estate. Greaves Decl. Ex. H., Bahamas Lift Stay Order, p. 2.

77. Moreover, a correct, binding determination of the customer questions under Bahamas, English and Antiguan law is critical for this Court to eventually equitably adjudicate FTX Digital's rights in the U.S. Debtors' cases. *See In re SCO Grp., Inc.*, 395 B.R. at 859 ("[W]ithout a ruling on the Liability Issues . . . [the creditor's] rights in these bankruptcy cases remains undetermined and the value of . . . [the creditor's] claim will remain a troubling issue for the Court . . . [the creditor] . . . and [d]ebtors."). Indeed, adjudication of the issues within the Application remains fundamental whether done by this Courtbre or by the Bahamas Court. The only difference is that the Bahamas Court would not normally need experts to apply the laws of its own jurisdiction and the Commonwealth, whereas this Court would necessarily have to hear from hired experts on Bahamas, Antiguan and English law governed issues. There can be little doubt that if this Court adjudicates these issues, the estates will incur millions more in fees for expert testimony and for U.S. lawyers just to learn the outer bounds of non-U.S. law. Accordingly, this factor supports lifting the stay.

3. The Merits Weigh In Favor of Lifting the Stay

78. Finally, the third lift-stay factor considered in the Third Circuit is "[t]he probability of the [movant] prevailing on the merits." *In re SCO Grp., Inc.*, 395 B.R. at 857. For this factor, "[t]he required showing is very slight." *Matter of Rexene Prod. Co.*, 141 B.R. 574, 578 (Bankr. D. Del. 1992). To meet it, the JPLs merely need to show that their claim is not frivolous. *In re Levitz Furniture*, 267 B.R. 516, 523 (Bankr. D. Del. 2000) ("Defendants have met the third prong, since that merely requires a showing that their claim is not frivolous.").

79. The JPLs clearly exceed that bar here, where there is publicly available documentary evidence that: the FTX Group (1) had a plan to move the international operations to the Bahamas,[44] and (2) began to execute on that plan by, among other things, moving the FTX Group's management team to The Bahamas and establishing the headquarters of the FTX Group there. Greaves Decl. ¶ 14. The U.S. Debtors have also admitted that at least some International Customers of FTX Trading migrated to FTX Digital, *Hr'g Tr. November 22, 2022*, 26:13-18 ("With respect to the Dotcom Silo – and this is the international silo . . . approximately 6 percent were customers of FTX Digital Markets Limited"), and billions of dollars of International Customer money ran through multiple FTX entities' bank accounts.[45] Moreover, the U.S. Debtors have conceded that "open" questions exist about whether the migration of other categories of International Customers were completed as a matter of law. *Hr'g Tr. February 15, 2023,* 30:14-18, 20-21 (U.S. Debtors' counsel stating that "things like assets that were in FTX Digital market accounts, or the migration of customers, and things of that sort. Those are all open issues" and that "the issues as to whether assets belong in the Bahamian estate or in the U.S. estate are open issues").

B. Considerations of Comity Also Support Lifting or Modifying the Stay

80. Finally, in addition to all of the foregoing, where a non-U.S. judicial regime is in play, courts within and outside the Third Circuit have considered the same factors that justify abstention, including considerations of comity, to justify lifting the automatic stay to allow

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[44] *See* Decrypt, "FTX Relocates from Hong Kong to Bitcoin-Friendly Bahamas", Sept. 24, 2021. Accessible at: https://decrypt.co/81834/ftx-relocates-hong-kong-bitcoin-friendly-bahamas

[45] *See* Ray Testimony (1:12:57-1:13:15) (Ray: "Definitely assets of customers in the Dotcom silo were transferred to Alameda, no question."); *see also id.* (43:25-43:30) (Ray: "We can confirm that funds were deposited directly into Alameda as opposed to FTX.com").

litigation to proceed outside the U.S. *See In re Drauschak*, 481 B.R. at 346; *Pursifull v. Eakin*, 814 F.2d 1501, 1505-06 (10th Cir. 1987) (holding that reasons given by the district court to support abstention constituted sufficient cause for lifting the stay); *In re Spanish Cay Co.*, 161 B.R. at 725 (granting stay relief to allow commencement of Bahamian insolvency proceeding and noting that "[a]pplying the principle of comity and deferring to the Bahamian courts and Bahamian law to govern any insolvency proceeding with respect to this Debtor [was] appropriate [] since (1) the Debtor [was] a Bahamian company and (2) the Debtor's principal asset [was] real property located in the Bahamas."); *see also Int'l Tobacco Partners, Ltd.*, 462 B.R. at 395 (abstaining in favor of a Massachusetts state court proceeding, reasoning that "the interest of justice . . . the interest of comity with State courts [and] respect for State law" tip the scale in favor of abstaining from this matter). Considerations of comity and judicial economy strongly favor lifting the stay.

81. *First*, as discussed above, the Bahamas Court will need to decide the Non-U.S. Law Customer Issues in the context of FTX Digital's Provisional Liquidation–the winding-up or restructuring of FTX Digital will not be possible otherwise because the JPLs will not know what customers and what assets FTX Digital has. This reality – unless addressed through the formation of a cross-border judicial protocol – presents the very real risk for conflicting rulings among this Court, and the Bahamas Court. This would be an inefficient result, and not an equitable one for creditors of FTX Digital or the U.S. Debtors.[46]

[46] *See Arkwright–Boston Mfrs. Mut. Ins. Co. v. City of New York*, 762 F.2d 205, 211 (2d Cir. 1985) (holding that the scales tipped in favor of abstention because the case raised novel issues of state tort and construction law); *see also In re Advanced Cellular Sys.* , 235 B.R. 713, 726-27 (Bankr. D.P.R. 1999) (the court, while ultimately holding that it did not have jurisdiction, observed that it would have to abstain from the adversary proceeding if it had jurisdiction, otherwise it would run the risk of conflicting rulings, piecemeal litigation of the claims, and unequal treatment of claimants); *In re Lafayette Radio Elecs. Corp.*, 8 B.R. 973, 977 (Bankr. E.D.N.Y. 1981) ("[A]bstention avoids the potential conflict and further avoids duplication by the federal court, of the state court procedures.").

82. *Second*, Courts have "frequently underscored the importance of judicial deference to foreign bankruptcy proceedings." *In re Northshore Mainland Servs., Inc.*, 537 B.R. at 207 (citing *Finanz AG Zurich v. Banco Economico S.A.*, 192 F.3d 240, 246 (2d Cir. 1999)) (abstaining in favor of Bahamian liquidation proceedings); *see also Stonington Partners v. Lernout & Hauspie Speech Prods N.V.*, 310 F.3d 118, 126 (3d Cir. 2002) ("The principles of comity are particularly appropriately applied in the bankruptcy context because of the challenges posed by transnational insolvencies"); *In re Cenargo Int'l, PLC*, 294 B.R. 571, 592-93 (Bankr. S.D.N.Y. 2003) (noting prior decision in the *Cenargo* matter to dismiss Chapter 11 proceedings in deference to English administration proceedings); *Maxwell Commc'n. Corp. v. Barclays Bank (In re Maxwell Commc'n. Corp.)*, 170 B.R. 800, 817-18 (Bankr. S.D.N.Y. 1994) (dismissing avoidance adversary proceeding in favor of Ch. 11 debtor's U.K. bankruptcy proceeding to allow the U.K. court to decide issues of U.K. law where the challenged transfers occurred in England, the debtors were incorporated and executives ran the company out of England, the loans surrounding the transfers were executed in England and English law were to govern any disputes arising out of the transfers. The Court reasoned that, having found that "English law ought govern, [the issue of whether the preferential transfers were avoidable], considerations of comity dictate that these suits be dismissed.").

83. *In re Soundview,* discussed above, is instructive here. In that case, the Court lifted the automatic stay based largely on considerations of comity. *In re Soundview Elite, Ltd.*, 503 B.R. at 595. . Even though the debtors in *Soundview* had pending U.S. bankruptcy proceedings and their principal places of business were in the U.S., the Court ordered the creation of a joint protocol to allow both proceedings to advance cooperatively, balancing the needs of all stakeholders. *Id.* The Court relied on the reasoning of a Cayman decision which embraced "cooperation and

coordination in cross-border insolvency proceedings where the majority of the investigations to be undertaken for the realization of [debtor's] assets are required to be undertaken in the United States, but the claims that the petitioners and … other investors may have against the company will have to be examined and assessed according to the law of the Cayman Islands." *Id.* (internal citations and quotations omitted).

84. The same reasoning applies even more strongly here where FTX Digital does not have a pending Ch. 11 case, and its place of business was always in The Bahamas. Moreover, in this case, extending comity to the Bahamas Court is particularly important because cooperation will be necessary for any chapter 11 plan for the U.S. Debtors to be enforced in The Bahamas. *In re Spanish Cay Co.*, 161 B.R. at 725 (potential for successful chapter 11 reorganization at best questionable because U.S. court orders may be given no effect in Bahamas); *In re Int'l Admin. Servs., Inc.*, 211 B.R. 88, 93 (Bankr. M.D. Fla. 1997) (noting that bankruptcy court lacks the ability to enforce jurisdiction over property located in foreign country without assistance of foreign court).

85. The U.S. Debtors' U.S.-first position goes squarely against these principles. As discussed above, the JPLs have court-appointed duties and obligations to the Bahamas Court. The JPLs' obligation, just like the U.S. Debtors', is to ensure the highest and best recoveries for the recognized creditors of the estate. But the JPLs cannot produce *any* result for their estate without first answering the threshold questions asked in the Application and in this Motion. The U.S. Debtors instead invite this Court to support their refusal to engage at all on the Non-U.S. Law Customer Issues and to disregard completely the Bahamian Court overseeing FTX Digital's Provisional Liquidation. This Court should decline that invitation. The JPLs have done everything to pay deference and respect to the U.S. Debtors' proceedings and this Court (unlike the liquidators

in *Soundview*, for instance), and this Court should require the U.S. Debtors to do the same for the Bahamas Court and the recognized proceedings before it.

86. *Third*, the Bahamas Court offers a more appropriate forum for resolving the Non-U.S. Law Customer Issues than the U.S. because International Customers of both FTX Digital and FTX Trading would have expected that disputes relating to the Terms of Service would be resolved outside the U.S., by a court familiar with the applicable English and Commonwealth laws, and the opportunity to appeal as far as the Privy Council. *In re Northshore Mainland Servs., Inc.*, 537 B.R. at 206 (dismissing chapter 11 cases in light of a provisional liquidation in The Bahamas and observing that "[e]xpectations of various factors –including the expectations surrounding the question of where ultimately disputes will be resolved –are important, should be respected, and not disrupted unless a greater good is to be accomplished").

87. In that regard, the FTX Group conspicuously relocated its headquarters to The Bahamas in 2021, where the nerve center of its operations and its co-founders were located up until the insolvency proceedings. Greaves Decl. ¶18. FTX Trading operated out of The Bahamas before portions of the International Customers were migrated to FTX Digital. *Id.* Moreover, as a Bahamian regulated entity, it was part of the public record that FTX Digital was licensed under the DARE Act, putting third parties on notice that the FTX Group's international exchange business was operated out of The Bahamas, and subject to the SCB's regulatory oversight. By contrast, the FTX International Platform specifically forbade U.S. users from using the platform. Greaves Decl. ¶11. Moreover, neither FTX Digital nor FTX Trading have a significant creditor body in the United States. First Day Declaration ¶ 33.[47]

[47] There appear to have been a handful of U.S. users that were on the platform improperly. *See* Ray Testimony 2:10:23-2:10:35 "There was a limited number of [U.S. Users] that invested on the .com which was not the intended use of that Exchange"; *see also id.* at 1:11:20-12:00 ("We don't have those kind of

88. *Fourth*, the interests of judicial economy would be well-served by lifting the stay where, as here, the alternative is for this Court to decide unsettled, complex and novel issues of Bahamas, English, and Antiguan law, in a proceeding that is already portending to set records for administrative costs. The decision in *Matter of Williams* is instructive on this point. *In re Williams*, 144 F.3d 544 (7th Cir. 1998). In that case, the Seventh Circuit found that a bankruptcy court did not abuse its discretion by modifying the automatic stay to permit state court action to determine the debtor's interest in a lease and therefore determine "whether the lease had any value that could be assumed under her plan," reasoned that "had the bankruptcy court not modified the stay so that the forcible entry case could go forward, likely it would then have to determine the merits to her right of possession." *Id.* at 550. The bankruptcy court had "no particular expertise under this narrow area of state law," so determining the merits of the debtor's right to possession "would not be a particularly efficient use of judicial resources." The court therefore concluded that the bankruptcy court did not abuse its discretion in lifting the stay because, among other things, "in a case like this all roads lead to the state court" and that "[the] sooner [the] issues are resolved, the sooner the parties can move on." *Id.* Just as in *Williams*, the Non-U.S. Law Customer Issues will need to be decided and, as in *Williams*, requiring this Court to wrestle with unsettled issues of foreign law "would not be a particularly efficient use of judicial resources." *Id.* Here, "all roads lead to" an English-law governed court – and what better than the Bahamas Court, where these issues are already front and center and where both parties can fully participate and be heard. *Id.* And, indeed, just as in *Williams*, "[the] sooner [the] issues are resolved, the sooner the parties can move on." *Id.*

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numbers on an investor basis, we have it on a customer basis. But you're talking about less than a couple hundred.")

NOTICE

89. The JPLs will provide notice of this Motion to the following parties: (i) counsel to the U.S. Debtors; (ii) Office of the United States Trustee for the District of Delaware; (iii) counsel to the Official Committee of Unsecured Creditors in the Chapter 11 Cases; and (iv) all parties entitled to notice of this Motion pursuant to Bankruptcy Rule 2002 and Local Rule 4001-1(a). The JPLs submit that, in view of the facts and circumstances, such notice is sufficient and no other or further notice need be provided.

NO PRIOR REQUEST

90. No previous request for the requested relief has been made to this or any other Court.

CONCLUSION

WHEREFORE, for the reasons stated above, the JPLs ask the Court to enter the Order, substantially in the form attached hereto as **Exhibit 1**.

[*Remainder of page intentionally left blank.*]

Dated: March 29, 2023

/s/ Kevin Gross

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Attorneys for the Joint Provisional Liquidators of FTX Digital Markets Ltd. (in Provisional Liquidation)

TAB 8

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
FTX TRADING LTD., *et al.*,[1]	)	Case No. 22-11068 (JTD)
Debtors.	)	(Jointly Administered)
	)	**Re: Docket Nos. 1192, 1408 & 1409**

OMNIBUS REPLY OF THE JOINT PROVISIONAL LIQUIDATORS OF FTX DIGITAL MARKETS LTD. TO OBJECTIONS TO THE MOTION FOR A DETERMINATION THAT THE U.S. DEBTORS' AUTOMATIC STAY DOES NOT APPLY TO, OR IN THE ALTERNATIVE FOR RELIEF FROM STAY FOR FILING OF THE APPLICATION IN THE SUPREME COURT OF THE COMMONWEALTH OF THE BAHAMAS SEEKING RESOLUTION OF NON-US LAW AND OTHER ISSUES

[1] The last four digits of FTX Trading Ltd.'s tax identification number are 3288. Due to the large number of debtor entities in these Chapter 11 Cases, a complete list of the debtors (the "**U.S. Debtors**") and the last four digits of their federal tax identification numbers is not provided here. A complete list of such information may be obtained on the website of the U.S. Debtors' claims and noticing agent at https://cases.ra.kroll.com/FTX.

PRELIMINARY STATEMENT[2]

1. As the court-appointed officers in FTX Digital's provisional liquidation, the JPLs need at this time to ask their supervising Court for guidance on several critical points of English, Antiguan and Bahamian law that are fundamental to the administration of FTX Digital's provisional liquidation.

2. As the only court-appointed estate fiduciaries in that provisional liquidation, the JPLs cannot abdicate their obligation to administer the FTX Digital estate to the U.S. Debtors who (along with the Committee) are only estate fiduciaries in these Ch. 11 Cases, not the provisional liquidation. Nor can the JPLs simply accept the U.S. Debtors' assumption that all customers of FTX were, at all times customers of the U.S. Debtors and that all assets held by the U.S. Debtors from customers belong to the U.S. Debtors as well. The Debtors cannot assume those issues away; they are complicated legal questions that must be answered by a court. Nor can they properly refuse to engage, as the U.S. Debtors have done for months, on any form of consensual cross-border protocol. Thus, the JPLs ask that they be allowed to submit the Application to the Bahamas Court so that this Court and the Bahamas Court can work together in order to ensure an efficient and cooperative path to resolution of these questions.

3. In opposition, the U.S. Debtors and the Committee take the extreme position that this Court should act as if the Bahamian Court does not exist. *See Debtors' Objection to the Motion*, Case No. 22-11068 [Dkt. No. 1409] (the "**U.S. Debtors' Obj.**"); *The Official Committee of Unsecured Creditors' Objection to the Motion*, Case No. 22-11068 [Docket No. 1408] (the "**Committee Obj.**"). To support their position, the U.S. Debtors make a number of

[2] In support of this Reply, the JPLs rely upon and incorporate by reference the Declaration of Brett Bakemeyer, dated May 12, 2023 filed simultaneously herewith (the "**Bakemeyer Declaration**").

unsubstantiated and self-serving allegations. The U.S. Debtors claim that: (a) FTX Digital was a "façade" behind which Mr. Bankman-Fried's "fraudulent scheme could operate;" (b) that despite their representations to the contrary in this Court, there never were *any* customers of FTX Digital, and (c) that the JPLs would like to "fill [the FTX Digital estate] with property taken from the Debtors." U.S. Debtors' Objection ¶¶ 3, 8, 26.

4. Cutting through the U.S. Debtors' rhetoric, it is clear that they do not dispute many of the fundamentals underlying the Motion. The Non-U.S. Law Customer Issues *are* important to both estates. The Bahamas Court has held that resolution of the "the issues raised by [FTX Digital's] officers, the JPLs, in the proposed [Application] is *fundamental* to the progress of the provisional liquidation of [FTX Digital] in this Honorable Court." Motion ¶ 44. (Emphasis added). The U.S. Debtors and the Committee have stated that these issues are central to the U.S. Debtors' estates. U.S. Debtors' Obj. ¶ 64; Committee Obj. ¶ 9. Likewise, at this point the U.S. Debtors and the JPLs agree that these issues must be decided by this Court or the Bahamas Court. In other words, no one is advocating that these issues need to be arbitrated or addressed in an English Court. There is no dispute that the Non-U.S. Law Customer Issues are governed by Non-U.S. law. No objecting party has even cited to a single customer contract governed by U.S. law. Finally, despite the misplaced rhetoric around who the JPLs are and what they are trying to do here, no objector contests that this Court should revoke recognition of the JPLs as the appropriate foreign representatives for FTX Digital in the United States and that the Bahamas Court is the appropriate forum for addressing all issues affecting that estate.

5. Given these key facts, cross-border cooperation is the only sensible way forward in these cases. Cooperation is consistent with the principles of comity embedded in Chapter 15, and the Cooperation Agreement approved by this Court and the Bahamas Court. *Notice of Entry Into*

Agreement Regarding Mutual Cooperation, Case No. 22-11068 [Dkt. No. 402-1] (the "**Cooperation Agreement**"). It is also the only way to avoid duplicative litigation.

6. A cross-border protocol is also necessary to allow both insolvency cases to proceed expeditiously. The JPLs were hopeful that the Cooperation Agreement could provide an adequate framework to allow both cases to proceed without getting bogged down in disputes. Unfortunately, the U.S. Debtors have made a practice of not honoring the Cooperation Agreement. In the four short months since executing the Cooperation Agreement, the U.S. Debtors have somehow managed to breach every single commitment they made:

U.S. Debtors' Commitment in the Cooperation Agreement	U.S. Debtors' Breaching Conduct
FTX DM shall be primarily responsible for recovering value from (a) the assets and property in the name of FTX DM, including without limitation, all real and personal property and bank and security accounts in the name of FTX DM, regardless of where located. Cooperation Agreement, ¶ 4.	Actively obstructing the JPLs efforts to recover FTX Digital's funds seized by the U.S. Government[3] and asserting avoidance claims against FTX Digital, "to confirm that the [U.S.] Debtors stand first in line to recover this cash asset to the extent it is ever released by the government . . . ." U.S. Debtors' Obj. ¶ 49.
FTX DM shall be primarily responsible for recovering value from; (b) the approximately $45 million of USDT currently frozen in The Bahamas. *Id.*	Contesting the ownership of the Tether
The Parties agree that either a liquidation proceeding with respect to PropCo will be opened in the Bahamas Court to run concurrently with the pending Chapter 11 case of PropCo. *Id.* ¶ 15.	Alleging that acts the JPLs have taken with respect to FTX Property Holdings Ltd. are violations of the automatic stay when they take a necessary enabling step prior to beginning proceedings for the agreed liquidation proceedings in the Bahamas and forcing the JPLs to abandon those proceedings. U.S. Debtors' Obj. ¶ 66.

[3] Apr. 12, 2023 Hr'g. Tr. At 10:7-10 ("We also appreciate the U.S. criminal authorities working in parallel with us to secure assets. This includes approximately 100 million in cash in the name of FTX Digital").

The JPLs (or any other person appointed as liquidator of Propco reasonably acceptable to the Chapter 11 Debtors) shall take the lead in managing the properties, determining the appropriate strategy for monetization of the properties, identifying buyers and conducting the market process. *Id.*	Actively interfering with the JPLs efforts to manage and monetize the real property in The Bahamas
The Parties will work together in good faith during the next six months (commencing on the date hereof) in coordination with appropriate stakeholders in their respective proceedings to develop alternatives for the potential sale, reorganization or other monetization of (a) the international FTX.com platform (the *"International Platform")* and (b) cryptocurrency held or managed by the Chapter 11 Debtors in accordance with this Agreement and associated with the International Platform (and not traceable to customers of FTX US). *Id.* ¶ 6.	Excluding the JPLs from discussions regarding options to restart the FTX International Platform.[4]
The Parties will share information in their possession concerning the matters contemplated by this Agreement. *Id.* ¶ 22.	Refusing to provide the JPLs with FTX Digital's own data, including communications and documents of FTX Digital's employees.
The Parties will propose procedures for court-to-court communication based on international best practices and acceptable to each of the U.S. Bankruptcy Court and The Bahamas Court. *Id.* ¶ 18.	Refusing to engage with the JPLs to propose a protocol for court-to-court communication between this Court and the Bahamas Court
The Parties shall work in good faith. *Id.* ¶¶ 6, 8, 9, 11, 20, 23,	The U.S. Debtors have not been acting in good faith.

7. In short, the prospect of awaiting open cooperation with the U.S. Debtors is a dim one at best, leaving it to this Court and the Bahamas Court to sort it out. The Motion is the necessary first step in that process, and the Court should grant it.

[4] Apr. 12, 2023 Hr'g, Tr. 17:15-18.

I. THE FILING OF THE APPLICATION IS A NECESSARY PREDICATE FOR COOPERATION BETWEEN THIS COURT AND THE BAHAMAS COURT FOR RESOLUTION OF NON-U.S. LAW CUSTOMER ISSUES

8. As noted, there is no dispute that the questions in the Application include factual and legal issues that are integral to both estates, that these questions need to be decided by some court, and that none of them are governed by U.S. law.

9. In these circumstances, the two courts with jurisdiction should coordinate based on a cross-border protocol. Motion ¶¶ 49-63. This should not be controversial. This Court has recognized FTX Digital's provisional liquidation as its foreign main proceeding. *Order Granting Recognition of Foreign Main Proceeding and Certain Related Relief*, Case No. 22-11217 [Dkt. No. 129] (the "**Recognition Order**"). Chapter 15 expressly directs this Court to "cooperate to the *maximum extent possible* with a foreign court." 11 U.S.C. § 1525(a).[5] (Emphasis added). Cooperation does not mean automatic deference on issues concerning both estates, but it does mean that this Court should not proceed without consultation with the Bahamas Court. As the Third Circuit explained, "Chapter 15 also encourages communication and cooperation with foreign courts, and authorizes our courts to communicate directly with foreign courts." *In re ABC Learning Ctrs. Ltd.*, 728 F.3d 301, 306 (3d Cir. 2013). Additionally, the Cooperation Agreement, which both courts approved, provides that "the Chapter 11 cases and the provisional liquidation of [FTX Digital] shall proceed in parallel. The Parties will propose procedures for court-to-court

[5] Cooperation would be required even if the Court had not entered the Recognition Order. *See Awal Bank, BSC v. HSBC Bank USA (In re Awal Bank, BSC)*, 455 B.R. 73, 81-82 (Bankr. S.D.N.Y. 2011) ("Even if there is no order of recognition, § 1525 provides that a court in a plenary case in the United States 'shall cooperate to the maximum extent possible with a foreign court or a foreign representative, either directly or through the trustee.'") (Citations omitted). *See also,* 8 Collier on Bankruptcy ¶ 1525.01 (16th ed. 2023) ("The dictates of section 1525 are often followed without any reference to the statutory provision, which does not require recognition to be applicable.").

communication based on international best practices and acceptable to each of the U.S. Bankruptcy Court and The Bahamas Court." *See* Cooperation Agreement, ¶ 18.

10. Yet, the U.S. Debtors and the Committee now argue there should be *zero* coordination between the Courts on issues critical to FTX Digital's liquidation, and that this Court should answer all of the Non-U.S. Law Customer Issues to the exclusion of the Bahamas Court. In support of their position the U.S. Debtors raise a number of flawed arguments:

11. *First*, the U.S. Debtors argue that this Court should decide all the Non-U.S. Law Customer Issues because they affect the U.S. Debtors' property, over which this Court has exclusive jurisdiction. U.S. Debtors' Obj. ¶¶ 41-42. The U.S. Debtors miss the point. The JPLs have never disputed that this Court will ultimately determine what is and is not property of the U.S. Debtors' estates. Motion ¶ 74; *see also* Cooperation Agreement ¶ 12 (recognition under Chapter 15 would not require this Court to defer to any decision in the Bahamian Liquidation Proceeding, with respect to any matter raised by the Chapter 11 Debtors before the Court with respect to property of the estate U.S. Debtors). Just like the Bahamas Court will ultimately determine what is and is not property of FTX Digital's estate. Cooperation Agreement ¶ 13 ("recognition in the Bahamas Court would not require the Bahamas Court to defer to the decisions of any foreign court . . . with respect to property of the estate of FTX DM . . . ."). But before either court can make those determinations, someone needs to resolve threshold legal issues of non-U.S. law. This Court should coordinate with the Bahamas Court on how that is done.

12. *Second*, the U.S. Debtors argue that "most of the Non-U.S. Law Customer Issues are matters of English Law, not Bahamas law, and in any event, application of foreign law in a bankruptcy proceeding is not a sufficient basis to require this Court's abstention, because bankruptcy courts are competent to apply foreign law." U.S. Debtors' Obj. ¶ 44. The JPLs have

never argued that this Court is incompetent to interpret foreign law. Rather, the JPLs simply point out that the Bahamas Court should play a role in resolving these issues because (i) it is the best Court to apply Bahamas Law; (ii) it is more familiar with English law than this Court; (iii) it gives the parties recourse to the Privy Council – which is the final authority on English, Bahamian, and Antiguan law.

13. The U.S. Debtors' authorities are not to the contrary. In fact, *In re Lyondell Chem. Co.*, 543 B.R. 428, 460 (Bankr. S.D.N.Y. 2016) squarely supports the JPLs' position and highlights the risks of an expert-driven proceeding in this Court. The U.S. Debtors cite *Lyondell*, for the proposition that bankruptcy courts often hear and apply evidence of English law or other foreign law. U.S. Debtors' Obj. ¶ 44 (characterizing *Lyondell* as "finding Luxembourg law not so unusual to render the task too difficult and that "largely similar briefing [on Luxembourg law] would presumably be necessary in either [Luxembourg or the United States]"). But in *Lyondell* the court dismissed one count of a complaint based on Luxembourg law because the experts provided conflicting and insufficient opinions, and barely allowed the other count to survive (while the requiring both sides to submit supplemental foreign law declarations). *Id.* at 446-48. The court, at various points highlighted the litany of issues caused by the foreign expert declarations. Such problems, including conflicting interpretations of foreign laws, are more likely here, where there are novel issues of foreign law. *See LaSala v. UBS, AG*, 510 F.Supp.2d 213, 233-34 (S.D.N.Y. 2007) ("It is inadvisable for this Court to decide a case where legal experts disagree about critical points in the application of foreign law... It is even more inadvisable for this Court to decide issues of Swiss law that both experts agree are unsettled.").[6]

[6] The U.S. Debtors' other cases are also distinguishable. *Wells Fargo Bank NA v. Am. Home Mort. Inv. Corp.*, dealt with a simple issue of contract interpretation, not with complex and novel issues relating to cryptocurrency. *Wells Fargo Bank NA v. Am. Home Mort. Inv. Corp.*, 2008 WL 4753342, at *4-7 (Bankr. D. Del. Oct. 30, 2008) (applying English principles of contract interpretation to plain language of trust

14. *Third*, the U.S. Debtors argue that "certain disputed issues, including arguments about constructive trust, will involve consideration of equitable principles that this Court, sitting in Delaware and applying Delaware choice of law rules, will apply to decide the relative recoveries of all the chapter 11 stakeholders (including the JPLs) . . . ." U.S. Debtors' Obj. ¶ 45. But the Non-U.S. Law Customer Issues do not merely concern FTX Digital's recoveries on its claims against the U.S. Debtors. They also concern questions of constructive trust in FTX Digital's provisional liquidation, including whether assets in FTX Digital's name (including assets in the Bahamas) are held in trust for customers.

15. *Fourth*, the U.S. Debtors argue that these Chapter 11 Cases implicate many disparate jurisdictions, and centralizing issues before this Court's jurisdiction is the only way to efficiently manage the proceedings. U.S. Debtors' Obj. ¶ 45. On this, the U.S. Debtors could not be more wrong. This Court unilaterally "centralizing" issues key to the provisional liquidation of an entity that is not in a chapter 11 case without consultation with the Bahamas Court in which its proceeding is actually pending, creates a very high risk of duplicative, never-ending litigation. FTX Digital's provisional liquidation was filed by the Bahamian regulator – the SCB – and involves a host of third parties (including 45,281 creditors that have submitted claims in that proceeding). If this Court bars the JPLs from putting the Non-Foreign Law Customer Issues before the Bahamas Court, and unilaterally proceeds to address them in the adversary, other parties will invariably raise those same or similar issues. If the two courts proceed without coordination, then both estates will be forced to litigate the same issues at the same time in two venues, with the risk

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agreement, with the benefit of a clear and succinct statement of the law from a variety of English Court decisions). The Australian law issue in *In re B.C.I. Finances Pty Ltd.*, was less clear but that decision dealt with recognition of a chapter 15 proceeding and whether certain claims could be considered assets under Section 109; notably, no party sought any involvement from the Australian Court here. *In re B.C.I Fins. Pty Ltd.*, 583 B.R. 288, 296-304 (Bankr. S.D.N.Y. 2018).

of disparate rulings (as the Committee, correctly points out). That is not the best outcome.[7] All of this could be avoided by the kind of cross-border cooperation that is routine in similar cases.[8]

16. *Fifth*, the U.S. Debtors argue that the United States Government has seized certain accounts held in FTX Digital's name (the "Accounts") and that this Court must adjudicate the U.S. Debtors avoidance claims as to the Accounts. In a separate pleading, the JPLs will address how the U.S. Debtors' actions against the Accounts violate the chapter 15 stay and the Recognition Order, and constitute a willful breach of the Cooperation Agreement. For now, the JPLs note that before determining whether the funds in the Accounts are subject to avoidance, this Court will first

[7] This risk of duplicative and fragmented proceedings is the reason why the opposition of the Customer Adversary Plaintiffs to the Motion is flawed. The JPLs sympathize with the Customer Adversary Plaintiffs' concern about any delays to these cases, and share their focus on distributing assets to customers. *See Customer Adversary Plaintiffs' Opposition to the Motion of Joint Provisional Liquidators Regarding the Automatic Stay and Application to the Supreme Court of the Bahamas on Non-US Law, and Joinder in Debtors'* Objection, Case No. 22-11068 [Dkt. No. 1412 ¶ 3]. The U.S. Debtors' actions will almost certainly guarantee parallel competing litigation and delays.

[8] The U.S. Debtors attempt to distinguish this case from cases that used a cross-border protocol, such as *Nortel*, *Calpine* and *Soundview*, based on several arguments that fail. First the U.S. Debtors argue that this is not a normal case "where some property is in one debtor's control and other property is in the control of a foreign entity" – because the U.S. Debtors are administering estates containing $7.3 billion in liquid assets while the JPLs currently control around $ 30 million of assets. U.S. Debtors' Obj. ¶ 46. That argument assumes that the U.S. Debtors own all the customers and all the property (which the JPLs do not concede and this Court has not yet decided). That one estate is bigger than the other does not erase the principles underlying cooperation. The U.S. Debtors also argue that *Nortel, Soundview, and Calpine* concerned debtors with distinct creditor bodies, while this case does not. U.S. Debtors' Obj. ¶¶ 46-47. The courts in *Nortel*, *Calpine*, and *Soundview* did not consider the existence of distinct bodies of creditors as a factor when adopting a cross-border protocol. Motion of Canadian Debtors for Entry of an Order Pursuant to 11 U.S.C. § 105(a) Approving Cross-Border Court-To-Court Protocol, *In re Calpine Corp.*, Case No. 05-60200 (CGM) (Bankr. S.D.N.Y. Apr. 5, 2007) [ECF No. 4242] (developing a cross-border protocol due in part to the duplicative nature of the issues and claims arising in both the U.S. and Canadian insolvency proceedings); *In re Nortel Networks, Inc.*, 532 B.R. 494, 531–32 (Bankr. D. Del. 2015) (adopting cross-border protocol without requiring that the U.S. and foreign debtor entities demonstrate distinct or separate creditors); Declaration of Alphonse Fletcher, Jr., Pursuant to Local Rule 1007-2, *In re Soundview Elite Ltd.*, Case No. 13-13098(LGB) (Bankr. S.D.N.Y. Sept. 24, 2013) [ECF No. 2] (expressly confirming that all six jointly administered debtors organized under the laws of the Cayman Islands have "the same managers, same shareholders and same creditors"). Even if this Court determines that it should be an important consideration, FTX Digital may very well have creditors distinct from the U.S. Debtors. In fact, that is one of the questions raised in the Application (and the adversary proceeding).

need to know whether FTX Digital holds a significant proportion of them on trust for the benefit of FTX Digital's customers. This court is not a superior forum to The Bahamas for resolving whether – under Bahamian and English law – funds sitting in a debtor's account are held in trust for third parties, and whether they are part of FTX Digital's bankruptcy estate. The U.S. Debtors have not explained why this Court (and only this Court) should attempt to answer that question to the exclusion of the court overseeing the Bahamas proceedings.

17. *Sixth*, the U.S. Debtors also argue that the United States Government has an interest in the disposition of any assets of FTX Digital, and that deference to other proceedings should be withheld where "appropriate to avoid the violation of the laws, public policies, or rights, of the citizens of the United States." U.S. Debtors' Obj. ¶ 50. The U.S. Debtors do not identify what laws or public policies would be violated if the Bahamas Court addresses issues of Bahamian, Antiguan, and English law, central to FTX Digital's bankruptcy.[9] The Application will not interfere with the prosecution of crimes against SBF and his co-conspirators.

18. *Finally*, the U.S. Debtors argue that there are concerns in granting comity here because the Bahamas is not a signatory to the Model Law on Cross-Border Insolvency or the Model Law on Recognition and Enforcement of Insolvency-Related Judgments. U.S. Debtors' Obj. ¶ 50. The U.S. Debtors do not articulate the nature of their concerns or why they matter here.[10] The Bahamas Court has shown a willingness to cooperate with the U.S. proceedings by approving the Cooperation Agreement, granting recognition to the U.S. Debtors' Ch. 11 Cases, and waiting to

[9] None of the cases cited by the U.S. Debtors in support of their argument support the proposition that public policy considerations support this Court barring the JPLs from filing the Application.

[10] As noted in the Motion, courts across the country regularly grant comity to Bahamian insolvency proceedings. Motion ¶¶ 82, 84. *See also, In re Northshore Mainland Svcs., Inc.*, 537 B.R. 192, 206 (Bankr. D. Del. 2015) (granting comity to Bahamian insolvency proceeding and noting that there is "no evidence that the Bahamian laws contravene the public policy of the United States.")

address issues that are central to FTX Digital's provisional liquidation while JPLs confirm that this Court's stay does not extend to the Application. Had the U.S. Debtors actually believed their arguments, they should have raised them before consenting to recognition.

II. THE AUTOMATIC STAY DOES NOT APPLY TO FILING OR PROSECUTION OF THE APPLICATION

19. The automatic stay does not bar FTX Digital from filing the Application, to put the Non-U.S. Law Customer Issues before the Bahamas Court. The U.S. Debtors and the Committee have not identified a single case in which the stay has reached so far as to prevent a foreign debtor from seeking its own court's guidance on the nature and extent of the estate's rights and liabilities. Motion ¶¶ 60-62.

20. The U.S. Debtors and the Committee instead argue that the questions in the Application affect the property of the U.S. Debtors. But none of the cases that the U.S. Debtors or Committee cite apply the automatic stay to bar a foreign debtor from asking its own court who its creditors are or identifying property of its estate.[11]

21. The "duelling debtor" cases that the JPLs cite in their motion are instructive because they show the bounds and limitations of the automatic stay with respect to another debtor's bankruptcy. Each of those cases allowed a debtor to act within its rights in its own bankruptcy, even though those actions had direct, adverse financial consequences to another debtor's estate. For example, the Court in *Noranda* allowed Noranda to reject its contract with Sherwin, and noted

[11] Indeed the only case that the U.S. Debtors and the Committee cite in this argument that involves two bankruptcy estates is *In re Kaiser Aluminum Corp.*, 315 B.R. 655 (D. Del. 2004). *Kaiser* is readily distinguishable. In *Kaiser*, one debtor started an adversary proceeding in its own bankruptcy to recover insurance premiums from an insurance company in which another debtor had an interest. *Id.* at 657-58. By contrast, the Application does not seek turnover of any assets that may or may not be property of the U.S. Debtors. Rather, the JPLs seek answers to threshold legal questions about the scope of FTX Digital's estate.

the leverage that Noranda gained over Sherwin in rejecting the contract: "Sherwin must either discontinue its business, renegotiate a different contract with [Noranda] on terms less attractive to it or alter its refinery to accommodate bauxite from a different seller (which has a different chemical composition). *[Noranda] is sophisticated and understands the leverage derived by rejection of the [supply contract]*." *In re Noranda Aluminum, Inc.*, 549 B.R. 725, 730, n.1 (Bankr. E.D. Mo. 2016) (emphasis added). Similarly, in *National Steel*, the court permitted the debtor to unilaterally increase the price of its contract with another debtor, which had adverse economic consequences for the latter. *In re Nat'l Steel Corp.*, 316 B.R. 287, 312 (Bankr. N.D. Ill. 2004). The U.S. Debtors misunderstand the import of *National Steel*. While the opposing debtor's acceptance of the unilateral price increase was important to the court's ruling, the court also found that unilaterally increasing the price of the contract in bankruptcy was permissible, even in light of the automatic stay, because "the rates in the original [contract] were well below the market rate for steel at the time." *Id.* Thus, the court permitted the unilateral price change in *National Steel* because it was economically advantageous to the debtor, despite the impact on the other counterparty.

22. Like the debtors in *Noranda*, *Carco*, and *National Steel*, FTX Digital is simply seeking to pursue its rights within its own provisional liquidation. Unlike the actions in those cases, filing the Application could not have a direct, adverse effect on the U.S. Debtors' estates because any decision by the Bahamas Court would be made in coordination with this Court and would have to be adopted (or not) by this Court. Thus, the principle underlying the cases apply even more strongly in favor of lifting the stay and allowing the JPLs to file the Application.

III. IN THE ALTERNATIVE, THE COURT SHOULD LIFT THE AUTOMATIC STAY TO ALLOW THE JPLS TO FILE THE APPLICATION AND INITIATE A CROSS-BORDER PROTOCOL

23. If this Court concludes that the stay does apply to the filing of the Application, the Court should lift the stay. The JPLs have met their burden to establish a case that cause exists to lift the stay, and the U.S. Debtors and the Committee have failed to rebut it.[12]

A. Resolving the Non-U.S Law Customer Issues in The Bahamas Does Not Prejudice the U.S. Debtors

24. The U.S. Debtors claim that they and their creditors would suffer "immeasurable harm" if the JPLs "pursu[e] shadow proceedings in The Bahamas seeking to adjudicate rights as to the scope and makeup of the Debtors' estates' property[]" because the Application seeks directions regarding "the nature of customer entitlements, holding and tracing of assets, and asset distribution matters." U.S. Debtors' Obj. ¶ 64.

25. U.S. Debtors mischaracterize the Application and FTX Digital's provisional liquidation, and the Committee merely parrots their mischaracterization. The provisional liquidation is not a "shadow proceeding," it is the foreign main proceeding for FTX Digital that has been recognized by this Court under chapter 15. And the Application says nothing about the tracing of assets or asset distribution matters, and it does not say that the "customer relationships and substantial assets held by the [U.S.] Debtors should be 'held' by FTX [Digital]." U.S. Debtors' Obj. ¶ 64. The Application primarily seeks to answer threshold questions concerning FTX

[12] The Committee's authorities do not prove otherwise. In both, the court denied stay relief because the movants failed to submit *any* evidence establishing cause. *See In re RNI Wind Down Corp.*, 348 B.R. 286, 299–300 (Bankr. D. Del. 2006) ("[T]he movant did not submit any evidence in support of its Stay Relief Motion."); Apr. 12, 2023 Hr'g Tr. [Dkt. No. 1284] at 52:18-21 ("Mr. Bankman-Fried did not put on any evidence whatsoever as to what, and the balancing of the equities here, what harm is going to occur to him."). Here, the JPLs have set forth more than sufficient evidence in the Greaves and MacMillan-Hughes declarations to establish a prima facie case and that the balance of the equities tips in their favor. *See Declarations in Support of the Motion*, Case No. 22-11068 [Dkt. Nos. 1194, 1194].

Digital's estate, such as whether the customers migrated and the extent of the estate's assets and liabilities.

26. The U.S. Debtors give a list of six examples of how "the prejudice to the [U.S.] Debtors and their creditors from the JPLs advancing issues core to the Debtors' Chapter 11 Cases outside of this court are evident from the JPLs' actions to date." U.S. Debtors' Obj. ¶ 66. None show any prejudice from lifting the stay (or any prejudice at all).

27. Three of the examples are basic actions that the JPLs took in the ordinary course of administering the FTX Digital estate. These include opening a claims portal for the FTX Digital provisional liquidation, filing a public reservation of rights with respect to the U.S. Debtors' settlements, and sending updates about the provisional liquidation to potential creditors (long before the U.S. Debtors provided the JPLs with any data). U.S. Debtors' Obj. ¶ 66. The JPLs opened a creditor portal as part of their obligation to identify all creditors of FTX Digital and give them the opportunity to participate in the provisional liquidation. The JPLs told customers they were being contacted in their capacity as customers of FTX Digital and that the customers may have a claim against the U.S. Debtors as well. *See Declaration of Edgar Mosley in Support of the U.S. Debtors' Obj.*, Case No. 22-11068 [Dkt. No. 1411] (the "**Mosley Decl.**") Ex. P. Similarly, the JPLs filed a reservation of rights as to the Voyager settlement in their role as the recognized representatives of the FTX Digital estate in, in order to ensure that the U.S. Debtors do not settle claims that belong to FTX Digital or its customers. *Reservation of Rights of the Joint Provisional Liquidators of FTX Digital Markets*, Case No. 22-11068 [Dkt. No. 819]. Finally, the JPLs did not "[s]olicit[] information from the [U.S.] Debtors' customers using customer data that is property of the Debtors' estates . . . [and] received under [the] NDA." U.S. Debtors' Obj. ¶ 66; Mosley Decl. ¶ 22. As the letter cited by the U.S. Debtors clearly shows, the JPLs sent circulars to customers

on January 6, 2023 – before receiving any data from the U.S. creditors and before entry into the NDA.[13] The JPLs invited customers to provide contacts information if they wanted to continue to receive communications from the JPLs (which customers could do – or not). The U.S. Debtors have not identified how this action has prejudiced the U.S. Debtors, beyond identifying a tweet. *See* Mosley Decl. Ex. M.

28. Two other examples involve vague accusations that the JPLs "[a]ttempted to cloud title to assets that have been marshalled by the [U.S.] Debtors" and "[p]otentially hindered the marketing process for potentially raising capital for a restructured exchange by directly soliciting investors." U.S. Debtors' Obj. ¶ 66. As to the first, the only "attempts to cloud title" the U.S. Debtors point to are a reference in the JPLs' First Interim Report to "$7.7 billion in transfer from FTX DM to FTX Trading or Alameda," and vaguely refer to "other similar statements made by the JPLs in hearings and filings submitted to this Court." Mosley Decl. ¶ 21 (quotations omitted). Identifying transfers from FTX Digital to certain of the U.S. Debtors is not an attempt to cloud title. As to the second, the JPLs do not know what the U.S. Debtors are talking about, and the U.S. Debtors have not clarified what marketing process they were referring to, or how the JPLs interfered with it.

29. A final example involves the JPLs serving a notice to begin a process that the U.S. Debtors agreed to in the Cooperation Agreement. The JPLs served that notice to begin a liquidation proceeding for PropCo that was expressly contemplated by the Cooperation Agreement. *See* Cooperation Agreement ¶ 15 ("The Parties agree that ***either a liquidation proceeding with respect to PropCo will be opened in the Bahamas Court*** to run concurrently with the pending Chapter 11 case of PropCo . . . .") (emphasis added). When the U.S. Debtors objected,

[13] Tellingly, the U.S. Debtors do not point to any provision of the NDA that they allege the JPLs breached.

the JPLs withdrew that notice, in a spirit of cooperation. The U.S. Debtors have not explained how receiving a notice that was withdrawn the same day prejudiced the U.S. Debtors.

30. Ultimately, the question is not what the JPLs have been doing in the FTX Digital proceeding that is prejudicing the U.S. Debtors. The question is whether *lifting the stay* would cause prejudice to the U.S. Debtors. The U.S. Debtors have no answer to that question.

31. The U.S. Debtors also argue that "equitable considerations" presented alongside the Application need to necessarily be decided under Delaware and Third Circuit law. Not true. The only connection to the United States or Delaware regarding questions posed in the Application is the fact that the U.S. Debtors filed for bankruptcy here. The parties at issue (FTX Trading and FTX Digital) are non-U.S. incorporated entities, were headquartered outside the U.S., with management sitting outside the U.S., engaged in business materially outside the U.S., had explicitly non-U.S. customers with customer contracts governed by non-U.S. law. The U.S. Debtors provide no reasoning as to why, therefore, U.S. equitable principals would apply to issues regarding the questions posed in the Application.

32. The Bahamas Court also provides sufficient procedural protections. *See* U.S. Debtors' Obj. ¶ 72. As made clear by reading the letter from The Bahamas Bar Association, the U.S. Debtors' counsel simply did not follow the Court's rules when filing their application for their King's Counsel to be specially admitted. This denial would be no different than this Court's clerk's office denying the appearance of a New York qualified attorney who has no local Delaware counsel.

B. The Hardship to the JPLs by Maintenance of the Stay Considerably Outweighs the Hardship to the U.S. Debtors

33. The JPLs' significant hardship rests in its inability to progress the FTX Digital provisional liquidation as ordered by the Bahamas Court. The JPLs have duties that they cannot

abdicate for the convenience of the U.S. Debtors' professionals or because the U.S. Debtors simply do not want the Bahamas Court to decide these issues and prefer this Court do so. In order to fulfil those duties the JPLs must know:

- the identity of the creditors to whom FTX Digital owes (or does not owe) money or assets;
- which money or assets are FTX Digital's;
- how expansive the FTX Digital estate is;
- whether FTX Digital's assets are held in trust on behalf of customers or not;
- who the real party in interest is in prosecuting clawback actions to recover FTX Digital's assets;
- who the real party in interest is when defending against claims brought by customers; and
- whether FTX Digital has any contractual rights against, or owes obligations to, customers who held perpetual futures.

34. The U.S. Debtors and the Committee argue that there is no harm at to the JPLs of litigating the central issues in FTX Digital's provisional liquidation in the United States. U.S. Debtors' Obj. ¶ 75; Committee Obj. ¶ 52. Not true.

35. There is significant harm to FTX Digital in having its provisional liquidation effectively moved to this Court, with no consultation or involvement of the Bahamas Court. FTX Digital is not a Chapter 11 Debtor. It is a Bahamian entity, with its own ongoing provisional liquidation, commenced by the Bahamas Securities Commission, overseen by the Bahamas Court, and recognized by this Court. As discussed above, both this Court and the U.S. Court have approved a Cooperation Agreement that specifically provides that the two proceedings will run in parallel. Cooperation Agreement ¶ 19(a). Forcing FTX Digital to litigate the most fundamental issues in FTX Digital's bankruptcy about its own assets, liabilities and customers, with no input

from the Bahamas Court would be contrary to the Recognition Order, contrary to the Cooperation Agreement, and would essentially erase FTX Digital's provisional liquidation.

36. The harm is not the same to the U.S. Debtors if this Court lifts the stay and allows the JPLs to file the Application.

37. *First*, the JPLs' primary purpose is to seek their court's guidance on an important threshold legal question in order progress FTX Digital's case in the Bahamas.[14] They are not seeking to take over these Chapter 11 cases – rather, they propose a cooperative process that takes account of any effects on the U.S. Debtors' estates.[15] Moreover, this Court would have to adopt any decision of the Bahamas Court (or even the Privy Council) before it could affect the U.S. Debtors. Thus, the integrity of the U.S. Debtors' bankruptcy proceedings and their recourse to their own Court would be preserved throughout the entire process.

38. *Second*, as the U.S. Debtors repeatedly point out, FTX Digital's estate is smaller than that of the U.S. Debtors. The U.S. Debtors have taken every step to make that estate even smaller and interfere with the JPLs' efforts to marshal FTX Digital's assets. A path that creates significant risk of duplicative proceedings and forces FTX Digital to litigate in a forum where they

[14] The Committee heavily relies on *In re Howrey LLP* in alleging that the JPLs seek to undermine this Court's authority to hear case dispositive issues, Committee Obj. ¶ 41, but that reliance is misplaced. Unlike here, the *Howrey* court denied a motion for relief from stay seeking to argue (in part) the merits of an adversary proceeding filed by the chapter 11 trustee against the movants in a different forum. 492 B.R. 19, 21-24 (Bankr. N.D. Cal. 2013) (movant characterized the issue as "fundamental legal principal on which the Adversary Proceeding turn[ed]"). In contrast, the Application seeks cooperation and coordination from this Court and the Bahamas Court so that the Bahamas Court can determine only preliminary issues and that this Court can determine which property belongs to the U.S. Debtors and FTX Digital bankruptcy estates.

[15] It is worth noting that the Non-U.S. Law Customer Issues are foundational to the entirety of FTX Digital's provisional liquidation. This is not true of the U.S. Debtors. For example, these issues do not implicate any of the Chapter 11 Debtors in the U.S. silo.

will be required to take on the additional expense of hiring foreign law experts burdens FTX Digital and its creditors more than proceeding in The Bahamas burdens the U.S. Debtors.

39. *Third*, FTX Digital will be harmed by having the Non-U.S. Law Customer Issues resolved in the U.S. because the rulings in the U.S. adversary cannot bind the International Customers. *See* Memorandum in Support of Motion to Dismiss Adversary Proceeding, *Alameda Research LLC et al. v. FTX Digital Mkts. et al*, Case No. 23-50145 (Bankr. D. Del.) [ECF No. 7] (the "**Motion to Dismiss**"). The Committee and U.S. Debtors' suggestion creates piecemeal serial litigation in the Bahamas Court against any of FTX Digital's customers who do not accept the answers of the U.S. Court and argue that they are not bound by them because they were not parties to the U.S. Debtors' adversary proceeding. By contrast, in the Bahamas Court there is a process for appointing representatives to represent the independent interests of the customers. Motion to Dismiss ¶¶ 32-35.

40. The U.S. Debtors claim that "no economic stakeholder has expressed a desire for proceedings in The Bahamas." U.S. Debtors' Obj. ¶ 77. They further argue that there is nothing to do in the Bahamas "aside from the PropCo Debtor matters that were addressed between the parties in the Cooperation Agreement." *Id.* Not so. Tens of thousands of customers have voluntarily submitted their information to the JPLs on the basis that they believe they may have a claim against FTX Digital's estate. Moreover, just this week an ad hoc group of customers filed a statement in support of the JPLs Motion and, pointedly, in support of the JPLs' proposed protocol. D.I. 1472. Just because the U.S. Debtors think that there is nothing for them to do in the Bahamas (with respect to their own cases) does not mean that there is nothing for the JPLs to do, with respect to FTX Digital's estate. Like most of the U.S. Debtors' and Committee's arguments, this assumes a world where the provisional liquidation does not exist.

41. Finally, the Committee argues that because the JPLs voluntarily sought recognition in the U.S. and otherwise availed themselves of this Court's jurisdiction, the JPLs are not harmed. Committee Obj.¶ 54.[16] This turns chapter 15 on its head. The purpose of recognition of a foreign main proceeding is to have this court assist the foreign court, not displace it. *See, In re Oi S.A.*, 587 B.R. 253, 273 (Bankr. S.D.N.Y. 2018) (recognizing foreign representative's motion to enforce Brazilian reorganization plan and noting that, "the Chapter 15 Court's role is to assist the foreign insolvency proceeding, not to supervise it."). *See also, In re Grand Prix Assocs.*, No. 09-16545 (DHS), 2009 Bankr. LEXIS 1779, at *9 (Bankr. D.N.J. June 26, 2009) ("Sections 1525 and 1527 specifically *require* communication and cooperation between the Court, the BVI Court, and the foreign representative with respect to the supervision and administration of the Foreign Debtors' assets including the approval of agreements related to the coordination of proceedings") (emphasis added); *In re Artimm, S.r.l.*, 335 B.R. 149, 159 (Bankr. C.D. Cal. 2005) ("One of the most important changes introduced by chapter 15 is a mandate that the court cooperate 'to the maximum extent possible' with a foreign court or representative, either directly or through any domestic trustee.") (citations omitted).

C. The Merits Weigh In Favor of Lifting the Stay

42. For the third prong, the JPLs need only show that their claim – asking for a court issued determination on whether migration occurred – is not frivolous. *In re Levitz Furniture*, 267

[16] The Committee's citation to *Nortel* is misplaced. In *Nortel*, pension regulators in the U.K. sought to continue litigating important case issues ***on behalf of private creditors*** after already filing proofs of claim in the U.S. cases. *In re Nortel Networks Corp.*, 426 B.R. 84, 93 (Bankr. D. Del. 2010). The JPLs are not seeking relief from the automatic stay to litigate issues on behalf of a singular private creditor constituency – they are simply trying to implement a protocol that will allow for cross-border coordination that will lead to a more efficient administration of the estates. Indeed, the Lift Stay Motion is not, as the Committee suggests, "inimical" to the efforts to assemble, allocate, and distribute assets – it is in furtherance of that effort. Given the clear factual differences between *Nortel* and the present cases, the rhetoric from *Nortel* is not applicable.

B.R. 516, 523 (Bankr. D. Del. 2000) ("Defendants have met the third prong, since that merely requires a showing that their claim is not frivolous."). This is a low bar. *In re Tribune Co.*, 418 B.R. 116, 129 (Bankr. D. Del. 2009) (finding declaration detailing specific dates, witnesses and facts, and copy of agreement sufficient "to support a slight showing of the probability of success on the merits"); *Matter of Rexene Prod. Co.*, 141 B.R. 574, 578 (Bankr. D. Del. 1992) ("The required showing [of success on the merits] is very slight[.]").

43. While the JPLs are not required to prove the merits on this question today, there is substantial evidence that make the question of migration substantively more than what the U.S. Debtors and the Committee call a non-issue.

44. *First*, although the U.S. Debtors now assert that *no* customers moved to FTX Digital, this is an open issue, as the U.S. Debtors' inconsistent positions make clear.[17] At the First Day hearing, the U.S. Debtors declared 6% of the Dotcom Silo customers were customers of FTX Digital. First Day H'rg Tr., Case No. 22-11068 [Dkt. No. 142] at 26:16. Now, "once the Debtors dug into the underlying facts and available information," (facts and information that the U.S. Debtors control and *continue to* deny the JPLs' access to) the U.S. Debtors declare none migrated. U.S. Debtors' Obj. ¶ 3. The limited discovery that the JPLs have been able to take since the U.S. Debtors' filed their objection undercuts this point. When asked to produce any documents that evidence what caused the U.S. Debtors to change their position, they referred to the FTX Terms of Service (something they had at the first day hearing) and identified nothing else that caused

[17] There are also a number of contested factual issues related to migration that the JPLs will address once a process for resolving these issues is in place. These issues include disputes about the extent of FTX Digital's Bahamian operations. For example, while the Committee asks this Court to accept that the FTX Group did not move its locus of operations to the Bahamas (*see e.g.* Committee Obj. ¶ 24, stating that before the petition date FTX Digital "only" employed 83 individuals), those 83 employees accounted for nearly half of the FTX Group's International workforce.

them to change their minds. Indeed, while the U.S. Debtors agreed to search for such documents, they did not even know whether any such documents existed.[18] This alone makes clear that a non-frivolous dispute exists.

45. *Second*, the U.S. Debtors point to the plain language of the 2022 Terms of Service. U.S. Debtors' Obj. ¶ 86. But the plain language of the 2022 Terms of Service indicates that FTX Digital is the proper counterparty to the majority of the International Customers. The language states "[t]he following terms and conditions of service . . . constitute an agreement between you ("you", "your" or "User") and FTX Trading Ltd, . . . **or** a Service Provider in respect of a Specified Service." 2022 Terms of Use (emphasis added). Section 1.3 of the 2022 Terms of Use state:

> "**IMPORTANT**: You acknowledge and agree that any Specified Service referred to in a Service Schedule shall be provided to you by the Service Provider specified in that Service Schedule. **In such case, the Specified Service shall be provided to you on and subject to the Terms, with references in these General Terms to "FTX Trading" (or "we", "our" or "us") being read as references to the Service Provider specified in the Service Schedule**, unless the context provides otherwise, and under no circumstances shall any other person, including any Affiliate of the Service Provider, be liable to you for the performance of any of the Service Provider's obligations under the Terms."

2022 Terms of Use § 1.3 (emphasis added). In other words, everywhere FTX Trading is used, FTX Digital must be replaced with respect to the Specified Service. The U.S. Debtors conveniently ignore this provision.

[18] *See* Bakemeyer Declaration, Exhibit A, at 7 (U.S. Debtors' response to the JPL's request for "Documents and Communications concerning the U.S. Debtors' 'own initial assumption that 6% of FTX.com customers were customers of FTX DM' and Your statement that, 'once the Debtors dug into the underlying facts and available information, this was proven incorrect.'"). Specifically, the U.S. Debtors responded that, "Subject to and without waiver of the foregoing objections, in response to Request No. 6 the Debtors refer the JPLs to the FTX Terms of Service, which were attached as Exhibits D, E, and H to the Mosley Decl., and ***will produce non-privileged documents responsive to Request No. 6, if any, following a reasonable search***." *Id.* (emphasis added).

46. FTX Digital was clearly a Service Provider for Spot Market services; Spot Margin Trading services; OTC/Off-Exchange Portal services; Futures Market services; and Volatility Market services. These services make up approximately 90% of the trading on the FTX.com platform. Therefore, FTX Digital was the counterparty to 90% of the International Platform, including those services in sections 7 (Order Book and Convert) and 8 (Account Funding) of the 2022 Terms of Use.

47. The 2022 Terms of Use also state that "under no circumstances shall [FTX Trading] be liable to [International Customers] for the performance of any of the Service Provider's obligations under the Terms." 2022 Terms of Use § 1.3. The JPLs take this contractual liability seriously.

48. *Third*, the Debtors suggest that the JPLs have "failed to produce any evidence of a single customer being provided notice of or consenting to the 2022 Terms of Service" and that consent for the novation was required. U.S. Debtors' Obj. ¶ 87. Again, the proper interpretation of these English law governed documents is not the subject of the Motion. But consent by or notice to the customers was not required under the 2019 Terms of Service:

> We reserve the right to freely assign or transfer these Terms and the rights and obligations of these Terms, to any third party at any time without notice or consent.

2019 Terms of Service § 29. Under English law, advance consent provisions such as this are enforceable under English law. *Habibsons Bank Ltd. v. Standard Chartered Bank (Hong Kong) Ltd.* [2011] QB 943 at 951-52. Bakemeyer Declaration, Exhibit B.

49. Finally, while discovery has been extremely limited, it is clear that customers did enter into contracts directly with FTX Digital. *See* Bakemeyer Declaration Exhibits C - M. Additional discovery is necessary to discover the extent of these contract prior to answering the merits of this question.

D. Comity Considerations Are Applicable Here

50. The U.S. Debtors' and Committee's arguments about how comity considerations cannot apply here because "there is no parallel proceeding in the Bahamas Court" and "because the JPLs have not filed a motion seeking abstention" put the cart before the horse. *E.g.*, U.S. Debtors' Obj. ¶¶ 94-95. The JPLs have proceeded properly by seeking to file the Application so that this Court may have a proceeding to abstain in favor of. That the Debtors have filed the Adversary Proceeding "first," in violation of FTX Digital's automatic stay, should not prevent the Court's determination that comity principals are applicable here. Indeed, the JPLs have recently filed their Motion to Dismiss the Adversary Proceeding arguing that that proceeding is void and have asked this Court to abstain in favour of the Bahamas Court in the interpretation of the Terms of Use and migration issues.

51. Further, the U.S. Debtors' attempt to distinguish the JPLs' authorities, as limited to courts with "substantial knowledge of the relevant non-bankruptcy legal claims" misses the point. U.S. Debtors' Obj. ¶¶ 96-97. In each case, deference was granted to the court best positioned to address the issues, with a court's prior familiarity with the case being just one of many relevant factors. *See Pursifull v. Eakin*, 814 F.2d 1501, 1506 (10th. Cir. 1987) (cause to lift the stay existed because (among other things) "the issues involved were matters of state law best decided by the state courts"); *Drauschak v. VMP Holdings Ass'n, L.P. (In re Drauschak)*, 481 B.R. 330, 347 (E.D. Bankr. 2012) (Pennsylvania courts "ha[d] greater expertise in resolving" claims arising under Pennsylvania law); *Int'l Tobacco Partners, Ltd. v. Ohio (In re Int'l Tobacco Partners, Ltd.)*, 462 B.R. 378, 393 (Bankr. E.D.N.Y. 2011) (the Massachusetts Court appeare[d] to be the more appropriate forum for determining the preliminary questions[,]"); *In re Int'l Admin. Servs., Inc.*, 211 B.R. 88, 94-96 (Bankr. M.D. Fla. 1997) (deferring to the Guernsey litigation where money at

issue was in Guernsey, Guernsey had greater interest in regulating entities doing business on its shores, and deference would promote judicial economy and comity). Here, the JPLs seek resolution of Non-U.S. Law Customer Issues, which concern Bahamian, Antiguan, and English law.

52. The U.S. Debtors' attempt to distinguish *Matter of Williams*, also fails. 144 F.3d 544 (7th Cir. 1998). The U.S. Debtors argue that, there, a state court was ready to make a determination that would be accepted by the bankruptcy court, and, here, this Court ultimately determines effect of a Bahamian court order on the Chapter 11 Cases. U.S. Debtors' Obj. ¶ 97. The U.S. Debtors fail to mention that the Seventh Circuit also reasoned that the bankruptcy court had "no particular expertise under [a] narrow area of state law [and adjudication there] would not be a particularly efficient use of judicial resources." *Matter of Williams*, 144 F.3d at 550. More importantly, the U.S. Debtors' argument conflates multiple issues. Bankruptcy courts often give deference to non-bankruptcy courts to preliminarily determine non-bankruptcy issues, but that deference is wholly separate from the determination of what constitutes property of the estate in light of the non-bankruptcy court's ruling. *See e.g.*, *In re Int'l Tobacco Partners, Ltd.*, 462 B.R. at 393 ("[A]t this stage in the litigation, state law questions of the validity of the assignment and priority of interest must be answered before a final § 541 determination can be made."). Here, the Bahamian court must address preliminary questions of non-U.S. law on which the Bahamas Court has expertise before this Court can reach the question of what constitutes property of the estate.[19] This is precisely in line with how the JPLs would propose to proceed.

[19] The U.S. Debtors' reliance on *Arcapita Bank B.S.C.C. v. Bahr. Islamic Bank (In re Arcapita Bank B.S.C.(c))*, 575 B.R. 229 (Bankr. S.D.N.Y. 2017), and the Committee's reliance on *In re Soundview Elite, Ltd.*, 503 B.R. 571 (Bankr. S.D.N.Y. 2014) bear the same result. In *Arcapita*, the court denied dismissal of a preference adversary proceeding, and in *Soundview*, the bankruptcy court declined to a lift the stay as to issues that were squarely within the expertise of a bankruptcy court. *In re Arcapita Bank B.S.C.(c)*, 575

53. The Committee also argues that comity principles "do[ ] not allow a bankruptcy court to 'ignore its own responsibility' to review issues that 'directly affect the bankruptcy estate.'" Committee Obj. ¶ 57 (citations omitted). The Committee and the U.S. Debtors misread the Application. The JPLs are not asking this Court to ignore its responsibilities – or for the Bahamas Court to decide the allocation of property of the U.S. Debtors' estates. The JPLs are simply asking this Court to allow them to file the Application so that the two courts can coordinate on resolving the Non-U.S. Law Customer Issues. Even though the Committee and the U.S. Debtors' pleadings are fraught with the assumption that because they say the International Customers are those of FTX Trading, that it must be true, as discussed above, the answer to this question is not clear.[20]

54. To the contrary, this Court may not ignore FTX Digital's provisional liquidation and disregard the principles of comity. *See Stonington Partners v. Lernout & Hauspie Speech Prods.* N.V., 310 F.3d 118, 128 (3d Cir. 2002). In *Stonington*, the bankruptcy court enjoined a creditor from prosecuting the nature of its claims against the debtor in the debtor's foreign court proceeding, finding that the debtor's chapter 11 proceeding was "the center of gravity." *Id.* at 122. The Third Circuit reversed the bankruptcy court's ruling stating "our case law unequivocally directs courts to exercise restraint in enjoining foreign proceedings" and to consider the "various comity concerns." *Id.* at 129.

55. The remainder of the Committee's arguments: that the JPLs ignore comity themselves (which they clearly do not); that there are other litigations pending about FTX in the

B.R. at 241-42; *In re Soundview Elite, Ltd.*, 503 B.R. at 584-87. Here, the English and Antiguan law-governed issues of migration and novation are not issues of U.S. bankruptcy law.

[20] The Committee cites two cases in support. *See* Committee Obj. ¶ 57 (citing *In re Solar Tr. of Am. LLC*, No. 12-11136 (KG), 2015 Bankr. LEXIS 76 (Bankr. D. Del. Jan. 12, 2015); *Liebmann v. French (In re French)*, 303 B.R. 774 (Bankr. D. Md. 2003), *aff'd*, 320 B.R. 78 (D. Md. 2004), *aff'd*, 440 F.3d 145 (4th Cir. 2006)). Neither case involved a concurrent foreign proceeding.

United States; and that these issues exist "only because the JPLs were appointed before a chapter 11 case for FTX DM could be filed," Committee Obj. ¶ 62, do not speak to whether this Court should allow the JPLs to proceed with the Application in the Bahamas Court.[21]

E. The JPLs Do Not Have Unclean Hands

56. As a last ditch argument, the U.S. Debtors argue that the JPLs should be denied stay relief because the JPLs have taken actions and acquiesced to the Commission's actions in violation of the automatic stay. U.S. Debtors' Obj. ¶ 91. Neither instance of the JPLs' alleged stay violations were actually stay violations. The first, that Brian Simms was cc'd on emails in which the Commission directed digital assets to be removed from the control of SBF and Gary Wang, is not a stay violation. *Pardo v. NYLCare Health Plans, Inc. (In re APF Co.)*, 274 B.R. 408, 417 (Bankr. D. Del. 2001) ("Plaintiffs must show that that NYLCare engaged in conduct which was an affirmative post-petition act manifesting either an exercise of control over property of the estate, or collecting, assessing, or recovering such property in order to demonstrate a stay violation . . . Sections (a)(3) and (a)(6) require more than a mere passive act[.]"). But even if the JPLs were liable for the Commission's actions (they are not), the Commission did not violate the stay. The Commission, an independent Bahamian governmental agency over which Mr. Simms has no control was acting within its police and regulatory powers. 11 U.S.C. § 362(b)(4).

[21] Of particular note is the Committee's baseless accusation that the Bahamas Court of lacking reciprocity to this Court. This unwarranted attack on the Bahamas Court could not be further from the truth and lacks any supporting evidence. In fact, through the Motion and Application, the JPLs seek to lay the framework for a protocol that fosters cooperation and efficiency among the Bahamas Court and this Court. The JPLs' efforts to coordinate are the exact opposite of the circumstances in *Remington Rand Corp.-Delaware v. Bus. Sys. Inc.*, where a Dutch insolvency trustee sold property of a U.S. debtor without notice or the opportunity to be heard for the U.S. debtor, nor a grant of relief from the automatic stay from the bankruptcy court. 830 F.2d 1260, 1265-67 (3d Cir. 1987). By the Application, the JPLs do not seek to recover or sell any of the U.S. Debtors' property, except to the extent agreed to or otherwise pursuant to a court order.

57. In fact, the Debtors have themselves recognized that the commission's actions were appropriate and proper and in the best interests of both estates. Feb. 6, 2023 Hr'g. Tr. at 62:18-21; 63:4-7 ("At the time we didn't fully realize what was transpiring, but there was efforts by the provisional liquidators to also secure assets for the protection of customers [...] [w]e were fortunate, of course, that the provisional liquidators were also able to capture some of this value held in custody in the Bahamas that, presumably, could have also been stolen in this time period.").

58. Second, the JPLs setting up a portal for their creditors is not in violation of the stay, as it is an ordinary course act in the FTX Digital liquidation proceeding. Customers were clearly told that they were being contacted in their capacity as customers of FTX Digital and that the customers may have a claim against the U.S. Debtors as well. This is not a stay violation.

59. The cases the U.S. Debtors cite in support are misplaced. The JPLs took no "self-help" actions here because the JPLs were never trying to collect on a debt owed by the U.S. Debtors or otherwise transfer U.S. Debtor property as was the case in both cases the U.S. Debtors cite. *See In re Am. Home Mortg. Holdings, Inc.*, 401 B.R. 653, 655 (D. Del. 2009), (defendant-creditors sought to recover the improper payment by offsetting the amount from other payments due to it); *In re Fugazy Exp. Inc.*, 982 F.2d 769, 767 (2d Cir. 1992) (chairman of board failed to seek bankruptcy court approval of transferring a license post-petition).

CONCLUSION

60. For the foregoing reasons, the JPLs respectfully request that this Court grant the Motion.

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Dated: May 12, 2023

/s/ Brendan J. Schlauch

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COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Commercial Division

IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020 (as amended)

AND IN THE MATTER OF FTX DIGITAL MARKETS LTD.
(A Registered Digital Asset Business)

AND IN THE MATTER OF the Companies (Winding Up Amendment) Act, 2011

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