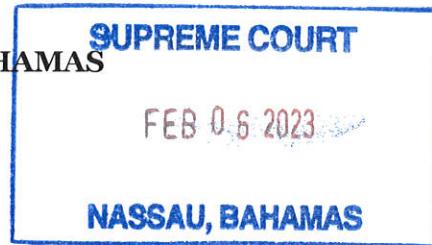


COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
COMMERCIAL DIVISION



2022

COM/com/ooo60

**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)

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**THIRD AFFIDAVIT OF MR. BRIAN SIMMS KC  
(Joint Provisional Liquidator of FTX Digital Markets Ltd.)**

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I, BRIAN SIMMS KC, of 3 Bayside Executive Park, West Bay Street and Blake Road, Nassau, N.P., The Bahamas make Oath and Say as follows

1. By an order of this Honourable Court made on 10 November 2022 ("the PL Order") the Honourable Mr. Chief Justice Ian Winder appointed me as Provisional Liquidator of FTX Digital Markets Ltd. ("FTX DM"). By a further order of this Honourable Court made on 14 November 2022 the Honourable Mr. Chief Justice Ian Winder appointed Messrs. Kevin G Cambridge and Peter Greaves as additional provisional liquidators of FTX DM (collectively with me ("the JPLs").
2. I make this affidavit in support of the JPLs' application for (i) sanction of the Settlement and Co-operation Agreement dated 6 January 2023 ("the Agreement") between a number of companies in the FTX group and the JPLs and (ii) sanction of the Confidentiality Arrangements Agreement dated 30<sup>th</sup> January 2023 ("the NDA") which was foreshadowed by clause 22 of the Agreement.
3. The facts and matters referred to herein are, unless otherwise stated, within my own knowledge or are obtained from documents in my possession or the professional advisors assisting the JPLs as the case may be, and are true to the best of my knowledge, information and belief.

4. There is now produced and shown to me marked "**BCS-1**" a paginated bundle of documents to which I shall refer in the course of my Affidavit. References to page numbers in this Affidavit are references to page numbers in the said paginated bundle unless otherwise stated.

### **Background**

5. As has been already detailed in affidavits previously filed in this provisional liquidation, on 10 November 2022 the Securities Commission of the Bahamas ("**the Commission**") presented a winding up petition against FTX DM based on the facts and matters deposed to by Christina R. Rolle, Executive Director of the Commission in an affidavit of the same date.

6. On 11 November 2022, Sam Bankman-Fried the founder and majority owner of the FTX group of companies appointed John J. Ray III ("**Mr. Ray**") as chief executive officer of a large number of companies in the FTX group, including FTX DM. The appointment of Mr. Ray in relation to FTX DM was of no effect because FTX DM had already, on 10 November 2022, been placed into provisional liquidation by this Honourable Court and appointed me as provisional liquidator.

7. On 11 and 14 November 2022, companies in the FTX group, other than FTX DM, ("**the Chapter 11 Debtors**"), acting by Mr. Ray, filed in the United States Bankruptcy Court for the District of Delaware ("**the Delaware Bankruptcy Court**") voluntary petitions ("**the Chapter 11 Cases**") for relief under title 11 of the United States Code 11 U.S.C. §§101 *et seq* ("**the US Bankruptcy Code**"). The names of the Chapter 11 Debtors are listed in Annex A to the Summons herein. For ease of reference, Annex A is also exhibited at pages **[1]-[3] of BCS-1**.

8. As the provisional liquidation of FTX DM had already commenced in this Honourable Court by 11 November 2022, no chapter 11 relief was filed in the Delaware Bankruptcy Court by Mr. Ray in respect of FTX DM.

9. From the date of my appointment on 10 November 2022 and the further appointment of the additional provisional liquidators on 14 November 2022, the JPLs have taken urgent steps to identify the assets of FTX DM and to investigate its affairs including the reasons for its collapse. It became apparent to us almost from the outset that the task was going to be immensely complex and time consuming because of (i) the nature of the assets that formed

the bedrock of FTX DM's business, namely, digital assets and (ii) the manner in which a very large number of FTX DM's books and records had been stored.

10. FTX DM operated an on-line exchange for digital assets (**"the International Platform"**). Although digital assets (often called digital currencies or cryptocurrencies) can be transferred on the underlying blockchain and the transactions in them can be readily seen (although the identity of the owners of them is pseudonymous), once digital assets are transferred to a cryptocurrency exchange, like the International Platform, transactions on that exchange (whether from a digital asset to another digital asset, or from digital assets to fiat currency, or vice versa) will not be mirrored by transaction on the public blockchain. Rather such transactions will only be recorded in the exchanges' own records, as transactions from one user to another, so requiring merely accounting entries in the accounts of users of the exchange. In addition, in the case of the International Platform there are likely to have been significant movements of digital assets between FTX-related entities which, although the transactions themselves are visible on the relevant blockchain, the identity of the participants to those transactions is not disclosed (being pseudonymous). Therefore, tying any particular transaction to particular FTX-related entities depends on matching transactions up with other records of the FTX-related entity. It is accordingly difficult to identify what FTX DM's assets and liabilities are without an electronic paper trail. FTX DM does not currently have access to that paper trail because the majority of its books and records are controlled by the Chapter 11 Debtors.
11. The International Platform was hosted through a website, FTX.com. The International Platform was hosted outside the United States. It was held on a cloud-based service (itself outside the US) which fell under the control of the Chapter 11 Debtors. Upon the commencement of the Chapter 11 Cases, FTX DM's access to the International Platform, and the information contained within it was terminated.
12. It also became apparent to the JPLs very quickly after our appointment that a very large number of the Company's books and records recording transactions on the International Platform and referring to transactions between FTX-related entities were in electronic form and had, prior to the provisional liquidation of FTX DM, been accessed by employees of FTX DM operating in The Bahamas via the same cloud-based service that hosted the International Platform itself, and which, therefore, was under the practical control of the Chapter 11 Debtors.

13. As far as the JPLs have been able to ascertain, cloud-based services which are referred to in the foregoing two paragraphs are:

- 13.1. Amazon Web Services (“**AWS**”) which hosted the International Platform and the database recording transactions occurring on the International Platform, and also held private keys for at least the “warm wallets” in which digital assets were held (private keys being the means of authorising transactions in such digital assets on the underlying blockchains), and
- 13.2. the Google Cloud Platform, which holds the main data tables from AWS for analytics purposes as well as emails and other correspondence of employees of FTX DM.

14. It became further apparent that FTX DM’s books and records had been mingled with those of the Chapter 11 Debtors, most notably, but not exclusively, with those of FTX Trading Ltd. (“**FTX Trading**”), a company incorporated in Antigua and Barbuda.

15. The above-described difficulties meant that, after FTX DM entered provisional liquidation, it was critical for the JPLs to obtain access to information now controlled by the Chapter 11 Debtors to which FTX DM had previously had access, in order to identify (i) what and where substantial assets of FTX DM were located; (ii) who FTX DM’s customers and other creditors were; (iii) the nature of the relationship between FTX DM and FTX DM’s customers; (iv) the nature of the relationship between FTX DM and other FTX-related entities, most notably, FTX Trading. To that end, having first obtained sanction to do so from this Honourable Court (**BCS-1**, page [4]-[6]), on 16 November 2022, the JPLs issued a petition in the United States Bankruptcy Court, Southern District of New York (“**the New York Bankruptcy Court**”) for relief pursuant to chapter 15 of the US Bankruptcy Code. The relief sought was, inter alia, for (i) the recognition of the provisional liquidation of FTX DM as a foreign main proceeding; (ii) the recognition of the JPLs as foreign representatives of FTX DM; (iii) an order authorising discovery measures of documents; and (iv) an order requiring the turnover of FTX DM’s assets to the JPLs. A copy of the chapter 15 petition and my declaration in support and my supplemental declaration is at **BCS-1**, pages [7] to [83].

16. On 17 November 2022, the Chapter 11 Debtors filed a motion to transfer the JPLs’ chapter 15 case from the New York Bankruptcy Court to the Delaware Bankruptcy Court. At the first

day hearing of the Chapter 11 Cases on 22 November 2022, the JPLs consented to the chapter 15 case being transferred to the Delaware Bankruptcy Court.

17. On 9 December 2022, the JPLs issued an emergency motion together with a motion to shorten the notice and objection periods in respect of the motion in the Delaware Bankruptcy Court against the Chapter 11 Debtors. The emergency motion was for, inter alia, access to the electronic records and other recorded information relating to FTX DM's property and financial affairs that was being held by the Chapter 11 Debtors as described above. The emergency motion and motion to shorten are exhibited at **BCS-1**, pages **[84]** to **[119]**. The Chapter 11 Debtors objected to the motion to shorten as appears from the objection dated 12 December 2022 at **BCS-1**, pages **[120]** to **[133]**.
18. From the tenor of the Chapter 11 Debtors' objection, it was clear that there would be strong resistance to the JPLs' application for disclosure and turnover of documents. The JPLs did not accept the allegations and criticisms contained in the Chapter 11 Debtors' objection. However, the JPLs also had no desire to see substantial costs in legal fees being incurred, and time and opportunities disappear, while litigating the motion. In due course, therefore, and with the encouragement of the Delaware Bankruptcy Court judge, the JPLs and the Chapter 11 Debtors sought to reach a position whereby both were able to accommodate the other's requirements.
19. Shortly before the date for the service of the JPLs' reply to the objection, the JPLs and the Chapter 11 Debtors entered into negotiations over a number of days to see whether each could accommodate the other's requirements. On 6 January 2023 the parties concluded the Agreement which is exhibited at **BCS-1**, pages **[142]** to **[150]**.

## **The Agreement**

20. The Agreement makes clear in its introduction that it will not take effect unless and until it is sanctioned by this Honourable Court in respect of FTX DM and is approved by the Delaware Bankruptcy Court in respect of the Chapter 11 Debtors.
21. The Agreement provides a framework for the future co-operation between FTX DM and the JPLs on the one hand and the Chapter 11 Debtors, on the other. It was made in the absence of any clarity as between the FTX DM/JPLs and the Chapter 11 Debtors as to (i) whether customers were customers of FTX DM and/or one or more of the Chapter 11 Debtors; and (ii) whether assets, including digital assets, real property and litigation claims, belonged to

FTX DM and/or one or more of the Chapter 11 Debtors. The Agreement does not resolve those questions. Rather, it acknowledges that the goal of FTX DM/JPLs and the Chapter 11 Debtors is to maximise recoveries for the benefit of customers and creditors of each of the estates of FTX DM and the Chapter 11 Debtors. In summary, the Agreement then:

**By clause 4:** allocates certain recovery functions to FTX DM.

**By clause 5:** allocates other recovery functions to the Chapter 11 Debtors.

**By clause 6:** provides that the Parties will work together for the potential sale of certain assets including the International Platform.

**By clause 7:** provides that the Parties will discuss whether there may be further co-operation to further the goals and objectives of the Agreement.

**By clause 8:** provides for consultation between the Parties 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.

**By clause 9:** provides for each Party to assist in supporting the other to appear in proceedings concerning the recovery of assets and to consult reasonably and good faith in relation to (a) the reasonableness of asset recovery decisions for which a Party has primary responsibility; (b) the settlement of inter-company 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.

**By clause 10** makes clear that the Agreement does not address any matter not specifically addressed in the Agreement.

**By clause 11** provides for the Parties to work together in good faith to determine the ownership of assets that are subject to competing claims and gives both Parties the right on reasonable notice to the other to apply in either the Delaware Bankruptcy Court or this Honourable Court to determine disputes between the Parties.

**By clause 12** provides for (a) the Chapter 11 Debtors to support the chapter 15 case of the JPLs for the recognition of the provisional liquidation by the Delaware Bankruptcy Court and the enforcement in the Delaware Bankruptcy Court of orders made by this Honourable

Court and elsewhere subject to certain limitations; (b) for the liquidation in The Bahamas of FTX Properties Holdings Ltd., (**“PropCo”**) a company incorporated in The Bahamas and a Chapter 11 Debtor, and for both the liquidation in The Bahamas and the Chapter 11 case to run in parallel, unless otherwise agreed.

**By clause 13** provides for the JPLs to support the continuation of the Chapter 11 Cases and the enforcement and recognition in The Bahamas of the Chapter 11 Cases and all orders of the Delaware Bankruptcy Court and elsewhere certain to certain limitations.

**By clause 14** provides for the JPLs to agree that they will not seek the dismissal of the Chapter 11 Cases.

**By clause 15** provides for the realization over time of the properties owned by PropCo based on a strategy to be developed by the JPLs and approved by the Chapter 11 Debtors.

**By clause 16** provides for the funding of the carrying costs of PropCo subject to the sanction of this Court and the Delaware Bankruptcy Court.

**By clause 17** provides for each Party’s reasonable costs with respect to PropCo incurred prior to the date of the Agreement to be charged to PropCo and to be paid from the first available sale proceedings and for 100% of the net proceeds of sale of PropCo’s property to be deposited in an escrow account unless the Parties agree or the release is approved by the Delaware Bankruptcy Court and this Court.

**By clause 18** provides for the Parties to propose procedures for court-to-court communication based on international best practices and acceptable to each of the Delaware Bankruptcy Court and this Honourable Court.

**By clause 19** provides for the Parties to provide a framework for claims and distributions to run in parallel with the liquidation of FTX DM and the Chapter 11 Cases.

**By clause 20** provides for the Parties to co-ordinate distributions so that a distribution is not made to a customer prior to a determination of whether to allow an identical claim in the other proceeding.

<b>By clause 21</b>	provides for the Parties to consider the feasibility of a joint claims process in which customers are only required to file one claim in both the Chapter 11 Cases and the liquidation in The Bahamas.
<b>By clause 22</b>	provides for information sharing concerning the matters contemplated by the Agreement subject to mutually satisfactory arrangements to preserve confidentiality.
<b>By clause 23</b>	provides that in the event of a dispute as to the meaning or operation of the Agreement each Party may upon reasonable notice to the other seek relief from either the Delaware Bankruptcy Court or this Honourable Court separately.
<b>By clause 24</b>	provides that neither Party waives a right except as expressly provided by the Agreement.

- 22.** As regards clause 22 of the Agreement, on 30<sup>th</sup> January 2023, after lengthy negotiations for the sharing of information between FTX DM and the Chapter 11 Debtors, the NDA was executed. Finally, therefore, the JPLs, and their advisors, should shortly obtain access to valuable and critical information about FTX DM that has so far eluded them. The executed NDA is at **BCS-1**, pages **[151]** to **[158]**.
- 23.** I wish to refer to paragraphs 3.b and 3.c of the NDA. Paragraph 3.b addresses a situation where either the Chapter 11 Debtors receive confidential information from FTX DM or FTX DM receives confidential information from the Chapter 11 Debtors and either or both are required by a foreign regulatory or governmental authority to disclose that confidential information. Paragraph 3.c. makes clear that if FTX DM/the JPLs are required by a foreign regulatory or governmental authority to disclose confidential information that they have received the requirement would be subject to any modifications required by this Honourable Court to the disclosure of that information to the foreign regulatory or governmental authority. This point will be dealt with in greater detail in legal submissions filed on the JPLs' behalf.
- 24.** Although the Agreement provides for the JPLs to support the recognition of the Chapter 11 Cases in this Court and the enforcement of orders made on the application of the Chapter 11 Debtors in the Delaware Bankruptcy Court and elsewhere, the Agreement does not in any way seek to limit, restrict or affect the jurisdiction of this Honourable Court in relation

to the matters on which it might be asked to adjudicate including whether any particular Chapter 11 Debtor has standing to appear in this Honourable Court or to obtain any relief sought by the Chapter 11 Debtor. That issue is a matter entirely for this Honourable Court to determine if, and when, any application is made by a Chapter 11 Debtor. Likewise, the Agreement does not seek to limit, restrict or affect the rights of persons who consider that they have claims against FTX DM or their rights to seek relief from this Honourable Court in relation to the provisional liquidation or any subsequent liquidation of FTX DM.

25. It is also of note that many clauses (namely, clauses 6-9, 11, 15, 18-21) only require the Parties to co-operate in relation to matters without mandating any solution. While the JPLs take the obligation to co-operate with the Chapter 11 Debtors very seriously, and they are hopeful that practical and consensual solutions will be possible in this very complex situation, they are mindful of their duties as officers of this Honourable Court. I, therefore, confirm, on behalf of the JPLs that, prior to agreeing any solution in relation to the matters covered by the aforementioned clauses, to the extent necessary and appropriate, we will seek further sanction of this Court.

### **Sanction**

26. At this point, though, the JPLs seek the sanction of this Honourable Court of the Agreement and the NDA so that they can be given effect to in accordance with its terms.
27. The Agreement expressly provides that it will only be effective when it has been sanctioned by this Honourable Court (and approved by the Delaware Bankruptcy Court). Therefore, irrespective of whether the sanction of this Honourable Court is required as a matter of statute, the Parties have agreed that the Agreement should not take effect unless it is so sanctioned.
28. The NDA does not in terms require the sanction of this Honourable Court. However, in light of the possibility that the JPLs may be required to disclose confidential information received by them to foreign regulatory or governmental authorities, the JPLs considered it appropriate to seek sanction of the NDA as well.
29. By the PL Order appointing me (**BCS-1** pages **[134]** to **[137]**) and the order appointing the additional provisional liquidators (**BCS-1** pages **[138]** to **[141]**), as JPLs we were tasked by paragraph 2 with maintaining the value of the assets owned or managed by FTX DM and to

exercise the powers contained in the Companies (Winding Up Amendment) Act 2011, Schedule 4, Parts I and II. Those powers include the power without sanction in Part I, paragraph 7, to deal with all questions in any way relating to or affecting the assets or the winding up of FTX DM. It might be said that the entry into the Agreement and the NDA is dealing with a question that relates to or affects the assets of FTX DM or its winding up, and therefore sanction is not required as a matter of statute.

- 30.** On the other hand, Part II, paragraph 9 authorizes the JPLs, with sanction, to do all other things incidental to exercise of the JPLs' powers. As the JPLs have been tasked with maintaining the value of assets owned or managed by FTX DM, it might be said that the entry into the Agreement and the NDA is the exercise of a power that is incidental to the power to maintain the value of the of assets owned or managed by FTX DM and that sanction is required.
- 31.** Whether or not sanction is strictly required as a matter of statute, the Agreement is clearly an important and significant one such that even without the requirement to obtain sanction in the Agreement itself, the JPLs would have sought sanction in any event given the intense international scrutiny of the provisional liquidation of FTX DM, the JPLs and the jurisdiction of this Honourable Court. The NDA is also important because it envisages that the JPLs will be giving disclosure of confidential information in FTX DM's possession to third parties, the Chapter 11 Debtors, and, as explained above, possibly foreign regulatory and governmental authorities. The NDA is, self-evidently, an agreement that would be a matter of concern to this Honourable Court.
- 32.** The Agreement and the NDA are undoubtedly in the interests of the provisional liquidation of FTX DM, its customers and creditors. Without the Agreement and the NDA, there is a real risk of lengthy protracted litigation in the Delaware Bankruptcy Court to obtain access to information on the International Platform and FTX DM's electronic records which will be immensely time-consuming and expensive. Litigation would also undoubtedly delay the progress of the liquidation of FTX DM and the urgent attention to the myriad of issues that need to be addressed. Moreover, given the mingling of FTX DM's records with those of the Chapter 11 Debtors and the lack of clarity over the ownership of certain assets, the Agreement and the NDA, together, provide a reasonable attempt to move things forward consensually in order that all Parties have access to information that was available to each of them prior to the provisional liquidation of FTX DM and the Chapter 11 Cases and so that

the Parties can also begin the difficult process of realising assets and identifying the persons entitled to them..

### **Conclusion**

**33.** Based on the foregoing, I humbly pray that this Honourable Court do grant the relief as prayed for in the Summons filed herein on 6<sup>th</sup> February 2023, that is an order sanctioning the Agreement and the NDA.

**SWORN TO** before me this )  
**6<sup>th</sup>** day of February 2023 at )  
Nassau, N.P., The Bahamas )



Before me,



**NOTARY PUBLIC**

COMMONWEALTH OF THE BAHAMAS

2022

IN THE SUPREME COURT

COM/com/ooo60

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)**

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**CERTIFICATE**

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I hereby certify that the attached is a true copy of **Exhibit “BCS-1”** referred to in the Third Affidavit of **Brian Simms KC** sworn before me this **6<sup>th</sup> day of February A.D., 2023.**

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**NOTARY PUBLIC**

**TAB 1**

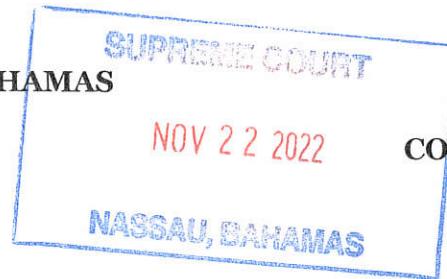
# ANNEX A

1. Alameda Aus Pty Ltd
2. Alameda Global Services Ltd.
3. Alameda Research (Bahamas) Ltd
4. Alameda Research Holdings Inc.
5. Alameda Research KK
6. Alameda Research LLC
7. Alameda Research Ltd
8. Alameda Research Pte Ltd
9. Alameda Research Yankari Ltd
10. Alameda TR Ltd
11. Alameda TR Systems S. de R. L.
12. Allston Way Ltd
13. Analisya Pte Ltd
14. Atlantis Technology Ltd.
15. Bancroft Way Ltd
16. Blockfolio, Inc.
17. Blue Ridge Ltd
18. Cardinal Ventures Ltd
19. Cedar Bay Ltd
20. Cedar Grove Technology Services, Ltd
21. Clifton Bay Investments LLC
22. Clifton Bay Investments Ltd
23. Cottonwood Grove Ltd
24. Cottonwood Technologies Ltd.
25. Crypto Bahamas LLC
26. DAAG Trading, DMCC
27. Deck Technologies Holdings LLC
28. Deck Technologies Inc.
29. Deep Creek Ltd
30. Digital Custody Inc.
31. Euclid Way Ltd
32. FTX (Gibraltar) Ltd
33. FTX Canada Inc
34. FTX Certificates GmbH
35. FTX Crypto Services Ltd.
36. FTX Digital Assets LLC
37. FTX Digital Holdings (Singapore) Pte Ltd
38. FTX EMEA Ltd.
39. FTX Equity Record Holdings Ltd
40. FTX EU Ltd.
41. FTX Europe AG
42. FTX Exchange FZE
43. FTX Hong Kong Ltd
44. FTX Japan Holdings K.K.

- 45. FTX Japan K.K.
- 46. FTX Japan Services KK
- 47. FTX Lend Inc.
- 48. FTX Marketplace, Inc.
- 49. FTX Products (Singapore) Pte Ltd
- 50. FTX Property Holdings Ltd
- 51. FTX Services Solutions Ltd.
- 52. FTX Structured Products AG
- 53. FTX Switzerland GmbH
- 54. FTX Trading GmbH
- 55. FTX Trading Ltd
- 56. FTX TURKEY TEKNOLOJİ VE TİCARET ANONİM ŞİRKET
- 57. FTX US Services, Inc.
- 58. FTX US Trading, Inc
- 59. FTX Ventures Ltd
- 60. FTX Zuma Ltd
- 61. GG Trading Terminal Ltd
- 62. Global Compass Dynamics Ltd.
- 63. Good Luck Games, LLC
- 64. Goodman Investments Ltd.
- 65. Hannam Group Inc
- 66. Hawaii Digital Assets Inc.
- 67. Hilltop Technology Services LLC
- 68. Hive Empire Trading Pty Ltd
- 69. Innovatia Ltd
- 70. Island Bay Ventures Inc
- 71. Killarney Lake Investments Ltd
- 72. Ledger Holdings Inc.
- 73. LedgerPrime Bitcoin Yield Enhancement Fund, LLC
- 74. LedgerPrime Bitcoin Yield Enhancement Master Fund LP
- 75. LedgerPrime Digital Asset Opportunities Fund, LLC
- 76. LedgerPrime Digital Asset Opportunities Master Fund LP
- 77. Ledger Prime LLC
- 78. LedgerPrime Ventures, LP
- 79. Liquid Financial USA Inc.
- 80. LiquidEX LLC
- 81. Liquid Securities Singapore Pte Ltd
- 82. LT Baskets Ltd.
- 83. Maclaurin Investments Ltd.
- 84. Mangrove Cay Ltd
- 85. North Dimension Inc
- 86. North Dimension Ltd
- 87. North Wireless Dimension Inc
- 88. Paper Bird Inc

89. Pioneer Street Inc.
90. Quoine India Pte Ltd
91. Quoine Pte Ltd
92. Quoine Vietnam Co. Ltd
93. SNG INVESTMENTS YATIRIM VE  
DANIŞMANLIK ANONİM  
ŞİRKETİ
94. Strategy Ark Collective Ltd.
95. Technology Services Bahamas  
Limited
96. Verdant Canyon Capital LLC
97. West Innovative Barista Ltd.
98. West Realm Shires Financial  
Services Inc.
99. West Realm Shires Inc.
100. West Realm Shires Services Inc.
101. Western Concord Enterprises  
Ltd.
102. Zubr Exchange Ltd

COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
COMMERCIAL DIVISION



2022

COM/com/00060

**IN THE MATTER OF the Digital Assets and Registered Exchanges Act, 2020  
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**AND IN THE MATTER OF FTX DIGITAL MARKETS LTD.  
(A Registered Digital Asset Business)**

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**ORDER OF SANCTION**

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**Before His Lordship, the Honourable Mr. Chief Justice Ian Winder**

**Dated the 21<sup>ST</sup> day of November, A.D., 2022**

**UPON THE APPLICATION** by an Ex-Parte Summons filed herein on 21<sup>ST</sup> November 2022 on behalf of the Joint Provisional Liquidations (“**the JPLs**”) of FTX Digital Markets Ltd. (“**the Company**”).

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

**AND UPON** reading the Affidavit of Kevin Cambridge filed herein on 21<sup>ST</sup> November 2022.

**IT IS HEREBY DIRECTED AND ORDERED that: -**

- 1.** The application made by the JPLs pursuant to the US Bankruptcy Code chapter 15 of the (“**the Chapter 15 Application**”) on 15<sup>th</sup> November 2022 in the US Bankruptcy Court of the Southern District of New York for the recognition of the provisional liquidation in the Bahamas as a foreign main proceeding is hereby sanctioned by this Honourable Court.
- 2.** The costs of and occasioned by this application be paid out of the assets of the Company.

**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)

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FTX DIGITAL MARKETS LTD.  
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AND IN THE MATTER OF the  
Companies (Winding Up Amendment) Act, 2011

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ORDER OF SANCTION

---

2022  
COM/com/ooo60

  
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*

## Fill in this information to identify the case:

United States Bankruptcy Court for the:

Southern District of New York

Case number (if known): \_\_\_\_\_ Chapter 15

 Check if this is an amended filing

## Official Form 401

**Chapter 15 Petition for Recognition of a Foreign Proceeding**

12/15

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write debtor's name and case number (if known).

## 1. Debtor's name

FTX Digital Markets Ltd.

## 2. Debtor's unique identifier

## For non-individual debtors:

 Federal Employer Identification Number (EIN) \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ Other 207269B. Describe identifier Company Registration # \_\_\_\_\_.

## For individual debtors:

 Social Security number: xxx - xx- \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ Individual Taxpayer Identification number (ITIN): 9 xx - xx - \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ Other \_\_\_\_\_ . Describe identifier \_\_\_\_\_.

## 3. Name of foreign representative(s)

Brian C. Simms, Kevin G Cambridge, and Peter Greaves

## 4. Foreign proceeding in which appointment of the foreign representative(s) occurred

In the Matter of FTX Digital Markets LTD.

## 5. Nature of the foreign proceeding

## Check one:

 Foreign main proceeding Foreign nonmain proceeding Foreign main proceeding, or in the alternative foreign nonmain proceeding

## 6. Evidence of the foreign proceeding

 A certified copy, translated into English, of the decision commencing the foreign proceeding and appointing the foreign representative is attached. A certificate, translated into English, from the foreign court, affirming the existence of the foreign proceeding and of the appointment of the foreign representative, is attached. Other evidence of the existence of the foreign proceeding and of the appointment of the foreign representative is described below, and relevant documentation, translated into English, is attached.

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## 7. Is this the only foreign proceeding with respect to the debtor known to the foreign representative(s)?

 No. (Attach a statement identifying each country in which a foreign proceeding by, regarding, or against the debtor is pending.) Yes

Debtor	<u>FTX Digital Markets Ltd.</u> Name	Case number (if known) _____
<hr/>		
<b>8. Others entitled to notice</b>	Attach a list containing the names and addresses of:  (i) all persons or bodies authorized to administer foreign proceedings of the debtor, (ii) all parties to litigation pending in the United States in which the debtor is a party at the time of filing of this petition, and (iii) all entities against whom provisional relief is being sought under § 1519 of the Bankruptcy Code.	
<hr/>		
<b>9. Addresses</b>	<b>Country where the debtor has the center of its main interests:</b>  <u>The Bahamas</u>	<b>Debtor's registered office:</b>  <u>Bldg. 27, Veridian Corp. Centre W Bay St.</u> Number Street
<hr/>		
		P.O. Box
	<b>Nassau</b>	City State/Province/Region ZIP/Postal Code
<hr/>		
	<b>The Bahamas</b>	Country
<hr/>		
	<b>Individual debtor's habitual residence:</b>	<b>Address of foreign representative(s):</b>
<hr/>		
	Number Street	<u>3 Bayside Executive Park</u> Number Street
<hr/>		
	P.O. Box	P.O. Box
<hr/>		
	City State/Province/Region ZIP/Postal Code	City State/Province/Region ZIP/Postal Code
<hr/>		
	Country	<b>The Bahamas</b> Country
<hr/>		
<b>10. Debtor's website (URL)</b>	<hr/>	
<hr/>		
<b>11. Type of debtor</b>	<i>Check one:</i>	
<input checked="" type="checkbox"/> Non-individual ( <i>check one</i> ):		
<input type="checkbox"/> Corporation. Attach a corporate ownership statement containing the information described in Fed. R. Bankr. P. 7007.1.		
<input type="checkbox"/> Partnership		
<input checked="" type="checkbox"/> Other. Specify: <u>Private Company Limited (LTD)</u>		
<input type="checkbox"/> Individual		

Debtor FTX Digital Markets Ltd.  
Name

Case number (if known) \_\_\_\_\_

**12. Why is venue proper in this district?**

Check one:

Debtor's principal place of business or principal assets in the United States are in this district.

Debtor does not have a place of business or assets in the United States, but the following action or proceeding in a federal or state court is pending against the debtor in this district:

If neither box is checked, venue is consistent with the interests of justice and the convenience of the parties, having regard to the relief sought by the foreign representative, because:

**13. Signature of foreign representative(s)**

I request relief in accordance with chapter 15 of title 11, United States Code.

I am the foreign representative of a debtor in a foreign proceeding, the debtor is eligible for the relief sought in this petition, and I am authorized to file this petition.

I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct,



\_\_\_\_\_  
Signature of foreign representative

Brian C. Simms

Printed name

Executed on

11/15/2022

MM / DD / YYYY



\_\_\_\_\_  
Signature of foreign representative

Printed name

Executed on

\_\_\_\_\_  
MM / DD / YYYY

**14. Signature of attorney**





Date

11/15/2022

MM / DD / YYYY

Signature of Attorney for foreign representative

Warren E. Gluck

Printed name

HOLLAND & KNIGHT LLP

Firm name

31 W. 52nd Street

Number Street

New York

City

NY

10019

State

ZIP Code

(212) 513-3200

Contact phone

[Warren.Gluck@hklaw.com](mailto:Warren.Gluck@hklaw.com)

Email address

4701421

Bar number

NY

State

Warren E. Gluck, Esq.  
Marie E. Larsen, Esq.  
David W. Wirt (*Pro Hac Vice Pending*)  
Jessica Magee (*Pro Hac Vice Pending*)  
Shardul Desai (*Pro Hac Vice Pending*)  
HOLLAND & KNIGHT LLP  
31 W. 52nd Street  
New York, NY 10019  
Telephone: 212-513-3200  
Fax: 212-385-9010  
Warren.Gluck@hklaw.com  
Marie.Larsen@hklaw.com  
David.Wirt@hklaw.com  
Jessica.Magee@hklaw.com  
Shardul.Desai@hklaw.com

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

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:	:	Chapter 15
FTX DIGITAL MARKETS LTD. (in Provisional Liquidation)	:	Case No. 22-_____ ( )
Debtor in a	:	
Foreign	:	
Proceeding. <sup>1</sup>	:	
	:	

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**VERIFIED PETITION FOR RECOGNITION OF  
FOREIGN INSOLVENCY PROCEEDING AND RELATED RELIEF**

Brian C. Simms, Kevin G Cambridge, and Peter Greaves (the “**Joint Provisional Liquidators**”), in their capacity as the joint provisional liquidators of FTX Digital Markets Ltd. (“**FTX Digital**”), in provisional liquidation in the Commonwealth of The Bahamas (the “**Bahamian Liquidation**”) pursuant to the Companies (Winding Up Amendment) Act 2011 (the

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

“CWUA Act”), by their undersigned United States counsel, Holland & Knight LLP, respectfully submits the Official Form Petition, this Verified Petition (together, the “**Petition**”), and the accompanying Declaration of Brian C. Simms, dated November 15, 2022 (the “**Simms Declaration**”), Supplemental Declaration of Brian C. Simms, dated November 15, 2022 (the “**Supplemental Simms Declaration**”), and the exhibits thereto, Sophia T. Rolle-Kapousouzoglou, dated November 15, 2021 (the “**STR Declaration**”), and the exhibits thereto (collectively, the “**Declarations**”), for entry of an Order pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the “**Bankruptcy Code**”):

- (i) recognizing the Bahamian Liquidation as a foreign main proceeding under 11 U.S.C. §§ 1502, 1517(a) and (b)(1), or, in the alternative, as a foreign nonmain proceeding pursuant to 11 U.S.C. § 1517(b)(2) of the Bankruptcy Code;
- (ii) appointing the Joint Provisional Liquidators as FTX Digital’s foreign representatives under 11 U.S.C. §§ 101(24), 1509 and 1517(a);
- (iii) confirming that the Joint Provisional Liquidators have satisfied the requirements of 11 U.S.C. 1515;
- (iv) granting automatic relief pursuant to section 1520 of the Bankruptcy Code;
- (v) granting other and additional relief pursuant to sections 1507 and 1521(a) and (b) of the Bankruptcy Code as necessary, including authorizing the Joint Provisional Liquidators to examine witnesses, take evidence, and seek the production of documents concerning the assets, affairs, rights and/or obligations of FTX Markets; and
- (vi) granting such other and further relief as the Court may deem just and proper.

## **I. PRELIMINARY STATEMENT**

FTX Digital is a Bahamian company in provisional liquidation in the Commonwealth of The Bahamas pursuant to a Petition for Winding Up Order and an Order for Appointment of Provisional Liquidator issued on November 10, 2022. FTX Digital maintains a registered office in The Bahamas and has since its formation. Accordingly, the center of main interests for FTX Digital is presumed to be The Bahamas under 11 U.S.C. § 1516(c).

As set forth below and in the Declarations, the Bahamian Liquidation is a "foreign main proceeding" under chapter 15 of the Bankruptcy Code because it is pending in The Bahamas, where FTX Digital is registered and has its center of main interests.<sup>2</sup> The Joint Provisional Liquidators maintain property in this District under 11 U.S.C. § 109 in the form of a retainer held in an undrawn attorney-trust account of the undersigned counsel. The Joint Provisional Liquidators are the foreign representatives of FTX Digital under 11 U.S.C. § 101(24) because they administer the assets and liabilities of FTX Digital. The Bahamian Liquidation is consistent with, and clearly not manifestly contrary to, the public policy of the United States. The discovery and other relief requested under Section 1521(a) of the Bankruptcy Code is crucial to accurately identify and protect FTX Digital's asset position in the United States, and thus to the efficient administration of its estate. Accordingly, FTX Digital respectfully requests that the Court grant recognition of the Bahamian Liquidation as a foreign main proceeding and grant related relief.

## **II. JURISDICTION, ELIGIBILITY, AND VENUE**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, as well as the Amended Standing Order of Reference dated January 31, 2012, Reference M-431, *In re Standing Order of Reference Re: Title 11, 12 Misc. 00032* (S.D.N.Y. Feb. 2, 2012) (Preska, C.J.). This is a core proceeding under 28 U.S.C. § 157(b)(2)(P).

2. Venue is proper in this District pursuant to 28 U.S.C. §§ 109(a) and 1410(1) because FTX Digital's principal (and indeed only) assets in the United States are in New York. FTX Digital has an interest in funds in the amount of \$15,000, deposited with Holland & Knight LLP ("H&K") and held by H&K in a non-interest bearing client trust account located in New York, New York (the "H&K Retainer"). Simms Declaration ¶ 61; *see also, e.g., In re Olinda*

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<sup>2</sup> In the alternative, the Joint Provisional Liquidators submits that the Bahamian Liquidations is a "foreign nonmain proceeding" because FTX Digital maintains nontransitory economic activity in The Bahamas.

*Star Ltd.*, 614 B.R. 28, 39 (Bankr. S.D.N.Y. 2020) (“Courts in this Circuit have held that section 109(a) can be satisfied by bank accounts in the United States, including by an undrawn retainer.”) (citations omitted); *In re Ocean Rig UDW Inc.*, 570 B.R. 687, 700 (Bankr. S.D.N.Y. 2017) (finding venue when New York counsel held a debtor’s retainer in a New York account); *In re U.S. Steel Can. Inc.*, 571 B.R. 600, 610 (Bankr. S.D.N.Y. 2017) (“Some courts, including this one, have held that an undrawn retainer in a United States bank account qualifies as property in satisfaction of section 109(a).”).<sup>3</sup>

3. The statutory predicates for the relief requested are sections 105(a), 1504, 1506, 1515, 1517, 1520, and 1521 of the Bankruptcy Code. The Joint Provisional Liquidators have properly commenced this case pursuant to sections 1504 and 1509(a) of the Bankruptcy Code by filing the Petition for recognition of the Bahamian Liquidation under section 1515 of the Bankruptcy Code.

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<sup>3</sup> Petitioner has examined the provisions of section 1410 of the Bankruptcy Code and has concluded that both section 1410(1) and 1410(3) of the Bankruptcy Code counsel in favor of a filing in the Southern District of New York. *See* 28 U.S.C. §§ 1410(1), (3) (stating that a Chapter 15 bankruptcy case may be commenced, in relevant part, where the prospective debtor’s principal assets are located in the United States, or “in which venue will be consistent with the interests of justice and the convenience of the parties, having regard to the relief sought by the foreign representative”). First, the Foreign Debtor does not have a principal place of business in the United States. As set forth herein, the Foreign Debtor’s center of main interests, including its headquarters, is in The Bahamas. *See* infra discussion at ¶ 27. Second, the Foreign Debtor’s principal assets in the United States, in the form of a retainer held in an undrawn attorney-trust account of Holland & Knight, LLP, are located in the Southern District of New York. *See* supra discussion at ¶ 2. Third, a recent decision under New York Law suggests that certain digital assets have their situs in New York. *See, e.g.*, *LCX AG v. John Does Nos. 1-25, et al.*, Index No. 154644/2022 (Sup. Ct. 2022). Additionally, certain relevant agreements are governed by New York law, and certain counterparties of FTX Digital, and investors in FTX Digital, are located in New York. Finally, there is currently no litigation pending by or against the Foreign Debtor anywhere in the United States (the FTX Trading and FTX Affiliates bankruptcy cases do not include FTX Digital as a debtor), so section 1410(2) is inapplicable. *See* 28 U.S.C. § 1410(2) (stating that a Chapter 15 bankruptcy case should be commenced in the district in which actions are pending against the Debtor). It is unclear whether FTX Digital has any property in Delaware. However, this Court has jurisdiction over this matter, as venue is not a jurisdictional issue. *See, e.g.*, *Town & Country Linen Corp. v. Ingenious Designs LLC*, Case No. 18-cv-5075, 2022 WL 1515120, at \*10 (S.D.N.Y. May 13, 2022) (indicating that venue and jurisdiction involve separate analysis). Petitioner believes that the Southern District of New York is the appropriate venue based upon its investigation thus far.

### **III. FACTUAL BACKGROUND**

#### **A. Formation, Registered Office, and Operations of FTX Digital**

4. FTX Digital was incorporated on July 22, 2021 in the Commonwealth of The Bahamas as an International Business Company, with registration number 207269B. Simms Declaration ¶¶ 27, 28. FTX Digital is a company within the meaning of the CWUA Act and is in provisional liquidation in the Commonwealth of The Bahamas pursuant to a Petition for Winding Up Order filed by the Securities Commission of The Bahamas and an Order for Appointment of Provisional Liquidator issued on November 10, 2022. *Id.* ¶ 2. On that date, FTX Digital's principal address and office was Building 27, Veridian Corporate Centre, West Bay Street, Nassau, N.P., The Bahamas. *Id.* ¶ 28. Two of the Joint Provisional Liquidators are also residents of the Bahamas. *Id.* ¶¶ 7–8.

5. FTX Digital is registered as a digital asset business under the Digital Assets and Registered Exchanges Act, 2020 (the “**DARE Act**”) pursuant to Bahamas law. *Id.* ¶ 29. Under the DARE Act, FTX Digital is registered to provide: (i) an exchange between digital assets and fiat currency and (ii) an exchange between one or more forms of digital assets. *Id.* It is a subsidiary of FTX Trading Ltd., a company incorporated in Antigua and Barbuda, that filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code on November 11, 2022, in the United States Bankruptcy Court for District of Delaware, along with 134 affiliate entities.<sup>4</sup> *Id.* ¶¶ 14, 35. The ultimate beneficial owner of FTX Digital is Samuel Bankman-Fried. *Id.* ¶ 33.

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<sup>4</sup>*In re FTX Trading Ltd.*, Case No. 22-11068, in the United States Bankruptcy Court for the District of Delaware (the “**FTX Trading Bankruptcy Case**”).

**B. Events Leading to the Provisional Liquidation and Appointment of the Joint Provisional Liquidators**

**1. Petition for Winding Up Order**

6. The Securities Commission of The Bahamas (“**The Bahamas Commission**”), is a regulatory body constituted pursuant to the Securities Industry Act 2011 under the law of The Bahamas. STR Declaration ¶ 9–10. In its capacity as regulator, The Bahamas Commission may apply to the Supreme Court, Commercial Division, of the Commonwealth of The Bahamas (the “**Bahamian Court**”) to wind up a company under the CWUA Act, if the company is carrying on a regulated business in the Bahamas for any reason as provided under the regulatory laws or any other law: CWUA Act §§ 190(1)(d) and (4). *Id.* ¶ 12. On November 10, 2022, The Bahamas Commission suspended FTX Digital’s license to conduct business. *Id.* ¶ 10. The CWUA Act § 186(4) authorizes The Bahamas Commission to petition for the winding up of a company over which it has regulatory authority and whose license has been suspended. *Id.* ¶ 15. Further, a winding up order may be entered if a company is unable to pay its debts as they fall due or is insolvent. *Id.* ¶¶ 10, 19. And, the DARE Act permits The Bahamas Commission to apply to the Bahamian Court for an order to take such action, as The Bahamas Commission considers necessary to protect the interests of clients or creditors of a regulated company. *Id.* ¶ 16.

7. Pending the entry of a winding up order, a provisional liquidator may be appointed when there is a *prima facie* case for making a winding up order under CWUA Act § 199(2)(a) and the appointment of a provisional liquidator is necessary to (i) prevent the dissipation or misuse of the company’s assets, (ii) to prevent mismanagement or misconduct on the part of the company’s directors; and/or (iii) it is in the public interest. *Id.* ¶ 18. On November 10, 2022, The Bahamas Commission filed a petition in the Bahamian Court for an order directing that FTX Digital be wound up and for the appointment of a the Provisional Liquidator. *Id.* ¶ 10. On the same date, the

Bahamian Court entered its Order for Appointment of Provisional Liquidator (the “**Provisional Liquidation Order**”). *Id.* ¶ 21. On November 14, 2022, the Bahamian Court entered its Order for Appointment of Joint Provisional Liquidators, appointing Messrs. Kevin G Cambridge and Peter Greaves as Joint Provisional Liquidators with Brian C. Simms. *Id.* ¶ 23.

## **2. The Provisional Liquidation Order**

8. Under the CWUA Act, a provisional liquidator is authorized to take any action that he considers fit under the CWUA Act § 199(4) to maintain the value of the assets owned or managed by the company or to carry out the functions for which he was appointed. *Id.* ¶ 22. The authorized powers of a provisional liquidator are quite broad and include, for example, the power: (i) to bring or defend any action or other legal proceeding in the name and on behalf of the company; (ii) to carry on the business of the company; (iii) to dispose of any property of the company to a person who is or was related to the company; and (iv) to sell any of the company's property by public auction or private contract. *Id.* ¶ 19.

9. The Provisional Liquidation Order specifically provides:

2. The Provisional Liquidator is hereby authorised to take any action that he considers fit under the Companies (Winding Up Amendment) Act 2011 (“**the Act**”), section 199(4) to maintain the value of the assets owned or managed by the Company or to carry out the functions for which he was appointed including,

- a. with the sanction of the court, those powers contained in Part I of the Fourth Schedule of the Act; and
- b. with or without sanction the exercise of general powers specified in Part II of the Fourth Schedule of the Act.

...

5. Until further order of this Court the Joint Provisional Liquidators are directed to take all and any necessary steps that they consider fit to protect the assets of the Company wheresoever situate including any assets held on trust by the Company.

*Id.* ¶ 22.

#### IV. BASIS FOR RELIEF

##### A. FTX Digital is Eligible for Relief under Section 109(a) of the Bankruptcy Code

10. Foreign debtors seeking relief under chapter 15 must satisfy the debtor eligibility requirements of 11 U.S.C. § 109(a). *See Olinda Star*, 614 B.R. at 39. Section 109(a) provides that “only a person that resides or has a domicile, a place of business, or property in the United States, or a municipality, may be a debtor” under the Bankruptcy Code. *See Drawbridge Special Opportunities Fund LP v. Barnet (In re Barnet)*, 77 F.3d 238, 246-48 (2d Cir. 2013). Section 109(a) does not require a specific quantum of property in the United States, nor does it indicate when or for how long such property must have a United States *situs*. *See, e.g., In re Berau Capital Res. Pte Ltd.*, 540 B.R. 80, 82 (Bankr. S.D.N.Y. 2015).

11. Courts regularly hold that attorney retainers deposited in a New York bank account satisfy the “property in the United States” eligibility requirement of section 109(a). *See Olinda Star*, 614 B.R. at 40 (client trust account held by the debtor at law firm in New York satisfies 109(a)); *In re Foreign Econ. Indus. Bank Ltd., “Vneshprombank” Ltd.*, 607 B.R. 160, 171-72 (Bankr. S.D.N.Y. 2019) (“A foreign debtor may satisfy the section 109(a) property requirement by having a retainer.”); *In re Octaviar Admin. Pty Ltd.*, 511 B.R. 361, 373-74 (Bankr. S.D.N.Y. 2014) (finding that the debtor “had property in the United States in the form of a retainer [, which] is sufficient to satisfy the requirements of section 109(a) of the Bankruptcy Code”).

12. Here, FTX Digital satisfies section 109(a) because it has property in the United States and in this district in the form of the H&K Retainer. Simms Declaration ¶ 61. The H&K Retainer remains in the bank account and constitutes FTX Digital’s property (subject to H&K’s applicable rights). *Id.*

**B. The Bahamian Liquidation Should be Recognized under Chapter 15**

13. The Petition should be granted under Chapter 15 because: (1) it concerns a “foreign proceeding”; (2) it was commenced by the Joint Provisional Liquidators who are duly authorized “foreign representatives”; and (3) all the required supporting documentation has been filed.

**1. Legal Standards**

14. The Second Circuit holds that “[u]nique to the Bankruptcy Code,” Chapter 15 contains a statement of purpose, which is “to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency . . .” *In re Fairfield Sentry Ltd.*, 714 F.3d 127, 132 (2d Cir. 2013) (citing 11 U.S.C. § 1501(a)). Chapter 15 and the Model Law “are designed to optimize disposition of international insolvencies by facilitating appropriate access to the court system of a host country (the United States, in the case of Chapter 15) by a representative of an insolvency proceeding pending in a foreign country.” *In re B.C.I. Fins. Pty Ltd.*, 583 B.R. 288, 292 (Bankr. S.D.N.Y. 2018) (citations omitted).

15. Consequently, “Chapter 15 expresses a strong preference for providing assistance to foreign representatives in appropriate circumstances. *That congressional preference is not to be lightly disturbed.*” *In re Platinum Partners Value Arbitrage Fund L.P.*, No. 18CV5176 (DLC), 2018 WL 3207119, \*4 (S.D.N.Y. June 29, 2018) (emphasis added and footnote omitted). “Chapter 15 . . . provides courts with broad, flexible rules to fashion relief that is appropriate to effectuate the objectives of the chapter[.]” *In re Oi S.A.*, 587 B.R. 253, 264 (Bankr. S.D.N.Y. 2018).

**2. The Bahamian Liquidation is a “Foreign Proceeding”**

**a. A Provisional Liquidation is a “Foreign Proceeding”**

16. The Bahamian Liquidation satisfies the definition of “foreign proceeding” as required by section 1517(a)(1) of the Bankruptcy Code. Under Section 101(23) of the Bankruptcy

Code, a “foreign proceeding” is defined as “a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.”

17. As referenced above, the Bahamian Liquidation is an involuntary liquidation. It is well recognized that this type of proceeding is a “foreign proceeding” as defined in 11 U.S.C. § 101(23).

18. Further, as explained in *In re Betcorp Ltd.*<sup>5</sup>, in the context of Chapter 15, “the word ‘proceeding’ requires a broader definition in order to achieve the statutory directive of interpretation consistent with the understandings and the usages of international law and the UNCITRAL Model Law.” 400 B.R. at 277. As such:

the “essence of a ‘proceeding’ [is] the acts and formalities set down in law so that courts, merchants and creditors can know them in advance, and apply them evenly in practice. In the context of corporate insolvencies, the hallmark of a ‘proceeding’ is a statutory framework that constrains a company’s action and that regulates the final distribution of a company’s assets.

*Id.* at 278.

19. Accordingly, the Bahamian Liquidation a “proceeding” under 11 U.S.C. § 101(23). The CWUA Act establishes a comprehensive statutory framework for the winding up of a Bahamian company like FTX Digital. It constrains a company’s actions in liquidation, such as the cessation of the powers of the corporate directors, and provides broad authority for the Joint Provisional Liquidators to take actions for the benefit of stakeholders. STR Declaration ¶ 25; *see Betcorp*, 400 B.R. at 280 (“The fact that commencing this type of external administration terminates the authority of the company’s directors, combined with the fact that the winding up

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<sup>5</sup> 400 B.R. 266 (Bankr. D. Nev. 2009).

cannot be stopped by the equity interest holders once they have passed the special resolution, lends further support to a finding that this Australian legal process is a proceeding.”).

20. The CWUA Act also allows the Bahamian court to alter the powers of the Joint Provisional Liquidators or remove and replace them. STR Declaration ¶ 26. And, the winding up cannot be reversed absent court intervention. *Id.*

b. The Bahamian Liquidation Meets the Elements of 11 U.S.C. § 101(23)

21. Courts apply seven elements to determine if 11 U.S.C. § 101(23) has been satisfied: (1) [the existence] of a proceeding; (2) that is judicial or administrative; (3) that is collective in nature; (4) that is in a foreign country; (5) that is authorized or conducted under a law related to insolvency or the adjustment of debts; (6) in which the debtor’s assets and affairs are subject to the control or supervision of a foreign court; and (7) which is for the purposes of reorganization or liquidation.” *See In re ENNIA Caribe Holding N.V.*, 594 B.R. 631, 638 (Bankr. S.D.N.Y. 2018).

22. The Bahamian Liquidation satisfies these elements.

23. First, for the reasons set forth above, the Bahamian Liquidation is a “proceeding.”

24. Second, the Bahamian Liquidation is a “judicial or administrative proceeding.”

Many of the Joint Provisional Liquidators’ tasks will be administrative in nature, *i.e.*, to carry on the business of the company - collecting assets, convening meetings, preparing various reports, and investigating the assets of FTX Digital. *See* STR Declaration ¶ 26; *see also ABC Learning Ctrs.*, 445 B.R. at 328. The Bahamian Liquidation is also judicial in character because the Bahamian Court maintains supervisory authority. STR Declaration ¶¶ 22, 26 (providing until further order to the Court, Provisional Liquidator is directed . . .); *see also ABC Learning Ctrs.*, 445 B.R. at 328 (“A winding up becomes judicial in character whenever the Australian Courts exercises its supervisory powers.”).

25. Third, the FTX Liquidation is “collective in nature.” This factor is typically evaluated in the context of the benefits granted to creditors, but the court can also examine “the law governing the foreign action and the parameters of the particular proceeding[.]” *In re PT Bakrie Telecom TBk*, 601 B.R. 707, 720 (Bankr. S.D.N.Y. 2019) (quoting *In re Ashapura Minechem Ltd.*, 480 B.R. 129, 136-37 (S.D.N.Y. 2014)). Here, the CWUA Act grants the Joint Provisional Liquidators the power, with the sanction of the Court, to pay any class of creditors in full. STR Declaration ¶ 27. And, one purpose of the appointment of the Joint Provisional Liquidators was “to protect the interests of investors and creditors of FTX Digital. . . .” *Id.* ¶ 27.

26. Notably, the Third Circuit in *ABC Learning* held that the Australian foreign proceeding was collective even though the foreign representative had no assets to distribute to creditors. *See* 728 F.3d at 309. In this case, FTX Digital has assets as a registered digital asset business, and the Joint Provisional Liquidators are acting for the benefit of creditors. STR Declaration ¶ 27.

27. Fourth, the Bahamian Liquidation is occurring in The Bahamas, a foreign country. FTX Digital is a Bahamian company and maintains a registered office there. *Id.* ¶ 38. The Bahamian Liquidation operates under Bahamian law and is governed by the CWUA Act. *Id.* ¶ 28. Two of the Joint Provisional Liquidators are residents of The Bahamas. Simms Declaration ¶¶ 7–8. And, the Bahamian Court holds supervisory authority over the Bahamian Liquidation. STR Declaration ¶ 28; *see also, e.g.*, *ABC Learning Ctrs.*, 445 B.R. at 330; *Manley Toys*, 580 B.R. at 643.

28. Fifth, the Bahamian Liquidation proceeds under the auspices of the CWUA Act, which is a statutory scheme “relating to insolvency or adjustment of debt” pursuant to 11 U.S.C. § 101(23). In other words, the proceeding “must be authorized by a statute that deals with

corporate insolvency or the adjustment of corporate debts. Here, one of the bases for the winding up and the appointment of the Joint Provisional Liquidators under the CWUA Act is the asserted insolvency of FTX Digital. STR Declaration ¶ 29. The CWUA Act authorizes the entry of a winding up order, the appointment of a provisional liquidator, and outlines the provisional liquidator's powers and responsibilities for the benefit of stakeholders on account of a company's insolvency. *Id.* ¶ 29. And, the provisional nature of the liquidation changes upon the entry of a winding up order. *Id.*; *see Ashapura*, 480 B.R. at 144 (the ability to “alternate between various remedial measures” is emblematic of satisfaction of this factor); *Betcorp*, 400 B.R. at 282 (noting that “the statutory ability to shift among various forms of dissolution given changing circumstances, demonstrate[s] that winding up is achieved under a law relating to insolvency or the adjustment of debts”).

29. As the Southern District of New York has explained,

Supervision or control of the company's affairs is not a demanding standard. The foreign court need not control the day-to-day operations with the debtor. It is sufficient, for instance, that the body monitor compliance with the repayment plan negotiated by the debtors and creditors ... the fact that actions in a foreign court related to the proceeding are typically imitated by interested parties and that liquidators proceed with most of their duties without court involvement was found ‘not [to] undermine the ... court[‘s] supervisory role.

*Ashapura*, 480 B.R. at 138 (quoting *ABC Learning Ctrs.*, 445 B.R. at 332).

30. The provisions of the CWUA Act and terms of the Provisional Liquidation Order clearly illustrate that the Bahamian Liquidation is under the supervision of the Bahamian Court, notwithstanding the powers granted to the Joint Provisional Liquidators. The Provisional Liquidation Order permits the Court to alter the power granted to the Joint Provisional Liquidators, and limits the powers of directors and management. STR Declaration ¶ 30; *see ABC Learning Ctrs.*, 445 B.R. at 331 (Removal and replacement of director is evidence of court supervision.).

31. Finally, the Bahamian Liquidation exists “for the purpose of reorganization or liquidation.” The express purposes of the CWUA Act is to permit and facilitate liquidation. STR Declaration ¶ 31; *see Cell C*, 571 B.R. at 553; *ABC Learning Ctrs.*, 445 B.R. at 332. The Petition for Winding Up Order commenced the process of liquidation. *See* STR Declaration ¶ 11; Simms Declaration ¶ 57.

32. For these reasons, the Bahamian Liquidation is a “foreign proceeding” in satisfaction of 11 U.S.C. § 1517(a)(1).

**3. The Joint Provisional Liquidators are the “Foreign Representatives” of FTX Digital**

33. A chapter 15 case is commenced by the filing of a petition by a “foreign representative.” *See* 11 U.S.C. § 1515(a). The Bankruptcy Code defines a “foreign representative” as “a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor’s assets or affairs or to act as a representative of such foreign proceeding.” 11 U.S.C. § 101(24).<sup>6</sup>

34. The requirement that a foreign representative be authorized in a foreign proceeding is “not an onerous one.” *PT Bakrie*, 601 B.R. at 717. Section 101(24) does not require that the foreign representative be appointed by a “foreign tribunal.” *See Cell C*, 571 B.R. at 550.

35. The Provisional Liquidation Order specifically gave the Liquidator authority over FTX Digital’s assets and, with sanction of the Court, the power to pay creditors. STR Declaration ¶ 35; *see Cell C*, 571 B.R. at 553 (person appointed by resolution is a foreign representative); *In re OAS S.A.*, 533 B.R. 83, 98-100 (Bankr. S.D.N.Y. 2015) (appointing foreign representative by board resolution that conferred authority to administer assets and liabilities). The Joint Provisional

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<sup>6</sup> The “foreign representative” can be an individual. *See Ascot Fund.*, 603 B.R. at 278 (citing 11 U.S.C. § 101(41)).

Liquidators are the representatives of FTX Digital authorized to act under the Bahamian Court’s order to carry out the powers under the CWUA Act. STR Declaration ¶ 35.

36. The Joint Provisional Liquidators are thus proper “foreign representatives” within the meaning of section 101(24) with respect to FTX Digital, and section 1517(a)(2) is satisfied.

**4. The Joint Provisional Liquidators Properly Filed this Case**

37. The Joint Provisional Liquidators duly and properly filed this proceeding as required by section 1504 of the Bankruptcy Code by filing the petition pursuant to 11 U.S.C. § 1515(a).

38. The Petition was accompanied by all documents required by subsections 1515(b) and 1515(c), including the Provisional Liquidation Order, and the Federal Rules of Bankruptcy Procedure. *See Olinda Star*, 614 B.R. at 45.

39. Accordingly, the Joint Provisional Liquidators satisfied the requirements set forth in section 1515 of the Bankruptcy Code and the Bankruptcy Rules. This Chapter 15 case has been properly commenced.

**C. The Bahamian Liquidation is a “Foreign Main Proceeding.”**

40. Section 1517(b)(1) of the Bankruptcy Code provides that a foreign proceeding shall be recognized as a “foreign main proceeding” if it is pending in the country where the debtor has its center of main interests (“COMI”) as of the date of the petition for recognition. 11 U.S.C. § 1502(4); *see also* *Fairfield Sentry*, 714 F.3d at 127. A debtor has only one COMI. *See In re Millennium Glob. Emerging Credit Master Fund Ltd.*, 458 B.R. 63, 79 (Bankr. S.D.N.Y 2011) (“[E]very entity has a center of main interests.”).

41. Courts in this district have developed a list of non-exclusive, but “widely adopted” factors that may be considered when determining COMI:

(1) the location of the debtor’s headquarters; (2) the location of those who actually manage the debtor; (3) the location of the debtor’s primary assets; (4) the location of the debtor’s creditors or of a majority of the creditors who would be affected by the case; and/or (5) the jurisdiction whose law would apply to most disputes.

*Olinda Star*, 614 B.R. at 41 (citation omitted); *see also In re Serviços de Petróleo Constellation S.A.*, 600 B.R. 237, 272-73 (Bankr. S.D.N.Y. 2019). The Second Circuit has also emphasized the importance of criteria that are both objective and ascertainable to third parties to determine a debtor’s COMI. *See Fairfield Sentry*, 714 F.3d at 136-37. An objective determination of COMI results from an examination of factors “in the public domain.” *Id.* at 137 (citation omitted).

42. Absent evidence to the contrary, a debtor’s registered office is presumed to be its COMI. 11 U.S.C. § 1516(c). The legislative history indicates that this presumption was “designed to make recognition as simple and expedient as possible” in cases, as here, where COMI is not controversial. H. Rep. 109-31 pt. 1, at 112-13 (2005). When determining a debtor’s COMI, the Bankruptcy Code provides “considerable but not complete discretion.” *Serviços de Petróleo*, 600 B.R. at 278 (citation omitted).

43. FTX Digital is incorporated under the laws of The Bahamas, and since its incorporation, maintained a registered office in The Bahamas, creating a presumption that The Bahamas is its center of main interests. Simms Declaration ¶¶ 1, 27; 11 U.S.C. § 1516(c). The registered office presumption is not rebutted, but rather confirmed, on the facts of this case.

44. It is objectively ascertainable by third parties that the COMI of FTX Digital is The Bahamas. FTX Digital’s operations are directed from the Bahamas. Simms Declaration ¶¶ 33, 43.

45. Further, two of the Joint Provisional Liquidators are residents of The Bahamas. *Id.* ¶¶ 7-8; *see, e.g.*, *Betcorp*, 400 B.R. at 292 (finding COMI in Australia “[t]he location of those that manage Betcorp -- the liquidators” were located); *Ascot Fund*, 603 B.R. at 280 (factor supports a

COMI finding of the Cayman Islands when the “JOLs are based in the Cayman Islands … and they, along with their staff … have directed and conducted the [debtor’s] liquidation in the Cayman Islands”).

46. With respect to FTX Digital’s assets, it is a registered digital asset business. Simms Declaration ¶ 29. Its business involves effecting exchanges between digital assets and fiat currency and exchanges between one or more forms of digital assets. *Id.* Digital assets, which exist and are transacted on a digital ledger also known as a blockchain, have unique features that include attributes of bearer instruments. *Id.* ¶ 29. To the extent a customer or account holder has control over a wallet’s private key, the account holder can conduct immutable transactions of the digital assets held within the wallet. *Id.* ¶ 18. However, commercial exchanges often store its customers’ digital currencies in pooled wallets, wherein the customer does not have control over the pooled wallet’s private key; rather, the customer’s assets are recorded on internal ledgers external to the blockchain. *Id.* ¶¶ 21, 24. In these circumstances, customers can conduct transactions only via requests to the commercial exchange. *Id.* ¶ 24. The assets on an exchange can be removed from the exchange much like cash can be withdrawn from a traditional bank account – however, in this case, from a digital wallet. *See id.* ¶ 24; *see also Ascot Fund*, 603 B.R. at 285 (rejecting the argument that the location of the asset is the “key piece of evidence ‘ascertainable by third parties.’”); *Ocean Rig*, 570 B.R. at 704 (although existence of assets outside the jurisdiction of liquidation “complicated” the analysis, the prevailing evidence was that the liquidators “have engaged in various activities supporting their COMI in the Cayman Islands for a year”).

47. At a minimum, FTX Digital’s creditors include all account holders with assets stored in the exchange’s custodial wallets. Simms Declaration ¶ 60. And, there are likely additional creditors that have not yet been fully identified. *See id.*

48. Finally, by virtue of its incorporation in The Bahamas, FTX Digital is subject to Bahamian laws, regulations, and its jurisdiction, including with respect to disputes. *See Olinda Star*, 614 B.R. at 43-44. Specifically, the Bahamian Liquidation is conducted pursuant to the CWUA Act, meaning that Bahamian law would apply to most disputes. *See Betcorp*, 400 B.R. at 292 (“The voluntary winding up is being conducted pursuant to the Australian [insolvency laws] and therefore this is the law that would apply to most disputes.”). Even if FTX Digital is subject to the laws of other jurisdictions, this does not necessarily weigh against a finding of COMI in The Bahamas. *See Olinda Star*, 614 B.R. at 43-44 (weighing this factor in favor of debtor even if “it may be subject to other regulatory regimes”).

**D. Alternatively, the Bahamian Liquidation is a Foreign Nonmain Proceeding**

49. Although the Joint Provisional Liquidators submit that the Bahamian Liquidation is a “foreign main proceeding,” in the alternative, the Joint Provisional Liquidators seek recognition of the Bahamian Liquidation as a “foreign nonmain proceeding.” Courts will recognize a foreign proceeding as a “foreign nonmain proceeding” if “the debtor has an establishment within the meaning of section 1502 in the foreign country where the proceeding is pending.” 11 U.S.C. § 1517(b)(2). “Establishment” is defined in Chapter 15 as “any place of operations where the debtor carries out a nontransitory economic activity.” 11 U.S.C. § 1502(5); *see Serviços de Petróleo*, 600 B.R. at 277 (“[T]he foreign debtor must establish a degree of stable connections with the jurisdiction to constitute a nontransitory ‘establishment.’”). Courts require proof of more than a “mail-drop presence.” *Id.*

50. Several factors “contribute to identify an establishment: the economic impact of the debtor’s operations on the market, the maintenance of a ‘minimum level of organization’ for period of time, and the objective appearance to creditors whether the debtor has a local presence.”

*Millennium Glob.*, 458 B.R. at 85. A “local effect on the marketplace” is evidenced by, among other things, engagement of local counsel. *Id.* at 86-87. At least one court holds that the presence of the liquidators is relevant to the determination of whether the debtor has an establishment in that location. *Id.* at 86.

51. In this case, The Bahamas is not merely a letter-box jurisdiction for FTX Digital. Its liquidation is centralized in The Bahamas, where two of the Joint Provisional Liquidators reside. The situs—the power to transfer the digital assets held by the exchange—is centralized in The Bahamas. Simms Declaration ¶ 43. Further, with a registered and principal address in The Bahamas, this supports a finding of the “establishment” in The Bahamas.

52. For these reasons, in the event the Court concludes that the Bahamian Liquidation is not a foreign main proceeding, the Bahamian Liquidation should be recognized as a foreign nonmain proceeding.

**E. The Requested Relief Accords with the Bankruptcy Code and U.S. Public Policy**

53. A bankruptcy court may refuse to grant recognition under chapter 15 if the action “would be manifestly contrary to the public policy of the United States.” 11 U.S.C. § 1506; *see also Fairfield Sentry*, 714 F.3d at 139 (“[T]he word ‘manifestly’ in international usage restricts the public policy exception to the *most fundamental policies of the United States.*”) (emphasis in original). Courts “interpret this exception as a narrow one that should be applied sparingly.” *ENNIA Caribe*, 594 B.R. at 640 (citation omitted). The proper focus is on whether a foreign proceeding violates “fundamental standards” of procedural “fairness.” *In re Metcalfe & Mansfield Alt. Invs.*, 421 B.R. 685, 697 (Bankr. S.D.N.Y. 2010).

54. The Bahamian Liquidation is clearly not “manifestly contrary to the public policy of the United States.” The CWUA Act is consistent with approaches to liquidation in other

countries, including with respect to the power to dispose of property, compromise claims and pay creditor classes. *See also ENNIA Caribe*, 594 B.R. at 640-41 (rejecting “due process concerns” in part because of a “variety of legal procedures” permitted to challenge the foreign proceeding); *ABC Learning Ctrs.*, 728 F.3d at 310 (*pro rata* distribution among levels of priority emblematic of a foreign proceeding that does not violate United States public policy).

55. Indeed, recognizing the Bahamian Liquidation will assist the orderly administration of FTX Digital’s liquidation, consistent with the public policy of the United States that the Bankruptcy Code embodies.

V. **THE COURT SHOULD GRANT THE JOINT PROVISIONAL LIQUIDATORS’ REQUEST FOR DISCRETIONARY RELIEF PURSUANT TO SECTION 1521 THE BANKRUPTCY CODE**

56. Section 1521(a) provides in relevant part that “[u]pon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief including . . . (4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor’s assets, affairs, rights, obligations or liabilities[.]” *See In re Inversora Eléctrica de Buenos Aires*, 560 B.R. 650, 655 (Bankr. S.D.N.Y. 2016) (in the context of section 1521(a), the “Bankruptcy Code confers exceedingly broad discretion . . . that would further the purposes of chapter 15 and protect the debtor’s assets and the interests of creditors”); *see also Millennium Glob.*, 471 B.R. at 346 (citation and footnote omitted) (“Section 1521(a)(4) provides specifically that the Court may enter an order providing for ‘the taking of evidence or the delivery of information concerning the debtor’s assets, affairs, rights, obligations or liabilities.’ . . . By its

terms, this provision enables a Foreign Representative to take broad discovery concerning the property and affairs of a debtor.”).<sup>7</sup>

57. Courts have recognized that the scope of discovery sought via 11 U.S.C. § 1521(a)(4) is particularly broad when the foreign representative is “gathering information which will enable them to comply with their duties.” *Id.* at 390 (quoting *In re Platinum Partners Value Arbitrage Fund L.P.*, 583 B.R. 803, 821 (Bankr. S.D.N.Y. 2018)).<sup>8</sup>

58. Pursuant to section 1507, the Court may also grant discretionary relief to provide additional assistance beyond that permitted under section 1521 to a foreign representative. 11 U.S.C. § 1507(a). In exercising discretion to grant relief under this section, courts are guided by the standards set forth in section 1507(b), which provides that a court:

[i]n determining whether to provide additional assistance ... shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure—(1) just treatment of all holders of claims against or interests in the debtor’s property; (2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding; (3) prevention of preferential or fraudulent dispositions of property of the debtor; (4) distribution of proceeds of the debtor’s property substantially in accordance with the order prescribed by this title; and (5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.<sup>9</sup>

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<sup>7</sup> A foreign nonmain proceeding can be “granted nearly identical relief as the relief provided to a main proceeding.” *Id.* at 272.

<sup>8</sup> Discovery sought via 11 U.S.C. § 1521(a)(4) is “not limited to documents in the United States. Permissible discovery extends to documents in the possession, custody or control of a party, including documents held by a party’s attorneys or agents” and the court “may order the production of documents from outside the United States.” See *In re Markus*, 607 B.R. 379, 389-390 (Bankr. S.D.N.Y. 2019), vacated sub nom. in part on other grounds, *Markus v. Rozhkov*, 615 B.R. 679 (Bankr. S.D.N.Y. Apr. 3, 2020). To that end, “[b]y its nature, chapter 15 involves parties located outside the United States. Absent some express language in chapter 15 of any geographical limitation on the scope of discovery, there is no basis for [a bankruptcy court] ... to impose such a limitation.” *Id.* at 390.

<sup>9</sup> Courts in this District have indicated that the “interplay between the relief available under sections 1507 and 1521 is far from clear.” *Olinda Star*, 614 B.R. at 46 (quoting *In re Acanti Comm’ns Grp.*, 682 B.R. 603, 615-16 (Bankr. S.D.N.Y. 2018)). The Fifth Circuit held that a court must “first consider the specific relief enumerated under § 1521(a) and (b). If the relief is explicitly provided for there, a court should then consider ... § 1521’s grant of any appropriate relief ... [which is] relief previously available under Chapter 15’s predecessor, § 304. Only if a court determines that the requested relief was not formerly available under § 304 should a court consider whether relief would be appropriate as “additional assistance” under § 1507.” *In re Vitro S.A.B. de CV*, 701 F.3d 1031, 1054.

59. Additionally, section 105(a) of the Bankruptcy Code provides that the “court may issue any order, process, or judgment that is necessary to carry out the provisions of this title.”

60. “In deciding whether to grant appropriate relief or additional assistance under chapter 15, courts are guided by principles of comity and cooperation with foreign courts.” *Avanti*, 582 B.R. at 616.

61. As set forth in the Declarations and in the *Emergency Motion for Provisional Relief Pursuant to 11 U.S.C. § 105(a), 1519, and 1521* (the “**Provisional Relief Motion**”), filed contemporaneously herewith, the immediate grant of the authority described in this Section V on a provisional basis pursuant to section 1519(a) of the Bankruptcy Code aids in the prevention of irreparable harm to FTX Digital and the enablement of the Joint Provisional Liquidators to carry out their duties under the CWUA Act, in connection with the Joint Provisional Liquidators’ ongoing attempts to obtain information regarding FTX Digital’s assets. To that end, the Joint Provisional Liquidators will likely need to conduct discovery in the FTX Trading Bankruptcy Case in order to determine whether they hold claims against its affiliates based on intercompany transfers of digital assets. Simms Declaration ¶ 68. Further, the Joint Provisional Liquidators will need to conduct discovery regarding insider transactions relating to the business’ cash and digital assets, and will need to access information relating to U.S. Dollar-denominated wire and fund transfers maintained by correspondent or intermediary banks. *See id.* ¶¶ 67–68.

62. Given this, and pursuant to the authority of the Provisional Liquidation Order, the Joint Provisional Liquidators determined that filing this Petition is in the best interests of FTX Digital, and necessary to enable the Joint Provisional Liquidators to obtain discovery in order to accurately identify and protect assets in the United States.

63. Accordingly, in light of the aim of chapter 15 to “optimize disposition of international insolvencies” by providing foreign representatives appropriate access to the U.S. court system, *see B.C.I. Fins. Pty Ltd.*, 583 B.R. at 292, and the clear, ongoing risk of diminution in value and/or diversion of FTX Digital’s assets in the United States, the Joint Provisional Liquidators respectfully submit that the requested discovery authority is appropriate and necessary “to effectuate the purposes of [chapter 15] and to protect the assets of the debtor.” 11 U.S.C. § 1521(a)(4).

64. Moreover, relief under section 1521(a) may be granted if the interests of “the creditors and the other interested entities, including the debtor, are sufficiently protected.” 11 U.S.C. § 1522(a). While the Bankruptcy Code does not provide a definition of “sufficient protection,” the legislative history of section 1522 suggests that this requirement is meant to prevent the rights of United States creditors of the foreign debtor from being “seriously and unjustifiably injur[ed].” H. Rep. No. 109-31, pt. 1, 109th Cong., 1st Sess. 116 (2005). As such, courts have “great leeway” in determining whether the rights of all relevant parties are “sufficiently protected” and will generally consider a balancing of competing interests. *See In re Toft*, 453 B.R. 186, 196 n.11 (Bankr. S.D.N.Y. 2011) (“[A] court should tailor relief balancing the interest of the foreign representative and those affected by the relief.”).

65. The Joint Provisional Liquidators submit that all parties in interest are sufficiently protected here, because the requested relief pertains to information directly bearing upon the Debtor’s assets and interests in the United States, which are central to the administration of the Bahamian Liquidation.

66. Further, as noted above and as set forth in the STR Declaration and the Simms Declaration, the Joint Provisional Liquidators seek discovery authority in order to issue subpoenas

for asset-tracing purposes, concerning, *inter alia*, accurately tracing and re-creating the flow of digital assets and funds pertaining to wire transfer transactions denominated in U.S. Dollars processed by the IBD Subjects. Simms Declaration ¶ 67.

67. To that end, this Court routinely orders similar relief pursuant to section 1521(a)(4), including specifically for the wire transfer and account information. *See id.*; *see also, e.g.*, *Platinum Partners*, 583 B.R. at 811 (authorizing discovery in support of liquidation of Cayman Islands-based funds because its auditors had a “unique set of documents and analyses concerning the Funds’ assets, liabilities and financial affairs which would assist the liquidators’ investigation and understanding of the Funds’ affairs for the two years immediately prior to the Funds’ liquidations”); *In re Frontera Caucasus Corp.*, No. 19-13418-mew (Bankr. S.D.N.Y. 2019) (recognizing Cayman Islands proceeding as a foreign main proceeding and authorizing issuance of subpoenas concerning suspect transfers and transactions to debtor’s accountants and executives); *In re Archetype Investments Fund SPC Ltd.*, No. 19-11996-shl (Bankr. S.D.N.Y. 2019) (recognizing British Virgin Islands liquidation as a foreign main proceeding and authorizing issuance of subpoenas to New York Banks); *In re Pinnacle Glob. Partners Fund I Ltd.*, No. 19-11573-rg (Bankr. S.D.N.Y. 2019) (recognizing Cayman Islands liquidation as a foreign main proceeding and authorizing issuance of subpoenas to New York Banks); *In re HiTs Africa Ltd.*, No. 18-11822-mew (Bankr. S.D.N.Y. 2018) (same).

68. As such, the Joint Provisional Liquidators submit that the additional relief requested under section 1521(a)(4) authorizing them to examine witnesses, take evidence and obtain information concerning the Debtor’s assets, affairs, rights, obligations and/or liabilities, is necessary and warranted under the circumstances.

**VI. REQUEST FOR WAIVER OF LOCAL BANKRUPTCY RULE 9013-1(a)**

69. It is respectfully requested that this Court waive and dispense with the requirement set forth in Rule 9013-1(a) of the Local Rules for the United States Bankruptcy Court for the Southern District of New York that any motion filed shall be accompanied by a memorandum of law on the grounds that the relevant authorities in support of the Petition are contained herein.

**VII. HEARING DATES AND NOTICES**

70. Section 1517(c) of the Bankruptcy Code requires that “[A] petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time.” Bankruptcy Rule 2002 sets forth a twenty-one day notice requirement to parties in interest with certain exceptions to approve the Petition. If no objections to this Petition are filed by the date ordered for such objections, the Joint Provisional Liquidators request that the Court enter the proposed order recognizing the Bahamian Liquidation as a foreign main proceeding without a hearing pursuant to Local Rule 2002-2; however, the Joint Provisional Liquidators and counsel are of course willing to appear and will be prepared to answer any questions that the Court may have.

71. Subsection (q)(1) of Rule 2002 governs notice of a petition for recognition of a foreign proceeding. Contemporaneously herewith, the Debtor has filed the *Motion for Order Specifying Form and Manner of Service of Notice*. The Joint Provisional Liquidators propose to provide service and notice of this Petition in accordance with Fed. R. Bankr. P. 2002(q), and the procedures and deadlines specified in the proposed *Order Specifying Form and Manner of Service and Notice*, which the Joint Provisional Liquidators respectfully submit constitutes sufficient service and notice of this Petition.

72. No previous application for the relief requested in this Petition has been made in this or any other court in the United States.

**CONCLUSION**

WHEREFORE, the Joint Provisional Liquidators respectfully request that this Court enter an Order, substantially in the form of Exhibit 1 to this Petition, granting the relief requested herein and such other and further relief as may be just and proper.

Dated: November 15, 2022  
New York, New York

HOLLAND & KNIGHT LLP

/s/ Warren E. Gluck

Warren E. Gluck, Esq.  
Marie E. Larsen, Esq.  
David W. Wirt (*Pro Hac Vice Pending*)  
Jessica Magee (*Pro Hac Vice Pending*)  
Shardul Desai (*Pro Hac Vice Pending*)  
HOLLAND & KNIGHT LLP  
31 W. 52nd Street  
New York, NY 10019  
Telephone: 212-513-3200  
Fax: 212-385-9010  
Warren.Gluck@hklaw.com  
Marie.Larsen@hklaw.com  
David.Wirt@hklaw.com  
Jessica.Magee@hklaw.com  
Sardul.Desai@hklaw.com

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

**VERIFICATION**

Pursuant to 28 U.S.C. § 1746, Brian C. Simms declares as follows:

I am a duly appointed Joint Provisional Liquidator of FTX Digital Markets Ltd. (in Provisional Liquidation), which is in provisional liquidation pursuant to the Companies (Winding Up Amendment) Act 2011. I have full authority to verify the foregoing *Verified Petition for Recognition of Foreign Insolvency Proceeding and Related Relief* (the “**Verified Petition**”). I have read the Verified Petition, and I am informed, and believe that the allegations contained therein are true and accurate to the best of my knowledge, information, and belief.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 15 day of November, 2022 in The Bahamas.

  
\_\_\_\_\_  
Brian C. Simms, in his capacity as Joint  
Provisional Liquidator of FTX Digital  
Markets, Ltd. (in Provisional  
Liquidation)

**EXHIBIT 1:**

**[Proposed] Order**

Warren E. Gluck, Esq.  
Marie E. Larsen, Esq.  
David W. Wirt (*Pro Hac Vice Pending*)  
Jessica Magee (*Pro Hac Vice Pending*)  
Shardul Desai (*Pro Hac Vice Pending*)  
HOLLAND & KNIGHT LLP  
31 W. 52nd Street  
New York, NY 10019  
Telephone: 212-513-3200  
Fax: 212-385-9010  
Warren.Gluck@hklaw.com  
Marie.Larsen@hklaw.com  
David.Wirt@hklaw.com  
Jessica.Magee@hklaw.com  
Sardul.Desai@hklaw.com

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

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:	:	Chapter 15
FTX DIGITAL MARKETS LTD. (in Provisional Liquidation)	:	Case No. 22-_____ ( )
Debtor in a	:	
Foreign	:	
Proceeding. <sup>1</sup>	:	
	:	

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**ORDER GRANTINGrecognition 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

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

Commonwealth of The Bahamas (the “**Bahamian 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 Petition, the “**Petition**”), on November 15, 2022, commencing 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**”), for entry of an Order (this “**Order**”) pursuant to sections 105(a), 1504, 1507, 1515, 1517, 1520 and 1521 of title 11 of the Bankruptcy Code, granting, among other things, (a) recognition of the Bahamian Liquidation as a “foreign main proceeding” under 11 U.S.C. § 1517(b)(1), or in the alternative, as a “foreign nonmain proceeding” under 11 U.S.C. § 1517(b)(2); (b) recognition of 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 Liquidation, and entrusting them with administration of FTX Digital’s assets within the territorial jurisdiction of the United States; (c) granting other and additional relief pursuant to sections 1507 and 1521(a) and (b) of the Bankruptcy Code as necessary, including authorizing the Joint Provisional Liquidators to examine witnesses, take evidence, and seek the production of documents concerning the assets, affairs, rights and/or obligations of FTX Digital; and (d) 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 it appearing that venue of this case and the Petition in this District is proper pursuant to 28 U.S.C. § 1410; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P); and it appearing that adequate and proper notice of the Petition has been given, and no other or further notice need be given; and a hearing having been held on \_\_\_\_\_, 2022 to consider the relief requested in the Petition; and no

objections or other responses having been filed that have not been overruled, withdrawn, or otherwise resolved; and upon consideration of the Simms Declaration,<sup>2</sup> STR Declaration, and the exhibits attached thereto, each filed on November 15, 2022 (collectively, the “**Supporting Documents**”); 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, accordingly the Court hereby **FINDS AND CONCLUDES THAT:**

- A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, 11 U.S.C. § 1501, and the Amended Standing Order of Reference Dated January 31, 2012, Reference M-431, *In re Standing Order of Reference* Re: Title 11, 12 Misc. 00032 (S.D.N.Y. Jan. 31, 2012).
- B. This is a core proceeding under 28 U.S.C. § 157(b)(2)(P).
- C. Venue is proper in this district pursuant to 28 U.S.C. § 1410.
- D. FTX Digital has property within this District, and, therefore, is eligible to be a debtor in a chapter 15 case pursuant to 11 U.S.C. §§ 109 and 1501.
- E. The Joint Provisional Liquidators properly commenced this case pursuant to 11 U.S.C. §§ 1504, 1509 and 1515.
- F. The Petition satisfies the requirements of 11 U.S.C. § 1515 and Rule 1007(a)(4) of the Federal Rules of Bankruptcy Procedure.
- G. The Bahamian Liquidation is a proceeding as defined in 11 U.S.C. § 101(23) and pursuant to 11 U.S.C. § 1517(a).

<sup>2</sup> All capitalized terms not otherwise defined shall have the meanings ascribed to them in the Petition.

H. The Bahamian Liquidation is pending in the Commonwealth of The Bahamas, where FTX Digital's center of main interests is located, and as such, the Bahamian Liquidation is entitled to recognition as a "foreign main proceeding" pursuant to 11 U.S.C. §§ 1502(4) and 1517(b)(1).

I. In the alternative, the Bahamian Liquidation occurs in The Bahamas where FTX Digital maintains an "establishment" and carries out nontransitory economic activity, and as such, is entitled to recognition as a "foreign nonmain proceeding," pursuant to 11 U.S.C. §§ 1502(2), 1502(5), and 1517(b)(2).

J. The Bahamian Liquidation is governed in accordance with applicable Bahamas law, including the CWUA Act, as it may be amended from time to time, and is subject to the supervision of a Bahamian Court, and is entitled to recognition by this Court pursuant to 11 U.S.C. §§ 1515 and 1517(a).

K. The Joint Provisional Liquidators are the duly appointed foreign representatives of FTX Digital pursuant to 11 U.S.C. § 101(24).

L. FTX Digital and the Joint Provisional Liquidators are entitled to all of the relief set forth herein under 11 U.S.C. §§ 1507 and 1521.

M. The relief granted hereby is necessary and appropriate to effectuate the purposes of chapter 15 of the Bankruptcy Code, 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 11 U.S.C. §§ 1507, 1517, 1520, and 1521.

N. Appropriate notice of the filing of, and the hearing on, the Petition was given, for which notice was deemed adequate for all purposes, and no further notice need be given.

For all of the foregoing reasons, and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT:**

1. The Petition and requested relief therein is granted.
2. The Bahamian Liquidation is granted recognition as a foreign proceeding as defined in 11 U.S.C. §§ 101(23) and pursuant to 11 U.S.C. § 1517(a).
3. The Bahamian Liquidation is a court-supervised proceeding governed in accordance with applicable Bahamas law, including the CWUA Act, as it may be amended from time to time, and is granted recognition as a foreign main proceeding pursuant to 11 U.S.C. § 1517(b)(1), and is entitled to the protections of 11 U.S.C. § 1520(a).
4. In the alternative, the Bahamian Liquidation occurs in The Bahamas where FTX Digital maintains an “establishment” and carries out nontransitory economic activity, and as such, is entitled to recognition as a “foreign nonmain proceeding,” pursuant to 11 U.S.C. §§ 1502(2), 1502(5), and 1517(b)(2).
5. Brian C. Simms, Kevin G Cambridge, and Peter Greaves are the duly appointed foreign representatives of FTX Digital pursuant to 11 U.S.C. § 101(24).
6. All relief afforded foreign main proceedings, or in the alternative, foreign nonmain proceedings, pursuant to 11 U.S.C. § 1520 is hereby granted.
7. All persons and entities (other than the Joint Provisional Liquidators and their expressly authorized representatives and agents) are hereby enjoined, except as provided in 11 U.S.C. §§ 555 through 557, 559 through 562, 1520 and 1521 or as modified herein, from:
  - (1) executing against the property or assets of FTX Digital;
  - (2) taking or continuing any act to obtain possession of, or exercise control over, the Joint Provisional Liquidators (with respect to FTX Digital), FTX Digital, or any of its property or assets;

(3) taking or continuing any act to create, perfect or enforce a lien or other security interest, set-off or other claim against the Joint Provisional Liquidators (with respect to FTX Digital), FTX Digital, or any of its property or assets as of the date of the filing of the Petition, or otherwise seeking the issuance of or issuing any restraining notice or other process or encumbrance with respect to FTX Digital or any of its property or assets; and

(4) transferring, relinquishing or disposing of any property of FTX Digital to any person or entity other than the Joint Provisional Liquidators.

8. The administration, realization, and distribution of all or part of the assets of FTX Digital within the territorial jurisdiction of the United States are 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) and 1521(b) of the Bankruptcy Code, in the event that no party objects.

9. The Joint Provisional Liquidators are hereby authorized to examine witnesses, take evidence, and seek the production of documents concerning the assets, affairs, rights, obligations or liabilities of FTX Digital as deemed appropriate in the Joint Provisional Liquidators' discretion pursuant to sections 1521(a)(4) of the Bankruptcy Code.

10. 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 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 11 U.S.C. §§ 306 and 1510.

11. The Order shall be served by electronic mail to the extent email addresses are available and otherwise by overnight courier or by hand delivery upon: (i) the Office of the United States Trustee for the Southern District of New York; and (ii) those parties requesting notice

pursuant to Bankruptcy Rule 2002. Such service and notice is considered good and sufficient service and adequate notice for all purposes.

12. 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.

13. This Order is without prejudice to the Joint Provisional Liquidators requesting any additional relief in the Chapter 15 Case, including seeking recognition and enforcement in the United States of any orders issued by a court in the Commonwealth of The Bahamas with jurisdiction over the Bahamian Liquidation.

14. The Joint Provisional Liquidators are authorized to take all actions necessary to effectuate the relief granted by this Order.

15. 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). The Clerk is hereby directed to enter this Order on the docket for this Chapter 15 case.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_, 2022

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United States Bankruptcy Judge  
United States Bankruptcy Court  
Southern District of New York

Warren E. Gluck, Esq.  
Marie E. Larsen, Esq.  
David W. Wirt (*Pro Hac Vice Pending*)  
Jessica Magee (*Pro Hac Vice Pending*)  
Shardul Desai (*Pro Hac Vice Pending*)  
HOLLAND & KNIGHT LLP  
31 W. 52nd Street  
New York, NY 10019  
Telephone: 212-513-3200  
Fax: 212-385-9010  
Warren.Gluck@hklaw.com  
Marie.Larsen@hklaw.com  
David.Wirt@hklaw.com  
Jessica.Magee@hklaw.com  
Sardul.Desai@hklaw.com

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

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re: : Chapter 15  
: Case No.  
FTX DIGITAL MARKETS LTD. :  
: Debtor in a  
: Foreign  
: Proceeding.<sup>1</sup>

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**DECLARATION OF BRIAN CECIL SIMMS KC IN SUPPORT OF PETITION FOR  
RECOGNITION UNDER CHAPTER 15 OF THE BANKRUPTCY CODE**

I, Brian Cecil Simms KC, hereby declare under penalty of perjury under the laws of the  
United States as follows:

<sup>1</sup> FTX Digital Markets LTD. is a company incorporated in the Commonwealth of The Bahamas and operates as a digital assets business under the Digital Assets and Registered Exchanges Act, 2020, with registration number 207269B.

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1. Kevin G. Cambridge, Peter Greaves, and I are the duly joint appointed provisional liquidators ("Joint Provisional Liquidators") of FTX Digital Markets LTD. ("FTX Digital"), a company incorporated in the Commonwealth of The Bahamas and operating as a digital assets business under the Digital Assets and Registered Exchanges Act, 2020 (the "DARE Act").

2. FTX Digital is a company within the meaning of the Companies (Winding Up Amendment) Act, 2011 ("CWUA Act") and is in provisional liquidation in the Commonwealth of The Bahamas (the "Bahamian Liquidation") 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"), the sole Court with jurisdiction over FTX Digital and the entities operated from FTX Digital's substantial office complex in Nassau, Bahamas.

3. I respectfully submit this declaration (the "Declaration") in support of the Joint Provisional Liquidators' petition (the "Petition") seeking, pursuant to Chapter 15 of the United States Bankruptcy Code, 11 U.S.C. § 1501, *et seq.* (the "Bankruptcy Code"), an Order:

- (i) recognizing the Bahamian Liquidation as a foreign main proceeding under 11 U.S.C. §§ 1502, 1515, 1517(a) and (b)(1), or in the alternative, as a foreign nonmain proceeding pursuant to 11 U.S.C. § 1517(b)(2);
- (ii) recognizing the Joint Provisional Liquidators as the "foreign representatives" of FTX Digital pursuant to 11 U.S.C. §§ 101(24) and 1515(a);
- (iii) confirming that the Joint Provisional Liquidators have satisfied the requirements of 11 U.S.C. § 1515;

- (iv) a stay of all actions against FTX Digital or its property pursuant to 11 U.S.C. § 1520(a)(1) and 1521(a);
- (v) an order authorizing discovery measures pursuant to 1521(a)(4); (vi) requiring the turnover of FTX Digital's assets, to the Joint Provisional Liquidators pursuant to 11 U.S.C. §§ 542, 1521(a)(4), (a)(7) and (b);
- (vii) an order authorizing the Joint Provisional Liquidators to appear in the state, federal and bankruptcy courts of the United States pursuant to 11 U.S.C. § 1521(a)(7);
- (viii) granting additional discovery relief under 11 U.S.C. §§ 1520 and 1521; and
- (ix) any other relief the Court finds just and proper.

4. I have reviewed the Petition, and it is my belief that the relief sought therein is necessary to implement the liquidation described therein.

5. I also make this Declaration to provide the Court with certain known background information on FTX Digital and the Bahamian Liquidation, and on other relevant events leading up thereto.

6. I am over the age of 18, and I am duly authorized to make this declaration acting in my capacity as one of the Liquidators of FTX Digital. If called upon to testify, I could and would testify competently as to the facts set forth herein. Except as otherwise indicated, I make this Declaration based on the documents in my possession and supplied to me, on facts and matters that are known to me or of which I have been informed by others, and on my experience and training. When I am informed by others, the information is true to the best of my knowledge and belief, and I state the source of the information.

7. I am a resident of The Bahamas. I am a Senior Partner of the firm Lennox Paton and the head of the Litigation and Insolvency & Restructuring Groups.

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Lennox Paton is a leading, full-service commercial law firm located at 3 Bayside Executive Park, Nassau, N.P., The Bahamas. I have been practicing law for over 30 years. Throughout my career, I have appeared a number of times in the Privy Council. I was made a Queen's Counsel in 2009 (now King's Counsel), and I have overseen some of the most substantial Bahamian and international offshore cases.

8. Kevin G. Cambridge is the Bahamas Advisory Partner at PricewaterhouseCoopers Advisory (Bahamas) Limited and resides in The Bahamas. He has over 20 years of combined Assurance and Advisory experience, and he focuses primarily on liquidation and forensic services. He has been a court approved liquidator in a number of Bahamian based liquidations including the liquidation of a Bahamas based entity with operations across North and South America in the production of agricultural commodities with revenues of \$1 billion. He also served as a Joint Liquidator and liaised with the US Receiver, Securities and Exchange Commission and other regulators on a Bahamas based investment fund alleged to be part of a \$130 million fraud by the principals. He also served as a member of the select committee responsible for drafting the CWUA Act in conjunction with the former Attorney General of the Commonwealth of The Bahamas.

9. Peter Greaves is PricewaterhouseCoopers Limited partner in its Restructuring and Insolvency practice and is based in Hong Kong. He is the firm's restructuring and insolvency leader for the Asia Pacific region and a qualified and licensed insolvency practitioner. He has 30 years of corporate restructuring and insolvency experience and has relevant experience as an appointee in insolvency cases in Hong Kong and the British Virgin Islands. He is regularly involved in insolvency and restructuring matters in other jurisdictions both offshore and onshore.

I. **Summary of the Bahamian Liquidation and Petition in the United States**

10. On November 10, 2022, the Securities Commission of The Bahamas (the "Commission") filed a petition ("The Bahamas Petition") in the Bahamas Supreme Court for an Order requiring that FTX Digital be wound up because (1) it was insolvent according to the CWUA Act, (2) the Commission suspended its license, and (3) it was in breach of its duties under the DARE Act. A true and correct copy of The Bahamas Petition is attached hereto as Exhibit 1.

11. Also on November 10, 2022, a hearing took place in the Bahamian Court and his Lordship, the Honourable Mr. Chief Justice Ian Winder, heard the Application of the Commission and the Affidavit of Christina Rolle, the Commission's Executive Director. Upon due consideration, Lord Winder issued an order directing FTX Digital be placed into provisional liquidation and he appointed me Provisional Liquidator of FTX Digital (the "**Provisional Liquidation Order**"). A true and correct copy of the Provisional Liquidator Order is attached hereto as Exhibit 2.

12. The Provisional Liquidation Order divests FTX Digital's directors' of the ability to act, or exercise any functions, for or on behalf of FTX Digital unless expressly instructed to do so by me in writing.

13. The Provisional Liquidation Order directs, authorizes and empowers me to take all and any necessary steps I consider fit to protect the assets of FTX Digital wherever situated, including any assets held in trust by FTX Digital, including the filing of this Chapter 15 Petition and the Provisional Relief Application for the purposes of protecting and collecting the assets of FTX Digital.

14. On November 11, 2022, FTX Trading Ltd. ("FTX Trading")<sup>2</sup> and 134 other affiliates and subsidiaries ("FTX Affiliates"), purported to file a Chapter 11 Voluntary Petition for

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<sup>2</sup> FTX Trading is a company incorporated in Antigua and Barbuda.

Non-Individuals for Bankruptcy in the United States Bankruptcy Court for the District of Delaware, case number 22-11068 (the “**Delaware Petition**”).

15. Notably, FTX Digital is not part of the Delaware Petition. As of the date of the Delaware Petition, no person other than me, as Provisional Liquidator, was authorized to take any act including, but not limited to, filing the Delaware Petition, in connection with FTX Digital and FTX Digital's subsidiaries to the extent the authority of FTX Digital's directors and management was requisite. I did not authorize or approve -- in writing or otherwise -- any of FTX Digital's officers, management or employees to file, or cause to be filed, the Delaware Petition. Based upon my years of experience practicing law in the Bahamas and information that has been provided to me by *inter alia* the Securities Commission of The Bahamas , and pending further analysis, I reject the validity of any purported attempt to place FTX Affiliates in bankruptcy insofar as such filing required FTX Digital's officers, directors, or management to approve and authorize such action.

16. On November 14, 2022, the Bahamian Court appointed both Mr. Cambridge and Mr. Greaves to serve alongside me as Joint Provisional Liquidators of FTX Digital, and extended to them all the rights, responsibilities and authority granted to me by the Provisional Liquidation Order.

17. As set forth below, the Joint Provisional Liquidators' findings to date indicate that serious fraud and mismanagement may have been committed with respect to FTX Digital and the FTX Affiliates.

## **II. FACTUAL BACKGROUND**

### **Digital Assets Generally**

18. Digital assets generally include cryptocurrency such as Bitcoin (BTC) and are generally regarded as property and are transacted on digital ledgers known as a blockchain. They

have unique features but those features can, depending on their design, include attributes of bearer instruments, attributes of dematerialized securities traded in the capital markets and attributes of cash (fiat currency). Control over those sorts of digital assets is at base dependent upon control over the relevant “private key” (akin to a password or PIN). To the extent that a person has control over the relevant private key (a unique alpha-numeric code), that person can conduct final, irreversible, immutable, and absolute transactions of the digital assets secured by that private key.

19. Cryptocurrencies are often said to be stored in “wallets” although the phrase “wallet” has a wide range of meanings: from a USB stick on which the “private key” is stored (commonly called a “cold wallet”), to software (“wallet software”) on a device connected to the internet which stores the private key behind various levels of security (commonly called a “hot wallet”), to an online account on the platform of an exchange or other crypto-market service provider that simply records the amount of cryptocurrency that a customer of that exchange or service provider has transferred to that exchange or service provider on an internal ledger maintained by the exchange which is entirely external to the relevant blockchain. In these circumstances, customers can conduct transactions only by interacting (making requests) to the exchange itself pursuant to whatever functionality the exchange’s platform provides and subject to any binding terms and conditions between the customer and the exchange. The customer does not have direct control over the cryptocurrency transferred to the exchange.

20. In this last situation, the exchange itself may hold the private key (or keys) to the cryptocurrency transferred to it by customers in a “cold wallet” or a “hot wallet”, or a combination of the two (i.e. some of the cryptocurrency being held on a private key kept in a “cold wallet” but some of it held on a different private key kept in a “hot wallet”).

21. Cryptocurrency exchanges often hold cryptocurrency transferred to the exchange

by more than one customer on a single private key (or a small number of private keys), rather than the cryptocurrency transferred by each customer being held on a separate private key. In this way, an exchange's digital currencies might be thought of as being held on a "pooled" basis or in an "omnibus" account (or a small number of "omnibus" accounts); certainly in this situation there is no segregation.

22. Alternatively, an exchange might provide customers with the ability themselves to hold the private key to the cryptocurrency (sometimes called a "self-custodial wallet").

23. A digital asset exchange allows customers to convert fiat currency to digital assets, to store digital assets within wallets provided by the exchange, and to exchange between one or more forms of digital assets.

24. Commercial exchanges often store their customers' digital assets in pooled wallets, wherein the customer does not have control over the pooled wallet's private key; rather, the customer's assets are recorded on internal ledgers of the exchange, which are external to the blockchain. In these circumstances, customers can conduct transactions only via requests to the commercial exchange.

25. Cryptocurrency exchanges also sometimes offer customers the opportunity to enter into derivative contracts referencing cryptocurrency in some way (e.g. options, forwards, volatility-based derivatives). Sometimes the counterparty to those contracts is the exchange operator itself, and sometimes it is an affiliate of the exchange operator.

A. **FTX Digital**

26. FTX's digital asset exchange was founded in May 2019 by Samuel Bankman-Fried ("SBF") in Hong Kong, and it (and SBF) relocated to Nassau, Bahamas in September 2021.

27. This digital asset exchange was incorporated as FTX Digital in the Commonwealth

of The Bahamas on July 22, 2021 as an International Business Company.

28. The registered number of FTX Digital in The Bahamas is No. 207269B. The principal address and office for FTX Digital is Building 27, Veridian Corporate Centre West Bay Street, Nassau, N.P.

29. FTX Digital is registered as a digital asset business under the DARE Act. Under the DARE Act, FTX Digital is registered to provide, *inter alia*, (i) an exchange between digital assets and fiat currency and (ii) an exchange between one or more forms of digital assets.

30. FTX Digital operated a digital asset exchange, which offered functionality similar to traditional brokerage accounts, providing the functionality set out in paragraph 11, *supra*. Digital asset exchanges typically generate revenue by collecting a fee for each trade they facilitate, but many also engage in trading (or other commercial use of) cryptocurrency that is transferred to them by customers.

31. The FTX platform also appears to have offered customers the ability to take various leveraged or derivative positions, such as margin trading (loans), futures, options, and volatility products, as well as the ability for one customer to buy or sell directly from another — serving customers outside of the United States, Japan, Bahamas, Australia, and Singapore.

32. In addition, the owners and operators of FTX Digital created their own digital asset called the FTX Token (“FTT”). This token allowed FTX Digital users to obtain discounts on trading fees, collateralize their futures positions, and benefit from other exchange-centric uses.

**B. Structure and Operation of FTX Located in The Bahamas**

33. SBF was the founder and controlling owner of the FTX network of companies that established the FTX Brand (the “**FTX Brand**”), and which were managed and operated by FTX Digital in The Bahamas. The FTX Brand includes Alameda Research Ltd. (“**Alameda**”), a

quantitative digital-asset trading firm also founded by SBF. Alameda is a wholly-owned subsidiary of holding company Alameda Research LLC which, upon information and belief, is wholly owned by SBF.

34. In addition, SBF is the 100% owner of Paper Bird Inc., which is the 75% owner of FTX Trading. Both Paper Bird Inc. and FTX Trading are holding companies.

35. FTX Trading is the sole 100% owner of FTX Digital, FTX Hong Kong, FTX Japan Holding K.K., FTX (Gibraltar) Ltd., FTX Canada Inc. FTX Europe AG, FTX Digital Holding (Singapore) Pte. Ltd., and many other entities.

36. SBF is the majority owner of West Realm Shires, Inc. d/b/a FTX US. For regulatory purposes, FTX US provided, within the United States, subset of services offered by FTX Digital.

37. Despite the seemingly complex structure of the FTX Brand companies, the entire FTX Brand was ultimately operated from a single location: The Bahamas. All core management personnel likewise were located in The Bahamas.

38. On September 20, 2021, SBF tweeted that “FTX has been registered with the Securities Commission of the Bahamas under the DARE Act of 2020,” and that it would be “building out our headquarters here in the Bahamas.” Four days later, SBF reemphasized the relocation by tagging the official FTX twitter account and stating “[w]e’re really excited to be setting up @FTX\_Official’s headquarters in the Bahamas!”

39. In October of 2022, The Bahamas Tribune reported that the headquarters would be located on a “4.95 acre site, located between Bayside Executive Park’s existing buildings and the Orange Hill Beach Inn, will feature two boutique hotel buildings covering a total 77,000 gross square feet and spanning seven levels, with parking area 51,000 gross square feet in size.

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Residential and office spaces, also spread over seven levels, will cover 116,000 gross square feet and be accompanied by a 205,000 square feet parking area.” Additionally, it stated 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’.”<sup>3</sup>

40. The Bahamas Tribune further reported that eventually “a total of 700 employees will work at the office building, of which 38 are expected to be housed in the boutique hotel and condo hotel. The remaining 662 employees are expected to live off-campus and commute to work. 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.” Further, “[t]he proposed development will include a total of 612 parking spaces: Twenty-five spaces for the hotel, 75 spaces for the condo hotel and the remaining 512 spaces for the office/convention buildings.”

41. The Bahamas Tribune stated that the campus headquarters would cost about \$60 million, and it published the proposed site plans submitted to the Department of Physical Planning.<sup>4</sup>

42. While this campus development was underway, FTX Digital employees worked from nearby offices. In the ordinary course of our work as the Joint Provisional Liquidators, we have recovered books and records of FTX Digital at these offices.

43. SBF has resided in The Bahamas since 2021 and has confirmed that he operated the entirety of the FTX Brand in and from The Bahamas. In addition, the power to transfer the digital assets held by the FTX exchanges is centralized in The Bahamas, and the possessory,

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<sup>3</sup> <http://www.tribune242.com/news/2022/oct/19/ftx-hire-more-100-bahamians-crypto-work>.

<sup>4</sup> The Bahamas Tribune report with the site plans can be found at the following link: <http://www.tribune242.com/photos/2022/mar/14/75794/>.

custodial, control and equitable property interests in all FTX Brand property is believed to be maintained in The Bahamas.

**C. Alleged Mismanagement of FTX Digital by SBF and FTX Insolvency**

44. Reputable news agencies have provided detailed coverage of the alleged fraud and mismanagement of FTX Digital.

45. In May and June of 2022, according to news reports, Alameda suffered severe losses from a number of deals it was engaged in, including a \$500 million loan that defaulted.<sup>5</sup> New York Times reporting contends that SBF was heavily involved in the decision-making for all of Alameda's "big trades."<sup>6</sup>

46. On or about November 2, 2022, Alameda's balance sheet was leaked on the Internet. This balance sheet showed that much of the company's \$14.6 billion in assets were held in FTT, the digital asset created by the FTX Brand and used for benefits on its platform.<sup>7</sup>

47. On November 6, 2022, Binance Holdings Ltd's ("Binance") CEO tweeted that "[a]s part of Binance's exit from FTX equity last year, Binance received roughly \$2.1 billion USD equivalent in cash (BUD and FTT). Due to recent *revelations* that have came [sic] to light, we have decided to liquidate any remaining FTT on our books." The impact of the announcement was swift; in 24 hours, more than \$5 billion of withdrawal requests were made on the various FTX Brand's exchange platforms.

48. Also on November 6, 2022, SBF seemingly responded by tweeting "a bunch of

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<sup>5</sup> <https://www.reuters.com/technology/exclusive-behind-ftxs-fall-battling-billionaires-failed-bid-save-crypto-2022-11-10/>.

<sup>6</sup> <https://www.nytimes.com/2022/11/11/business/ftx-bankruptcy.html>; <https://fortune.com/2022/11/11/sam-bankman-fried-crypto-empire-ftx-alameda-run-gang-kids-bahamas-who-all-dated-each-other/>.

<sup>7</sup> <https://www.wsj.com/articles/binance-is-said-to-be-likely-to-walk-away-from-deal-to-buy-ftx-11668020963>; <https://www.reuters.com/technology/exclusive-behind-ftxs-fall-battling-billionaires-failed-bid-save-crypto-2022-11-10/>.

unfounded rumors have been circulating. FTX keeps audited financials etc.—And, though it slows us down sometimes on product, we're highly regulated.” SBF further explained that FTX Digital “has enough to cover all client holdings. We don't invest client assets (even in treasuries). We have been processing all withdrawals, and will continue to be.” SBF later deleted this tweet.

49. At or around this time, the Wall Street Journal reported that the FTX Brand's management misused customer deposits on the FTX digital asset exchange to extend undisclosed loans to Alameda. Essentially, the allegation is that FTX Brand management misused cryptocurrency that had been credited to customers' accounts on the FTX cryptocurrency exchange to extend undisclosed loans to Alameda. According to the report, one observer indicated that Alameda used this cryptocurrency exchange to extend undisclosed loans to Alameda. Allegedly, FTX had \$16 billion in crypto assets at that time; thus, more than half of the amounts standing to the credit of customer accounts on the FTX cryptocurrency exchange were misappropriated to finance Alameda's unsuccessful trades.<sup>8</sup>

50. On November 8, 2022, SBF tweeted that “[i]n the last 72 hours, we've had roughly \$6b of net withdrawals from FTX,” that withdrawals at FTX.com are “effectively paused,” and that the pause in withdrawals would be resolved in “the near future.”

51. That same day, the Binance CEO announced on Twitter that FTX approached him for help due to a “significant liquidity crunch.” The two parties signed a non-binding LOI, intending for Binance to acquire FTX.com and to help with the liquidity crunch.

52. In a series of tweets thereafter, SBF confirmed the potential acquisition and stated that “FTX.us and Binance.us—two separate companies—are not currently impacted by this. FTX.US's withdrawals are and have been live, is fully backed 1:1, and operating normally.”

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<sup>8</sup> <https://www.wsj.com/articles/ftx-tapped-into-customer-accounts-to-fund-risky-bets-setting-up-its-downfall-11668093732>.

53. On November 9, 2022, Reuters reported that SBF issued an admission of wrongdoing and an apology to all FTX employees via internal messaging application Slack that stated: "I'm deeply sorry that we got into this place, and for my role in it. That's on me, and me alone, and it sucks, and I'm sorry, not that it makes it any better."<sup>9</sup>

54. On November 9, 2022, Binance tweeted that it backed out of the deal due to "mishandled customer funds and alleged US agency investigations." That same day, the Wall Street Journal reported that Alameda CEO Caroline Ellison—joined by SBF and two other members of FTX Digital's management team (Nishad Singh, Director of Engineering, and Gary Wang, Co-Founder & Chief Technology Officer)—told Alameda employees that they were aware of the decision to send customer funds to Alameda. Specifically, according to the report, Ms. Ellison stated that "FTX used customer money to help Alameda meet its liabilities."<sup>10</sup>

55. The next day, SBF tweeted another admission and apology, stating "I'm sorry. That's the biggest thing. I fucked up, and should have done better." He further explained that only "FTX International, the Non-US Exchange" was in trouble, but FTX US users were fine. In fact, he stated that FTX US is "100% liquid" and "was not impacted by the shitshow." "FTX International, the Non-US Exchange" is shorthand for FTX Digital.

56. SBF sent a series of additional tweets. Essentially, SBF stated that "FTX International currently has a total market value of assets/collateral higher than client deposits," but such assets were illiquid. He then admitted that "as a very high level, I fucked up twice." "The first time, a poor internal labeling of bank-related accounts meant that I was substantially off on my sense of users' margin." SBF claimed that he thought the user's available leverage was zero

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<sup>9</sup> <https://www.reuters.com/markets/currencies/ftx-turmoil-causes-crypto-concern-sending-token-prices-sliding-2022-11-09>.

<sup>10</sup> <https://www.wsj.com/articles/alameda-ftx-executives-are-said-to-have-known-ftx-was-using-customer-funds-11668264238>.

when in reality it was 1.7x. Second, SBF admitted that he believed the company was ready to deliver 24 times the daily withdrawal amounts; however, in reality, it only had 0.8 times that amount. Consequently, on November 6, the company had insufficient liquidity to cover withdrawals, which amounted to about \$5 billion.<sup>11</sup>

57. On November 10, 2022 the Commission froze the assets of FTX Digital and commenced regulatory proceedings.

58. On November 11, 2022, SBF tweeted that he “filed FTX, FTX US, and Alameda for voluntary Chapter 11 proceedings in the US.” He again apologized for “end[ing] up here” and states that he “is piecing together all of the details, but [he] was shocked to see thing unravel the way they did earlier this week.”

59. Once again, as the sole Provisional Liquidator at the time, I did not authorize the Chapter 11 filings and reject the validity of such filings to the extent that such filings required the authorization and consent of FTX Digital Officers and Management. Additionally, none of the Joint Provisional Liquidators have authorized the Chapter 11 filings since the appointment of the Joint Provisional Liquidators.

60. As a result of the events and admissions summarized above, it is believed the vast majority of International (non-US) account holders with accounts on the FTX cryptocurrency exchange showing credits of cryptocurrency are creditors of FTX Digital. In addition, there are other creditors including investors of FTX Digital. FTX Digital is presently cash flow insolvent and is likely to be balance sheet insolvent.

61. Presently, FTX Digital has an interest in funds in the amount of \$15,000, deposited with Holland & Knight LLP (“H&K”) and held by H&K in a non-interest bearing client trust

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<sup>11</sup> <https://www.wsj.com/articles/ftx-tapped-into-customer-accounts-to-fund-risky-bets-setting-up-its-downfall-11668093732>.

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account located in New York, New York.

**III. THE PROGRESS OF THE BAHAMIAN LIQUIDATION**

62. Since my appointment, I have engaged counsel and professional advisors in The Bahamas and the United States. I have authorized certain limited functions of FTX Digital's directors and management. I have been working to gather FTX Digital's books and records and have obtained access to the FTX Digital office space. I have collected or am in the process of collecting FTX Digital assets.

63. Moreover, in the ordinary course of work as the Joint Provisional Liquidators, we have learned that FTX Digital was headquartered in The Bahamas, that SBF effectively controlled and owned FTX Digital, that SBF resided in The Bahamas, that the power to transfer the digital assets held by the FTX exchanges is centralized in The Bahamas, that the operations of all FTX Brand entities operated out of The Bahamas through FTX Digital, and that the possessory, custodial, control and equitable property interests in all FTX Digital property is maintained in The Bahamas.

**IV. DISCOVERY REQUESTED WILL ASSIST THE BAHAMIAN LIQUIDATION**

64. I am informed by counsel that chapter 15 of the Bankruptcy Code includes provisions granting broad discovery rights to the foreign representative(s) upon recognition.

65. For the following reasons, those discovery rights are critical to the orderly and effective liquidation of FTX Digital for the benefit of all creditors and stakeholders, as the primary assets and business practices of FTX Digital, FTX Brand, among others, remain under investigation.

66. At the most basic level, the Joint Provisional Liquidators are presently unable to ascertain FTX Digital's financial position, its assets and liabilities more generally, and does not have the totality of the information necessary to protect FTX Digital's assets.

67. Most importantly, digital assets can be readily exchanged for digital currencies and to others on the underlying blockchains throughout the United States and elsewhere, and these digital assets can be converted to fiat currency and deposited into bank accounts or other fiat-based financial accounts. Additionally, funds deposited into bank accounts could be dissipated through wire transfers. Thus, the requested discovery in the Petition is essential because the Joint Provisional Liquidators cannot accurately trace assets and re-create the flow of FTX Digital assets without the ability to issue subpoenas. This may include the need to access information concerning digital asset accounts maintained by exchanges and/or fund transfers maintained by correspondent or intermediary banks.

68. Also, as noted above, FTX cryptocurrencies were used by Alameda. Thus, the Joint Provisional Liquidators will need to conduct discovery to determine whether FTX Digital holds claims against its affiliates based on intercompany transfers and to assess insider transactions.

69. United States records of FTX Digital and the FTX Brand are likely to be of critical importance to the Bahamian Liquidation for multiple reasons. For example, these documents could provide a clear picture of the reasons for the insolvency of FTX Digital, and allow the Joint Provisional Liquidators to make an informed judgment as to the potential third party claims available to FTX Digital, and to determine if FTX Digital holds additional, undisclosed assets.

70. The books and records will provide valuable insight into the financial machinations that led to the alleged dissipation of FTX Digital assets, at the expense of creditors. The discovery

of these agreements and other financial documents will likely provide further insight into the financial engineering, which appears to have contributed to the insolvency of FTX Digital.

**V. SECTION 1515(c) STATEMENT**

71. I am informed by counsel that section 1515(c) of the Bankruptcy Code provides that “[a] petition for recognition shall be accompanied by a statement identifying all foreign proceedings with respect to that debtor that are known to the foreign representative.”

72. In compliance with section 1515(c) of the Bankruptcy Code, I hereby declare that, to my knowledge, the only foreign proceeding (as such term is defined in section 101(23) of the Bankruptcy Code) pending with respect to FTX Digital is the Bahamian Liquidation.

**VI. LIST PURSUANT TO BANKRUPTCY RULE 1007(a)(4)**

73. I am informed by counsel that Rule 1007(a)(4) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) provides that a foreign representative filing a petition for recognition under chapter 15 of the Bankruptcy Code shall file with the petition:

(A) a corporate ownership statement containing the information described in Rule 7007.1; and (B) unless the court orders otherwise, a list containing the name and address of all persons or bodies authorized to administer foreign proceedings of the debtor, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and all entities against whom provisional relief is sought under § 1519 of the Code.

In accordance with Bankruptcy Rules 1007(a)(4) and Rule 7007.1, I hereby provide the following information:

74. As of November 10, I understand that the following corporations own 10% or more of any class of FTX Digital’s equity interest: FTX Trading.

75. The Joint Provisional Liquidators are the duly appointed joint provisional liquidators of FTX Digital authorized to administer the Bahamian Liquidation. The Joint Provisional Liquidators’ address is 3 Bayside Executive Park, Nassau, N.P., The Bahamas.

76. To the best of my knowledge, FTX Digital is not presently a party to any other litigation in the United States.

77. At present, FTX Digital seeks the following forms of provisional relief pending recognition of the FTX Digital liquidation pursuant to 11 U.S.C. 1501 et seq:

- a. pursuant to 11 U.S.C. 1519(a)(1), an order staying execution against FTX Digital's assets pursuant to 11 U.S.C. 1520(a);
- b. pursuant to 11 U.S.C. 1519(a)(2) an order entrusting the administration or realization of all or part of the debtor's assets located in the United States to the foreign representative;
- c. pursuant to 1519(a)(3) an order authorizing urgent discovery measures pursuant to 11 U.S.C. 1521(a)(4);
- d. pursuant to 1519(a)(3) an order suspending the right to transfer, encumber or otherwise dispose of any assets of FTX Digital to the extent that the extent this right has not been suspended under 11 U.S.C. 1520(a); and
- e. pursuant to 1519(a)(3) and 1521(a)(7) an order authorizing the Joint Provisional Liquidators to appear in the state, federal and bankruptcy courts of the United States.

78. Notice will be provided to any persons or entities that are made the subject of the requested provisional discovery via subpoena and the requested relief shall be without prejudice to such discovery targets' rights to challenge the generalized grant of discovery or the particularized discovery issued.

79. It is conceivable that the FTX Affiliates that filed Chapter 11 will be "impacted" by the provisional relief sought herein and therefore the FTX Affiliates are listed herein and therefore

will be noticed, however I do not believe that the provisional relief sought herein is "against" the FTX Affiliates and no provisional relief seeking the injunction or dismissal of the Chapter 11 is presently sought.

[remainder of page intentionally left blank]

Pursuant to section 1746 of title 28 of the United States Code, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: November 15, 2022  
Executed in Nassau, The Bahamas



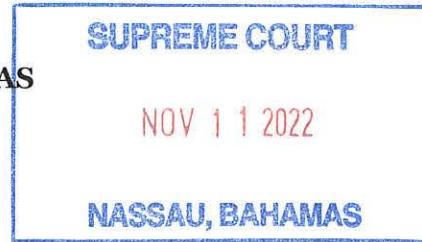
**BRIAN CECIL SIMMS KC**

*Joint Provisional Liquidator of FTX Digital Markets LTD.*

**EXHIBIT 1:**

**The Bahamas Petition**

COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
COMMERCIAL DIVISION



2022

COM/com/

**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)**

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**PETITION**

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TO: The Supreme Court of the Commonwealth of The Bahamas

The Humble Petition of **THE SECURITIES COMMISSION OF THE BAHAMAS** (“**the Commission**” or “**the Petitioner**”) a statutory body continued pursuant to the Securities Industry Act, 2011 show as follows:

1. This Petition relates to FTX Digital Markets Ltd (“**FTX Digital**”).
2. FTX Digital was incorporated in the Commonwealth of The Bahamas on 22 July 2021 as an International Business Company.
3. The registered number of the FTX Digital is **No.207269B** and the principal address and office for FTX Digital is Building 27, Veridian Corporate Centre, West Bay Street, Nassau, N.P., The Bahamas.
4. FTX Digital is registered as a digital asset business under the **Digital Assets and Registered Exchanges Act, 2020** (“**the DARE Act**”). FTX Digital is a subsidiary of FTX Trading Ltd, a company incorporated in Antigua and Barbuda (collectively referred to as “**FTX**”). Under the DARE Act, FTX Digital is registered to provide: (i) an exchange

between digital assets and fiat currency and (ii) an exchange between one or more forms of digital assets.

5. To the best of the Petitioner's information and belief FTX Digital operates its business in Antigua and Barbuda and the United States of America.
6. The ultimate beneficial owner of the company is Mr. Samuel Bankman-Fried ("SBF").

### **The Grounds and Jurisdiction**

7. The grounds on which a winding up order by this Honourable Court is sought as follows:
  - 7.1. FTX Digital is a company within the meaning of the Companies (Winding Up Amendment) Act 2011 ("the CWUA Act), s.185 (b).
  - 7.2. The Petitioner is a regulator within the meaning of the CWUA Act, s.183.
  - 7.3. The Petitioner, in its capacity as regulator, may apply to wind up a company under CWUA Act, if the company is carrying on a regulated business in The Bahamas for any reason as provided under the regulatory laws or any other law: CWUA Act, s. 190(1)(d) and s.190(4).
  - 7.4. Under the CWUA Act, this Honourable Court may make an order winding up a company on the application of the Petitioner if the company is insolvent and a company is insolvent if it is unable to pay its debts as they fall due or the value of the company's liabilities exceeds its assets: CWUA Act s. 186(c) and s.187.
  - 7.5. Also, a company is deemed to be unable to pay its debts if it is proved to the satisfaction of the court that the company is unable to pay its debts: s.188(c).
  - 7.6. The Petitioner believes that FTX Digital is insolvent for the reasons set out in the affidavit of Christina R. Rolle sworn on 10<sup>th</sup> November 2022.
8. There are other additional or alternative grounds on which a winding up order is sought to be made by this Honourable Court as follows:

- 8.1. On 10 November 2022 the Commission suspended FTX Digital's licence. The CWUA Act, s.186(4) authorises the Commission to petition for the winding up of a company over which it has regulatory authority and whose licence has been suspended.
- 8.2. Further, the DARE Act, s.24 requires FTX Digital to act honestly and fairly, to act with due care and diligence, observe and maintain a high standard of professional conduct and maintain adequate financial resources and solvency. The affidavit of Christina R. Rolle evidences that these duties have been breached. The DARE Act, s.46(1)(f) permits the Commission to apply to this Honourable Court for an order to take such action as the Commission considers necessary to protect the interests of clients or creditors of a regulated company. The Commission considers that it is necessary to take action by presenting a winding up petition and obtaining the appointment of a provisional liquidator. In light of the wide power afforded to the Commission by CWUA Act s.190(1)(d) and s.190(4), a petition can be presented where the DARE Act has been breached. The fact that FTX Digital is not complying with its duties under the DARE Act constitutes sufficient and alternative grounds for a winding up order to be made.

### **Appointment of Provisional Liquidator**

9. The Petitioner also seeks an immediate order that a provisional liquidator be appointed in respect of FTX Digital, the order to continue until further order of this Honourable Court.
10. The grounds for the appointment of a provisional liquidator as required by the CWUA Act, s.199 are:
  - 10.1. There is a *prima facie* case for making a winding up order: CWUA Act s.199(2)(a) and
  - 10.2. The appointment of a provisional liquidator is necessary: CWUA Act s.199(2)(b) –
    - (i) To prevent the dissipation or misuse of the company's assets; and/or
    - (ii) To prevent mismanagement or misconduct on the part of the company's directors; and/or
    - (iii) In the public interest.

11. It is proposed that Mr. Brian Cecil Simms KC of 3 Bayside Executive Park, Nassau, N.P., The Bahamas be appointed as a provisional liquidator of FTX Digital pending the determination of the Petition.
12. The purpose of such an appointment is to protect the interests of investors and creditors of FTX Digital and the wider public interest in the orderly and secure management of the business of digital and crypto assets in the Commonwealth of the Bahamas pending the determination of the Petition
13. For the reasons set out above the Petitioner makes this application for FTX Digital to be wound up on the following grounds:
  - 13.1. That FTX Digital is insolvent: CWUA Act, s.186(b)
  - 13.2. That it is just and equitable that FTX Digital be wound up: CWUA Act, s.186(e)
  - 13.3. That FTX Digital's licence has been revoked: CWUA Act, s.186 (f)

**AND YOUR PETITIONER** therefore humbly prays that:

- i. FTX Digital be wound up in accordance with the Companies (Winding Up Amendment) Act, 2011.
- ii. Mr. Brian Simms KC of 3 Bayside Executive Park, Nassau, N.P., The Bahamas be appointed as provisional liquidator of FTX Digital forthwith pending the determination of the Petition.
- iii. All costs incurred by Mr. Brian Simms KC, and his advisors to date, if any, shall be costs in the winding-up; and
- iv. Such further Order or directions as the Court thinks fit.

**AND YOUR PETITIONER** will ever pray.

**DATED this 10<sup>th</sup> day of November A.D., 2022**

*Securities Commission of the Bahamas*  
**Securities Commission of The Bahamas**  
2<sup>nd</sup> Floor Poinciana House,  
North Building  
31A East Bay Street  
Nassau, N.P., The Bahamas

**NOTE:** This petition is intended to be served on FTX Digital and Samuel Bankman-Fried whose last known address is Nassau, N.P., The Bahamas.

This Petition was presented by the Securities Commission of The Bahamas whose address for service is **Securities Commission of The Bahamas** 2<sup>nd</sup> Floor Poinciana House, North Building, 31A East Bay Street.

#### **NOTICE OF HEARING**

**TAKE NOTICE THAT** the hearing of this petition will take place at the Supreme Court in the city of Nassau on the Island of New Providence one of the Islands of the Commonwealth of The Bahamas on the **10<sup>th</sup>** day of **February** A.D., 2023 at **10** o'clock in the fore-noon.

Any correspondence or communication with the Court relating to the hearing of this petition should be addressed to the Registrar of the Commercial Division of the Supreme Court at Nassau, The Bahamas.

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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**PETITION**

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2022  
COM/com

*Securities Commission of The Bahamas*  
**Securities Commission of The Bahamas**  
2<sup>nd</sup> Floor Poinciana House,  
North Building  
31A East Bay Street  
Nassau, N.P., The Bahamas

**EXHIBIT 2:**

**Provisional Liquidation Order**

COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
COMMERCIAL DIVISION



2022

COM/com/

**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)**

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**ORDER FOR APPOINTMENT OF  
PROVISIONAL LIQUIDATOR**

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**Before His Lordship, the Honourable Mr. Chief Justice Ian Winder**

**Dated the 10 day of November, A.D., 2022**

**UPON THE APPLICATION** by an unfiled Summons for Directions dated 10<sup>th</sup> November 2022 on behalf of the Petitioner/Application, the Securities Commission of The Bahamas (“**the Applicant**”) for an Order that Mr. Brian Cecil Simms KC be appointed provisional liquidator of FTX Digital Markets Ltd. (“**the Company**”).

**AND UPON HEARING** Mr. Gladstone Brown of Counsel for the Applicant, and Mrs. Sophia T. Rolle-Kapousouzoglou with Mr. Valdere J. Murphy of Counsel for the proposed liquidator.

**AND UPON** reading the unfiled Petition of the Applicant.

**AND UPON READING** the unfiled Affidavit of Christina Rolle, Executive Director of the Securities Commission of The Bahamas and the unfiled Affidavit of Brian Cecil Simms KC.

**AND UPON** the Applicant undertaking by its counsel to pay any damage suffered by the Company, as a result of this order and/or the appointment of a provisional liquidator in the event that the winding up petition is ultimately withdrawn or dismissed.

**AND UPON COUNSEL** for the Applicant giving an undertaking to file the aforementioned unfiled Petition, Summons for Directions, Affidavit of Christina Rolle and Affidavit of Brian Simms KC as soon as reasonably practicable.

**IT IS HEREBY ORDERED** that: -

1. Mr Brian Cecil Simms KC of 3 Bayside Executive Park, West Bay Street and Blake Road, Nassau, N.P., The Bahamas be appointed provisional liquidator of the Company (**“the Provisional Liquidator”**).
2. The Provisional Liquidator is hereby authorised to take any action that he considers fit under the Companies (Winding Up Amendment) Act 2011 (**“the Act”**), section 199(4) to maintain the value of the assets owned or managed by the Company or to carry out the functions for which he was appointed including,
  - a. with the sanction of the court, those powers contained in Part I of the Fourth Schedule of the Act; and
  - b. with or without that sanction the exercise of the general powers specified in Part II of the Fourth Schedule of the Act.
3. For the avoidance of doubt, the above-mentioned powers include a power to dispense with the services of the directors and other management of the Company, but the exercise of that power is without prejudice to the duties of the directors and officers under section 230 of the Act.
4. Until further order the Company’s directors have no further authority to act or exercise any functions for or on behalf of the Company unless expressly instructed to do so in writing by the Provisional Liquidator.
5. Until further order of this Court the Provisional Liquidator is directed to take all and any necessary steps that he considers fit to protect the assets of the Company wheresoever situate including any assets held on trust by the Company.

6. The remuneration and expenses of the Provisional Liquidator shall be paid out of the assets of the Company in any event.
7. The Winding-Up Petition shall be adjourned to the 10<sup>th</sup> February 2023 at 10:00am.
8. The Affidavits of Christina Rolle and Brian Cecil Simms KC and other documents to be filed herein save for the petition, and provisional liquidation order shall be sealed and kept confidential until the return date which is set for 10<sup>th</sup> February 2023 or until further Order.

**BY ORDER OF THE COURT**

**REGISTRAR**

*This Order was drawn up by the Securities Commission of The Bahamas, 2<sup>nd</sup> Floor Poinciana House, North Building, 31A East Bay Street, Nassau, N.P., The Bahamas, Attorneys for the Petitioner/Applicant*

**PENAL NOTICE**

**IF YOU FTX DIGITAL MARKETS LTD., WHETHER BY ITSELF, ITS DIRECTORS, EMPLOYEES, SERVANTS, AGENTS OR OTHERWISE DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED.**

**ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE BREACH OF THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.**

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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ORDER FOR APPOINTMENT OF  
PROVISIONAL LIQUIDATOR

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2022  
COM/com

*Securities Commission of The Bahamas*

Securities Commission of The Bahamas  
2<sup>nd</sup> Floor Poinciana House,  
North Building  
31A East Bay Street  
Nassau, N.P., The Bahamas  
Attorneys for the Petitioner/Applicant

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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	:	Chapter 15
In re:	:	Case No. 22-11516 (MEW)
FTX DIGITAL MARKETS LTD.	:	
	:	
Debtor in a	:	
Foreign	:	
Proceeding. <sup>1</sup>	:	
	:	
	:	

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**SUPPLEMENTAL DECLARATION OF BRIAN CECIL SIMMS KC IN SUPPORT OF  
PETITION FOR RECOGNITION UNDER CHAPTER 15  
OF THE BANKRUPTCY CODE**

I, Brian Cecil Simms KC, hereby declare under penalty of perjury under the laws of the United States as follows:

1. I am a resident of The Bahamas. I am a Senior Partner of the firm Lennox Paton and the head of the Litigation and Insolvency & Restructuring Groups. Lennox Paton is a leading, full service commercial law firm located at 3 Bayside Executive Park, Nassau, N.P., The Bahamas. I have been practicing law for over 30 years. Throughout my career, I have appeared a number of times in the Privy Council. I was made a Queen's Counsel in 2009 (now King's Counsel), and I have overseen some of the most substantial Bahamian and international offshore cases.

2. Kevin G Cambridge, Peter Greaves, and I are the duly appointed joint provisional liquidators ("Joint Provisional Liquidators") of FTX Digital Markets LTD. (the "FTX Digital"), a company incorporated in the Commonwealth of The Bahamas and operating as a digital assets business under the Digital Assets and Registered Exchanges Act, 2020 (the "DARE Act"). FTX

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<sup>1</sup> FTX Digital Markets LTD. a company incorporated in the Commonwealth of the Bahamas operating as a digital assets business under the Digital Assets and Registered Exchanges Act, 2020, with registration number 207269B.

Digital is a company within the meaning of the Companies (Winding Up Amendment) Act, 2011 ("CWUA Act") and is in provisional liquidation in the Commonwealth of The Bahamas (the "**Bahamian Liquidation**") 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**"), the sole Court with jurisdiction over FTX Digital and the entities operated from FTX Digital's substantial office complex in Nassau, Bahamas. A summary of the Bahamian Liquidation and the events leading to the filing of the above-captioned case is contained in the Petition and the Declarations.

3. I respectfully submit this supplemental declaration (the "**Supplemental Declaration**") in support of the Joint Provisional Liquidator's *Emergency Motion for Provisional Relief Pursuant to 11 U.S.C. §§ 105(a), 1519 and 1521* (the "**Motion**")<sup>2</sup> seeking, pursuant to Chapter 15 of the United States Bankruptcy Code, 11 U.S.C. § 1501, *et seq.* (the "**Bankruptcy Code**"), an Order: (i) staying execution against FTX Digital's assets; (ii) suspending the right to transfer, encumber or otherwise dispose of any assets of FTX Digital; (iii) entrusting the administration or realization of all or part of FTX Digital's assets located in the United States to the Joint Provisional Liquidators as foreign representatives; (iv) authorizing urgent discovery measures pursuant to 11 U.S.C. 1521(a)(4); and (v) authorizing the Joint Provisional Liquidator s to appear and be heard on the Debtor's behalf until the Court rules on the Petition.

4. I am over the age of 18 and I am duly authorized to make this declaration acting in my capacity as one of the Joint Provisional Liquidators of FTX Digital. If called upon to testify, I could and would testify competently as to the facts set forth herein. Except as otherwise

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<sup>2</sup> Capitalized terms used herein but not otherwise defined shall have the meanings ascribed in the Motion.

indicated, I make this Declaration based on the documents in my possession and supplied to me, on facts and matters that are known to me or of which I have been informed by others, and on my experience and training. When I am informed by others, the information is true to the best of my knowledge and belief, and I state the source of the information.

5. I have reviewed the Motion and it is my belief that the relief sought therein is necessary to implement the liquidation or restructuring contemplated in the Bahamian Liquidation.

6. I am informed by counsel that chapter 15 of the Bankruptcy Code includes provisions granting: (i) broad discovery rights to the foreign representative(s) upon recognition; (ii) the imposition of a stay preventing creditors from executing against assets of the Debtor; (iii) a suspension of the rights to transfer, encumber or otherwise dispose of assets of the Debtor; and (iv) authority to the ‘foreign representative’ to appear and be heard in United States court proceedings on a debtor’s behalf. For the following reasons, each of these rights are critical to the orderly and effective liquidation of FTX Digital for the benefit of all creditors and stakeholders, as the primary assets and business practices of FTX Digital, and FTX Brand, among others, remains under investigation.

**A. The Joint Provisional Liquidators have a critical need to obtain discovery.**

7. At the most basic level, the Joint Provisional Liquidators are presently unable to ascertain FTX Digital’s financial position, and its assets and liabilities more generally, nor do the Joint Provisional Liquidators have the totality of the information necessary to protect FTX Digital’s assets. The authority to seek discovery requested in the Motion is critical to my ability to discover the full extent of FTX Digital’s assets and financial situation so that I can work towards a full, efficient and equitable distribution of FTX Digital’s assets to creditors in the Bahamian Liquidation.

8. Most importantly, digital assets can be readily exchanged for digital currencies and to others on the underlying blockchains throughout the United States and elsewhere, and these digital assets can be converted to fiat currency and deposited into bank accounts or other fiat-based financial accounts. Additionally, funds deposited into bank accounts could be dissipated through wire transfers. Thus, the requested discovery is essential because the Joint Provisional Liquidators cannot accurately trace assets and re-create the flow of FTX Digital assets without the ability to issue subpoenas. This may include the need to access information concerning digital asset accounts maintained by exchanges and/or fund transfers maintained by correspondent or intermediary banks.

9. Also, as discussed in the Petition and the Declarations, FTX cryptocurrencies were used by, at least one affiliate, Alameda Research Ltd. Thus, the Joint Provisional Liquidators will need to conduct discovery to determine whether FTX Digital holds claims against its affiliates based on intercompany transfers and to assess insider transactions.

10. United States records of FTX Digital and the FTX Brand are likely to be of critical importance to the Bahamian Liquidation for multiple reasons. For example, these documents could provide a clear picture of the reasons for the insolvency of FTX Digital, and allow the Joint Provisional Liquidators to make an informed judgment as to the potential third party claims available to FTX Digital, and to determine if FTX Digital holds additional, undisclosed assets.

11. The books and records will provide valuable insight into the financial machinations that led to the alleged dissipation of FTX Digital assets, at the expense of creditors. The discovery of these agreements and other financial documents will likely provide further insight into the financial engineering, which appears to have contributed to the insolvency of FTX Digital.

Accordingly, it is important that the Joint Provisional Liquidators be granted the authority to seek discovery.

**B. Creditors must be prevented from executing against FTX Digital's assets.**

12. We are in the early stages of what will likely be a lengthy wind down or restructuring process for FTX Digital. As discussed, at this juncture, the full scope and location of FTX Digital's assets, claims and liabilities are unknown. Accordingly, it is critical that the Court enter an order preventing creditors from executing on FTX Digital's assets for at least two reasons.

13. First, as discussed, at this time the full extent of FTX Digital's assets is unknown, and therefore it is possible that unscrupulous creditors may attempt to take advantage of this by executing on FTX Digital's assets before they become known to the Joint Provisional Liquidators.

14. Second, it is believed that FTX Digital is cash flow insolvent, and creditors may therefore receive something less than a 100% recovery on their claims against FTX Digital. Accordingly, an order preventing creditors from executing on assets now in an attempt to realize more than they would receive in the Bahamian Litigation is paramount.

15. It is my belief and opinion that an order of the Court preventing execution against the Debtor's assets will ameliorate the threat of dissipation of the Debtor's assets before they can be properly administered by the Joint Provisional Liquidators.

**C. The Court must suspend the transfer, encumbrance or disposition of the Debtor's assets.**

16. It is similarly important that the Court suspend the right to transfer, encumber or otherwise dispose of the Debtor's assets. As discussed, the Debtor's assets consist, in large part, of digital assets that can be exchanged for digital currencies and to others on the underlying blockchain and can be converted to fiat currency, making it harder to trace once transferred.

*✓ sue*

17. It is my belief that the longer holders of the Debtor's assets have the ability to transfer or dispose of it, the less likely it is that the Joint Provisional Liquidators will be able to recover said assets for distribution or for use in a restructuring in the Bahamian Liquidation.

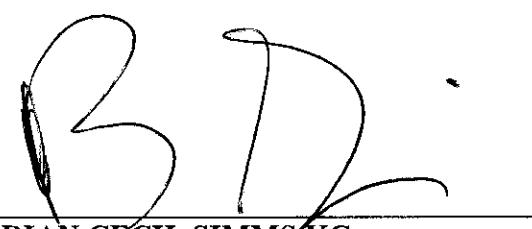
18. Accordingly, I believe an order suspending the transfer, encumbrance or disposition of the Debtor's assets is key to the success of the Bahamian Liquidation.

**D. The Court should authorize the Joint Provisional Liquidators to appear on behalf of FTX Digital in proceedings in the United States.**

19. It is also important that the Court authorize the Joint Provisional Liquidators to appear on behalf of FTX Digital in proceedings taking place in the United States pending a final ruling on the Petition. As discussed in the Motion, FTX Trading and the FTX Affiliates recently filed for bankruptcy in the Bankruptcy Court for the District of Delaware. Due to the close relationship between FTX Digital, on the one hand, and FTX Trading and the FTX Affiliates, on the other, I anticipate that there will be a need for the Joint Provisional Liquidators to appear and be heard in these cases in the near future. Additionally, there may be a need for the Joint Provisional Liquidators to appear and be heard in other proceedings in the United States related to FTX Digital of which I am yet unaware.

Pursuant to section 1746 of title 28 of the United States Code, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: November 16, 2022  
Executed in Nassau, The Bahamas



**BRIAN CECIL SIMMS KC**  
*Joint Provisional Liquidator of FTX Digital Markets LTD.*

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

In re	Chapter 11
FTX TRADING LTD., <i>et al.</i> <sup>1</sup>	Case No. 22-11068 (JTD)
Debtors.	(Jointly Administered)
In re	Chapter 15
FTX DIGITAL MARKETS LTD. <sup>2</sup>	Case No. 22-11217 (JTD)
Debtor in a Foreign Proceeding.	<b>Objection Deadline: To be determined</b> <b>Hearing Date: To be determined</b>

**EMERGENCY MOTION OF THE JOINT PROVISIONAL LIQUIDATORS  
OF FTX DIGITAL MARKETS LTD. (I) FOR RELIEF FROM AUTOMATIC STAY AND  
(II) TO COMPEL TURNOVER OF ELECTRONIC RECORDS UNDER SECTIONS 542,  
1519(A)(3), 1521(A)(7) AND 1522 OF THE BANKRUPTCY CODE**

Brian C. Simms KC, Kevin G. Cambridge, and Peter Greaves (“**Joint Provisional Liquidators**”), in their capacity as the duly appointed joint provisional liquidators of FTX Digital Markets Ltd. (“**FTX Digital**” or the “**Company**”) and foreign representatives of the Provisional Liquidation (as defined below) of FTX Digital, submit this emergency motion (the “**Motion**”) for entry of an order (i) granting the Joint Provisional Liquidators relief from the automatic stay pursuant to section 362(d) of title 11 of the United States Code (the “**Bankruptcy**

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<sup>1</sup> The last four digits of FTX Trading Ltd.’s tax identification number are 3288. Due to the large number of debtor entities in the 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 herein. A complete list of such information may be obtained on the website of the U.S. Debtors’ proposed claims and noticing agent at <https://cases.ra.kroll.com/FTX>.

<sup>2</sup> FTX Digital Markets Ltd. (in Provisional Liquidation) was incorporated in the Commonwealth of The Bahamas as an International Business Company, registered number 207269B.

**Code**") (to the extent applicable and to the extent such relief is necessary) in Case No. 22-11068 (the "**Chapter 11 Cases**") and (ii) requiring the U.S. Debtors to provide the Joint Provisional Liquidators with access to certain electronic records related to FTX Digital's property and financial affairs in FTX Digital's chapter 15 case (Case No. 22-11217 (JTD)) (the "**Chapter 15 Case**") pursuant to sections 542, 1519(a)(3), 1521(a)(7) and 1522 of the Bankruptcy Code. In support of the Motion, the Joint Provisional Liquidators rely upon and incorporate by reference the *Declaration of Peter Greaves in Support of Emergency Motion of the Joint Provisional Liquidators of FTX Digital Markets Ltd. (I) for Relief from Automatic Stay and (II) to Compel Turnover of Electronic Records Under Sections 542, 1519(a)(3), 1521(a)(7) and 1522 of the Bankruptcy Code* (the "**Greaves Declaration**").

## INTRODUCTION

1. The Joint Provisional Liquidators have been duly appointed by the Supreme Court of the Bahamas to wind up the affairs of FTX Digital. As a fundamental part of their court-mandated duties, the Joint Provisional Liquidators urgently require access to certain electronic records related to FTX Digital's property and financial affairs so that they can identify the Company's assets, investigate potential claims and maintain value available to FTX Digital's creditors. Access to this information, however, was abruptly cut off on or about November 12, 2022, and the U.S. Debtors have the ability to restore it. Despite some encouraging statements from U.S. Debtors' counsel, no progress has been made in restoring that access, frustrating the ability of the Joint Provisional Liquidators to perform their duties mandated under Bahamian law. Since the first day hearing, the Joint Provisional Liquidators have engaged with the U.S. Debtors in an attempt to find a mutually agreeable solution, but so far, no access to the systems or other information has been shared.

2. As discussed below, on or about November 12th, access to FTX Digital’s cloud databases (AWS and GCP) was suddenly denied for certain FTX Digital employees, and the Joint Provisional Liquidators have been unable to access the records of the International Platform (defined below). Without access, there is great risk that FTX Digital will suffer severe financial harm, as the Joint Provisional Liquidators will be unable to promptly identify, locate and protect assets at risk of dissipation. Moreover, information that is potentially critical to the Joint Provisional Liquidators’ investigation may be automatically purged if access is not secured. Accordingly, while the Joint Provisional Liquidators remain hopeful that an agreed solution can be negotiated with the U.S. Debtors, they are compelled to seek the relief sought in this Motion.

3. Although FTX Digital owns its electronic records (the “**FTX Digital Records**”), access to this property is in the control of the U.S. Debtors, and therefore arguably protected by the automatic stay. Because the Joint Provisional Liquidators need access to both the FTX Digital Records and other recorded information relating to FTX Digital’s property and financial affairs (collectively, with the FTX Digital Records, the “**Recorded Information**”) in order to protect the interests of the FTX Digital estate, the Joint Provisional Liquidators, as the foreign representatives of the Bahamian Provisional Liquidation, urgently seek an order from this Court lifting the stay in the Chapter 11 Cases and requiring the U.S. Debtors to provide access to this Recorded Information.

### **JURISDICTION**

4. The United States Bankruptcy Court for the District of Delaware (the “**Court**”) has jurisdiction over these chapter 11 cases and 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. This is a core proceeding under 28 U.S.C. § 157(b)(2).

5. Pursuant to 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 Joint Provisional Liquidators consent to entry of a final judgment or order with respect to this Motion if it is determined that this Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

6. Venue of these chapter 11 cases in this district is proper under 28 U.S.C. §§ 1408 and 1409.

7. The statutory predicates for the relief requested herein are 11 U.S.C. § 362(d)(1), 542(a), 542(e), 1519(a)(3), 1521(a)(7) and 1522.

## **BACKGROUND**

### **A. THE FTX COMPANIES AND INSOLVENCY FILINGS**

8. FTX Digital is an International Business Company incorporated in the Commonwealth of The Bahamas and operating as a digital assets business under the Digital Assets and Registered Exchanges Act, 2020 (the “**DARE Act**”) as amended, Statute Laws of The Bahamas. Greaves Decl. ¶ 2.

9. On November 10, 2022, the Securities Commission of the Bahamas (the “**Bahamas Securities Commission**”) suspended the registration of FTX Digital pursuant to section 19 of the DARE Act. *Id.* ¶ 6. On that date, the Bahamas Securities Commission filed a petition (the “**Bahamas Petition**”) in the Supreme Court of the Bahamas (the “**Bahamas Court**”) seeking the provisional liquidation of FTX Digital. *Id.*

10. On November 10, 2022, the Bahamas Court issued an order (the “**Provisional Liquidation Order**”) directing that FTX Digital be placed into provisional liquidation (the “**Bahamian Provisional Liquidation**”) and appointing Brian C. Simms KC as provisional

liquidator. *Id.* ¶ 7. On November 14, 2022, the Bahamian Court entered an order appointing Kevin G. Cambridge and Peter Greaves as Joint Provisional Liquidators, along with Brian C. Simms KC. *Id.* The Provisional Liquidation Order divests the powers of FTX Digital's directors to act or exercise any functions for or on behalf of FTX Digital unless expressly instructed to do so by the Joint Provisional Liquidators in writing. *Id.*

11. On November 11, 2022, FTX Trading Ltd. and 101 other affiliates and subsidiaries which comprise the U.S. Debtors filed petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, Case No. 22-11068 commencing the Chapter 11 Cases.

12. On November 15, 2022, the Joint Provisional Liquidators filed a petition for recognition of a foreign proceeding under chapter 15 in the United States Bankruptcy Court for the Southern District of New York commencing the Chapter 15 Case. On November 28, this Court entered an agreed order to transfer venue of the Chapter 15 Case to this Court, Case No. 22-11217.

#### **B. FTX DIGITAL'S ELECTRONIC INFORMATION**

13. Before these bankruptcy proceedings, FTX Digital employees had access to key systems that were related to the services provided by FTX Digital. Greaves Decl. ¶ 8. These services were provided through the ftx.com website and its underlying technology platform (collectively known as the “**International Platform**”). *Id.* The following key systems were used by FTX Digital employees to deliver the services:

- a. An Amazon Web Services (AWS) cloud account, which was used to set up and run virtual servers, databases and other technology components that hosted the International Platform.

b. A Google Cloud Portal (GCP) account, which was used to store a copy of key database records from the International Platform hosted on AWS.

*Id.*

14. The International Platform was used by several FTX entities to provide services to customers including both FTX Digital and the U.S. Debtors. *Id.* ¶ 9. The ftx.us platform (the “**US Platform**”) was also hosted using the same AWS account – although its virtual servers, databases, and other technology components were logically separate from those of the International Platform. *Id.*

15. On or about November 12, 2022, access to the Recorded Information of FTX Digital was restricted. *Id.* ¶ 10. The Joint Provisional Liquidators have made many attempts to obtain access. *Id.* The Joint Provisional Liquidators first instructed FTX Digital employees to attempt to gain access, but they were denied. *Id.* After multiple attempts, the Joint Provisional Liquidators engaged their counsel to communicate access requests with the U.S. Debtors’ counsel. *Id.*

16. The Joint Provisional Liquidators understand the U.S. Debtors have the ability to restore FTX Digital’s access to this information promptly. *Id.* To perform their court-appointed duties to identify, preserve, and maintain the value of FTX Digital’s assets, the Joint Provisional Liquidators urgently require access to the Recorded Information. *Id.* Under the Provisional Liquidation Order, the Joint Provisional Liquidators have the rights and powers of a liquidator to the extent necessary to maintain the value of the assets owned or managed by the Company and to carry out the functions for which they were appointed. *Id.* This includes the power to take possession of, collect and get in the property of the Company, and for that purpose to take all such proceedings as the Joint Provisional Liquidators consider necessary. *Id.* The Joint

Provisional Liquidators are also directed pursuant to the Provisional Liquidation Order to take all and any necessary steps to protect the assets of the Company wherever situated, including any assets held in trust by the Company. *Id.* at ¶ 11.

17. Prior to the filing of the bankruptcy petitions, FTX Digital's information technology architecture was shared globally with other FTX entities, including the U.S. Debtors. *Id.* ¶ 12. In particular, there are two key systems with data relevant to FTX Digital – Amazon Web Services (“AWS”) and Google Cloud Portal (“GCP”). AWS hosted the FTX.com trading platform (otherwise known as the international (non-U.S.) platform) and held information such as wallet addresses, customer balances, deposit and withdrawal records, trades, and accounting data. *Id.* GCP maintained a copy of the main data tables from AWS for analytics purposes. *Id.*

18. There are at least five categories of information that the Joint Provisional Liquidators need urgent access to in order to perform their duties:

- International trading platform data (the trading platform data was run on AWS, with an analytics backup on GCP, as noted above);
- Email records for FTX Digital employees (either those with an @ftxdigitalmarkets.com email address, or other FTX group email addresses of employees that are now fully/partially employed by FTX Digital);
- Slack chat records for FTX Digital employees (Slack was shared across the FTX group, including both FTX Digital and the U.S. Debtors);
- Documents stored on Google Drive (a company share drive); and
- Accounting system (QuickBooks).

*Id.* ¶ 13.

19. As noted above, the Joint Provisional Liquidators have asked counsel for the U.S. Debtors for access to and cooperation with sharing the Recorded Information. And this Court expressed its hope at the November 22, 2022 hearing that the parties “will continue and come to

a resolution about how to proceed forward with the sharing of information.” Case No. 22-11068, Docket No. 142, Nov. 22, 2022 Hearing Transcript at 78:20-23. To that end, the Joint Provisional Liquidators have been and remain willing to explore an information sharing protocol with the U.S. Debtors, though any such protocol would be subject to authorization by the Bahamian Court and it is not certain such relief will be granted. Because time is of the essence, however, and FTX Digital’s assets are at risk of dissipation, the Joint Provisional Liquidators have requested the U.S. Debtors to immediately restore access to the Recorded Information. Counsel for the Joint Provisional Liquidators requested access on the date of the first day hearing, then requested a call with counsel for the U.S. Debtors which occurred on December 1, during which counsel for the Joint Provisional Liquidators requested access to the Recorded Information. On December 7, counsel for the Joint Provisional Liquidators sent a written demand to the U.S. Debtors to restore access to the systems containing the Recorded Information by December 8 at 5 PM. A copy of such letter is attached as Exhibit A. Counsel for the Joint Provisional Liquidators did not receive a response, but instead received a vague request for a meeting the following week. While the Joint Provisional Liquidators are happy to engage in dialogue with the U.S. Debtors, their refusal to promptly restore access has frustrated the ability of the Joint Provisional Liquidators to carry out their duties under Bahamian law and placed FTX Digital’s assets at risk of dissipation. Greaves Decl. ¶ 14. The U.S. Debtors’ refusal also creates the risk that critical information will be automatically deleted and irretrievably lost. *Id.*

### **RELIEF REQUESTED**

20. The Joint Provisional Liquidators respectfully request that the Court enter an order (the “**Order**”) substantially in the form attached as Exhibit B hereto (i) providing limited relief from the automatic stay in the Chapter 11 Cases to allow the Joint Provisional Liquidators

to seek to compel the U.S. Debtors to provide access to the Recorded Information, (ii) requiring the U.S. Debtors to provide the Joint Provisional Liquidators with access to the Recorded Information and (iii) granting such other and further relief as is just and equitable.

### **BASIS FOR RELIEF**

#### **I. THE COURT SHOULD GRANT THE JOINT PROVISIONAL LIQUIDATORS RELIEF FROM THE AUTOMATIC STAY**

21. 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). “Cause” is not defined in the Bankruptcy Code. It is a flexible concept that is fact intensive, and must be determined on a case-by-case basis 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).

22. In fashioning relief appropriate for the specific facts here, this Court may consider the effect of the stay on the parties. Courts in this district consider: (i) the hardship to the estate if stay relief is granted; (ii) the hardship to the movant if stay relief is not granted; and (iii) the underlying merits. *See, e.g., In the Matter of Revenue Products Co.*, 141 B.R. 574, 576 (Bankr. D. Del 1992). “To establish cause, the party seeking relief from the stay must show that the balance of hardships from not obtaining relief tips significantly in its favor.” *Atl. Marine, Inc. v. American Classic Voyages, Co. (In re American Classic Voyages, Inc.)*, 298 B.R. 222, 225 (D. Del. 2003) (cleaned up).

23. The Joint Provisional Liquidators’ effort to secure access to FTX Digital’s own property arguably does not even require relief from stay. “The automatic stay of 11 U.S.C. § 362(a) protects only the debtor, property of the debtor, and property of the estate. It does not

protect non-debtor parties or their property.” *In re Advanced Ribbons and Office Products, Inc.*, 125 B.R. 259, 263 (9th Cir. BAP 1991); *see Boucher v. Shaw*, 572 F.3d 1087, 1092 (9th Cir. 2009) (“As a general rule, the automatic stay protects only the debtor, property of the debtor or property of the estate. . . . The stay ‘does not protect non-debtor parties or their property.’”); *Endover Palisades, LLC v. Stuart (In re Stuart)*, 594 B.R. 834, 842 (Bankr. N.D. Ga. 2018) (“Because an in rem action against non-Debtor and non-estate property does not constitute an attempt to collect on the Judgment from the Debtor personally, it does not implicate the automatic stay of Section 362(a)(1) or (6)’’); *Singer Furniture Acq. Corp. v. SSMC Inc.*, 254 B.R. 46, 56 (M.D. Fla. 2000) (“If property is not property of the estate, then the automatic stay does not protect it.”).

24. To the extent some of FTX’s records may be located on platforms owned or controlled by the U.S Debtors, there is cause to modify the stay to allow the Joint Provisional Liquidators to seek access to or disclosure of all information relating to FTX Digital’s property and financial affairs, and this will promote cooperation with respect to the information sharing that will be essential as the Chapter 15 Case proceeds. *See In re St. Clair*, 2011 Bankr. LEXIS 5166, at \*23 (Bankr. D.N.J. Dec. 29, 2011) (granting relief from stay to allow party to pursue rights as to his property and noting that “[t]he automatic stay serves only to protect property in which either the debtor or the estate has an interest.”); *In re W.L. Bradley Co.*, 75 B.R. 505, 513 (Bankr. E.D. Pa. 1987) (granting relief from automatic stay to allow party to recover its property from the estate).

25. Here, balancing of the relative hardships weigh strongly in favor of lifting the stay. The Joint Provisional Liquidators urgently need to access the Recorded Information to carry out their fundamental and essential obligations to identify all the FTX Digital’s assets and

potential claims and maintain value for all FTX Digital's creditors. Without access to this information, the Joint Provisional Liquidators will be unable to perform their court-mandated duties, which presents the risk that the Joint Provisional Liquidators will be unable to identify, locate, and protect assets at risk of dissipation. Moreover, unless the Joint Provisional Liquidators are able to secure access to the Recorded Information, there is a risk that critical information will be automatically deleted and forever lost.

26. The U.S. Debtors will suffer no harm or hardship if this relief is granted. The Joint Provisional Liquidators ask only that the U.S. Debtors be required to *share* the Recorded Information. This will not prevent the U.S. Debtors from continuing to access the same information.

27. Finally, there is no dispute that the Joint Provisional Liquidators are authorized to act on behalf of FTX Digital, and under the Bankruptcy Code, FTX Digital is entitled to obtain its own books and records under sections 542(a) and 542(e) of the Bankruptcy Code. *See In re Markus*, 610 B.R. 64, 84 (Bankr. S.D.N.Y. 2019) (“Section 1521(a)(7) authorizes the court to grant to the foreign representative the sort of relief that might be available to a trustee appointed in a full bankruptcy case, including the turnover [under § 542] of property belonging to the debtor.”) (internal quotations omitted).

28. Accordingly, sufficient cause exists for lifting the automatic stay.

## **II. THE COURT SHOULD REQUIRE THE U.S. DEBTORS TO PROVIDE THE JOINT PROVISIONAL LIQUIDATORS WITH ACCESS TO THE RECORDED INFORMATION**

29. The Bankruptcy Code allows this Court to order the U.S. Debtors to provide the Joint Provisional Liquidators with access to the Recorded Information. Section 1519(a)(3) provides that “[f]rom the time of filing a petition for recognition until the court rules on the

petition, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including . . . (3) any relief referred to in paragraph (3), (4), or (7) of section 1521(a).” Section 1521(a)(7) provides that “[a] [u]pon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including . . . (7) granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).”

30. In addition, Section 542(a) provides that “an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title . . . shall deliver to the trustee, and account for, such property or the value of such property.” 11 U.S.C. § 542(a).

31. Section 542(e) of the Bankruptcy Code provides that “[s]ubject to any applicable privilege, after notice and a hearing, the court may order an attorney, accountant, or other person that holds recorded information, including books, documents, records, and papers, relating to the debtor’s property or financial affairs, to turn over or disclose such recorded information to the trustee.” 11 U.S.C. § 542(e).

32. Courts have found that section 1521(a)(7) “authorizes the court to grant to the foreign representative the sort of relief that might be available to a trustee appointed in a full bankruptcy case,” including the turnover of property belonging to the debtor. *In re Inversora Eléctrica de Buenos Aires S.A.*, 560 B.R. 650, 655 (Bankr. S.D.N.Y. 2016); *see also In re AJW Offshore, Ltd.*, 488 B.R. 551, 562 (Bankr. E.D.N.Y. 2013) (“Chapter 15 does not have a specific

provision authorizing turnover under § 542 or § 543, but does have the general incorporation of powers available to a trustee under § 1521(a)(7), subject to the protection of affected interests under § 1522.”); *see also In re ABC Learning Centers Ltd.*, 445 B.R. 318, 341 (Bankr. D. Del. 2010), *aff’d*, 728 F.3d 301 (3d Cir. 2013) (recognizing foreign main proceeding, and without further discussion, ordering right to use of sections 542 and 543 turnover provisions).

33. Section 1522(a) ensures that the interests of creditors and interested parties, including the debtor, are “sufficiently protected,” to impose conditions on any discretionary relief, including turnover under section 1521(a), and to modify or terminate discretionary relief. *See 11 U.S.C. § 1522(a); see also In re Int’l Banking Corp. B.S.C.*, 439 B.R. 614, 626 (Bankr. S.D.N.Y. 2010) (“The idea underlying [§ 1522] is that there should be a balance between relief that may be granted to the foreign representative and the interests of the persons that may be affected by such relief.”)

34. As noted above, the Joint Provisional Liquidators urgently require access to the Recorded Information to carry out their fundamental and essential obligations to identify all the debtor’s assets and potential claims against third parties and maintain value for all of FTX Digital’s creditors. Without access to such information, the Joint Provisional Liquidators will be unable to perform their court-mandated duties to the detriment of all stakeholders in FTX Digital, as the Joint Provisional Liquidators will be unable to identify, locate and protect assets at risk of dissipation. Moreover, unless the Joint Provisional Liquidators are able to secure access to the Recorded Information, there is a risk that critical information will be automatically deleted and forever lost.

35. The Joint Provisional Liquidators are entitled to the Recorded Information under both section 542(a) and 542(e) of the Bankruptcy Code, as the Recorded Information includes

FTX Digital Records that are the property of FTX Digital, and the Record Information contains books and records of FTX Digital. Meanwhile, there is a limited burden, if any, to the U.S. Debtors for sharing the Recorded Information. Again, the U.S. Debtors would be required to *share* access to the Recorded Information. This will not prevent the U.S. Debtors from continuing to access the same information. And there is no dispute that the Joint Provisional Liquidators are authorized to act on behalf of FTX Digital, and FTX Digital is entitled under the Bankruptcy Code to obtain its books and records from third parties. *See In re Markus*, 610 B.R. 64, 84 (Bankr. S.D.N.Y. 2019) (“Section 1521(a)(7) authorizes the court to grant to the foreign representative the sort of relief that might be available to a trustee appointed in a full bankruptcy case, including the turnover [under § 542] of property belonging to the debtor.”) (internal quotations omitted).

36. Accordingly, the Court should require the U.S. Debtors to provide the Joint Provisional Liquidators with access to the Recorded Information as soon as possible.

### **NOTICE**

37. The Joint Provisional Liquidators will provide notice of this Motion to: (i) counsel to the U.S. Debtors; (ii) Office of the United States Trustee for the District of Delaware; (iii) and all parties entitled to notice of this Motion pursuant to Bankruptcy Rule 2002 and Local Rule 4001-1(a). The Joint Provisional Liquidators submit that, in view of the facts and circumstances, such notice is sufficient and no other or further notice need be provided.

### **NO PRIOR MOTION**

38. The Joint Provisional Liquidators have not made any prior motion for the relief sought in this Motion to this Court or any other.

**CONCLUSION**

39. WHEREFORE, for the reasons stated above, the Joint Provisional Liquidators respectfully request that the Court (i) enter the Order, substantially in the form attached hereto as **Exhibit B**, and (ii) grant such other and further relief as is just and equitable.

Dated: December 9, 2022

/s/ Brendan J. Schlauch  
**RICHARDS, LAYTON & FINGER, P.A.**  
Kevin Gross (No. 209)  
Paul N. Heath (Bar No. 3704)  
Brendan J. Schlauch (Bar No. 6115)  
David T. Queroli (Bar No. 6318)  
One Rodney Square  
920 N. King Street  
Wilmington, DE 19801  
Telephone: (302) 651-7700  
Facsimile: (302) 651-7701  
gross@rlf.com  
heath@rlf.com  
schlauch@rlf.com  
queroli@rlf.com

—and—

**WHITE & CASE LLP**

Jessica C. Lauria (admitted *pro hac vice*)  
J. Christopher Shore (admitted *pro hac vice*)  
Brian D. Pfeiffer (admitted *pro hac vice*)  
Mark Franke (admitted *pro hac vice*)  
Brett L. Bakemeyer (admitted *pro hac vice*)  
1221 Avenue of the Americas  
New York, NY 10020  
Telephone: (212) 819-8200  
jessica.lauria@whitecase.com  
cshore@whitecase.com  
brian.pfeiffer@whitecase.com  
mark.franke@whitecase.com  
brett.bakemeyer@whitecase.com

Thomas E Lauria (admitted *pro hac vice*)  
Richard S. Kebrdle (admitted *pro hac vice*)  
200 South Biscayne Boulevard, Suite 4900  
Miami, FL 33131  
Telephone: (305) 371-2700  
tlauria@whitecase.com  
rkebrdle@whitecase.com

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

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

In re

FTX TRADING LTD., *et al.*<sup>1</sup>

Debtors.

Chapter 11

Case No. 22-11068 (JTD)

(Jointly Administered)

In re

FTX DIGITAL MARKETS LTD.<sup>2</sup>

Debtor in a Foreign  
Proceeding.

Chapter 15

Case No. 22-11217 (JTD)

**Objection Deadline: To be determined  
Hearing Date: To be determined**

**NOTICE OF MOTIONS AND HEARING**

**PLEASE TAKE NOTICE** that, on December 9, 2022, Brian C. Simms KC, Kevin G. Cambridge, and Peter Greaves (“**Joint Provisional Liquidators**”), in their capacity as duly appointed joint provisional liquidators of FTX Digital Markets Ltd. (“**FTX Digital**”) and foreign representatives of the Provisional Liquidation of FTX Digital, filed the *Emergency Motion of the Joint Provisional Liquidators of FTX Digital Markets Ltd. (I) for Relief from Automatic Stay and (II) to Compel Turnover of Electronic Records Under Sections 542, 1519(a)(3), 1521(a)(7) and 1522 of the Bankruptcy Code* (the “**Motion**”) with the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

<sup>1</sup> 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 (the “**U.S. 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 U.S. Debtors’ claims and noticing agent at <https://cases.ra.kroll.com/FTX..>

<sup>2</sup> FTX Digital Markets Ltd. (in Provisional Liquidation) was incorporated in the Commonwealth of The Bahamas as an International Business Company, registered number 207269B.

**PLEASE TAKE FURTHER NOTICE** that, contemporaneously with the filing of the Motion, the Joint Provisional Liquidators also filed a motion to shorten the notice and objection periods with respect to the Motion (the “**Motion to Shorten**”).

**PLEASE TAKE FURTHER NOTICE** that, if the Court grants the relief requested in the Motion to Shorten: (i) a hearing to consider the Motion will be held on **a date to be scheduled** before The Honorable John T. Dorsey, United States Bankruptcy Judge for the District of Delaware, at the Court, 824 North Market Street, 5<sup>th</sup> Floor, Courtroom 5, Wilmington, Delaware 19801, and (ii) any responses or objections to the Motion may be made by **a date to be determined**.

**PLEASE TAKE FURTHER NOTICE** that parties-in-interest will receive separate notice of the Court-approved objection deadline and hearing date for the Motion.

Dated: December 9, 2022

/s/ Brendan J. Schlauch

**RICHARDS, LAYTON & FINGER, P.A.**

Kevin Gross (No. 209)  
Paul N. Heath (Bar No. 3704)  
Brendan J. Schlauch (Bar No. 6115)  
David T. Queroli (Bar No. 6318)  
One Rodney Square  
920 N. King Street  
Wilmington, DE 19801  
Telephone: (302) 651-7700  
Facsimile: (302) 651-7701  
gross@rlf.com  
heath@rlf.com  
schlauch@rlf.com  
queroli@rlf.com

—and—

**WHITE & CASE LLP**

Jessica C. Lauria (admitted *pro hac vice*)  
J. Christopher Shore (admitted *pro hac vice*)  
Brian D. Pfeiffer (admitted *pro hac vice*)  
Mark Franke (admitted *pro hac vice*)  
Brett L. Bakemeyer (admitted *pro hac vice*)  
1221 Avenue of the Americas  
New York, NY 10020  
Telephone: (212) 819-8200  
jessica.lauria@whitecase.com  
cshore@whitecase.com  
brian.pfeiffer@whitecase.com  
mark.franke@whitecase.com  
brett.bakemeyer@whitecase.com

Thomas E Lauria (admitted *pro hac vice*)  
Richard S. Kebrdle (admitted *pro hac vice*)  
200 South Biscayne Boulevard, Suite 4900  
Miami, FL 33131  
Telephone: (305) 371-2700  
tlauria@whitecase.com  
rkebrdle@whitecase.com

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

**EXHIBIT A**

**December 7, 2022 Letter from White & Case LLP to Sullivan & Cromwell LLP**

December 7, 2022

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White & Case LLP  
1221 Avenue of the Americas  
New York, NY 10020-1095  
T +1 212 819 8200

[whitecase.com](http://whitecase.com)

Sullivan & Cromwell LLP  
125 Broad Street  
New York, New York 10004  
Attn: James Bromley  
Andrew Dietderich  
Brian Gluckstein

**RE: *In re FTX Digital Markets Ltd.*, Case No. 22-11217 (Bankr. D. Del.)**

Dear Gentlemen:

As you know, we represent Brian Simms KC, Kevin Cambridge and Peter Greaves in their capacities as joint provisional liquidators (“*JPLs*”) of FTX Digital Markets Ltd. (the “*Company*”), which was placed into provisional liquidation by the Supreme Court of the Commonwealth of The Bahamas upon a petition presented by the Securities Commission of The Bahamas for the winding up of the Company.

Thank you for taking the time to speak with us on Thursday, December 1, 2022. As discussed, the *JPLs* urgently require immediate access to the Company’s electronic records that are contained on certain of the systems controlled by the Chapter 11 Debtors. The *JPLs* have been cut off from those systems and their access must be immediately restored. Without access, there are potentially severe adverse impacts and possible damage to the Company because the Company’s assets are at real risk of dissipation. Moreover, information key to the *JPLs*’ investigation is expected to be automatically wiped over time if not preserved. The specific systems at issue were identified in my November 30, 2022 letter and include:

1. Slack
2. Google Mail / Google Chat
3. Google Drive
4. AWS Cloud Platform
5. Google Cloud Platform BigQuery

Please restore access to the *JPLs* by no later than 5PM EST on Thursday, December 8, 2022. We understand that for certain sensitive systems you have created a recent “clone” of the live database. For immediate purposes, access to these clones will be sufficient.

Sullivan & Cromwell LLP  
December 7, 2022

While we strongly prefer to work with you consensually on this matter, we are prepared to seek urgent assistance from the Bankruptcy Court if necessary. Thank you in advance for your cooperation. We are available to discuss this matter further if helpful.

Best regards,



Brian Pfeiffer  
Partner

**EXHIBIT B**

**Proposed Order**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re

FTX TRADING LTD., *et al.*<sup>1</sup>

Debtors.

Chapter 11

Case No. 22-11068 (JTD)

(Jointly Administered)

In re

FTX DIGITAL MARKETS LTD.<sup>2</sup>

Debtor in a Foreign  
Proceeding.

Chapter 15

Case No. 22-11217 (JTD)

**ORDER GRANTING EMERGENCY MOTION OF THE  
JOINT PROVISIONAL LIQUIDATORS OF FTX DIGITAL MARKETS LTD.  
(I) FOR RELIEF FROM AUTOMATIC STAY AND (II) TO COMPEL  
TURNOVER OF ELECTRONIC RECORDS UNDER  
SECTIONS 542, 1519(A)(3), 1521(A)(7) AND 1522 OF THE BANKRUPTCY CODE**

Upon the consideration of the emergency motion (the “**Motion**”)<sup>3</sup> of Brian C. Simms KC, Kevin G. Cambridge, and Peter Greaves (“**Joint Provisional Liquidators**”), in their capacity as the duly appointed joint provisional liquidators of FTX Digital Markets Ltd. (“**FTX Digital**”) and foreign representatives of the Provisional Liquidation of FTX Digital, for entry of an order

(i) granting FTX Digital relief from the automatic stay in the Chapter 11 Cases under section

<sup>1</sup> 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 herein. A complete list of such information may be obtained on the website of the U.S. Debtors’ proposed claims and noticing agent at <https://cases.ra.kroll.com/FTX>.

<sup>2</sup> FTX Digital Markets Ltd. (in Provisional Liquidation) was incorporated in the Commonwealth of The Bahamas as an International Business Company, registered number 207269B.

<sup>3</sup> Capitalized terms not otherwise defined herein are to be given the meanings ascribed to them in the Motion.

362(d) of the Bankruptcy Code and (ii) requiring the U.S. Debtors to provide access to the Recorded Information under sections 542(a), 542(e), 1519(a)(3), 1521(a)(7) and 1522 of the Bankruptcy Code, all as more fully set forth in the Motion; and the Court having jurisdiction over this matter 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 having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and the Court having reviewed the Motion; and the Court having determined that the legal and factual bases set forth in the Motion 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 therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED as set forth herein.
2. The automatic stay imposed in Chapter 11 Cases by section 362(a) of the Bankruptcy Code, to the extent applicable, is hereby modified to allow the Joint Provisional Liquidators to seek the relief requested in the Motion.
3. The relief from the automatic stay shall be effective immediately upon entry of this Order and the 14-day stay provided in Bankruptcy Rule 4001(a)(3) shall not apply.
4. The U.S. Debtors shall provide the Joint Provisional Liquidators with access to the Recorded Information.

5. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

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

In re	Chapter 11
FTX TRADING LTD., <i>et al.</i> <sup>1</sup>	Case No. 22-11068 (JTD)
Debtors.	(Jointly Administered)
	<b>Re: Docket No. 197</b>
In re	Chapter 15
FTX DIGITAL MARKETS LTD., <sup>2</sup>	Case No. 22-11217 (JTD)
Debtor in a Foreign Proceeding.	<b>Re: Docket No. 27</b>

**MOTION OF THE JOINT PROVISIONAL LIQUIDATORS OF FTX DIGITAL  
MARKETS LTD. FOR ENTRY OF AN ORDER SHORTENING  
THE NOTICE AND OBJECTION PERIODS WITH RESPECT TO THE  
EMERGENCY MOTION OF THE JOINT PROVISIONAL LIQUIDATORS OF  
FTX DIGITAL MARKETS LTD. (I) FOR RELIEF FROM AUTOMATIC STAY  
AND (II) TO COMPEL TURNOVER OF ELECTRONIC RECORDS  
UNDER SECTIONS 542, 1519(A)(3), 1521(A)(7)  
AND 1522 OF THE BANKRUPTCY CODE**

Brian C. Simms KC, Kevin G. Cambridge, and Peter Greaves (the “**Joint Provisional Liquidators**”), in their capacity as the duly appointed joint provisional liquidators of FTX Digital Markets Ltd. (“**FTX Digital**”) and foreign representatives of the Bahamian Provisional

<sup>1</sup> 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 (the “**U.S. 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 U.S. Debtors’ claims and noticing agent at <https://cases.ra.kroll.com/FTX>.

<sup>2</sup> FTX Digital Markets Ltd. (in Provisional Liquidation) was incorporated in the Commonwealth of The Bahamas as an International Business Company, registered number 207269B.

Liquidation (as defined below) of FTX Digital hereby file this motion (this “**Motion to Shorten**”) and respectfully state as follows:

**RELIEF REQUESTED**

1. By this Motion to Shorten, pursuant to section 105(a) of title 11 of the United States Code (the “**Bankruptcy Code**”), rule 9006(d) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and rules 9006-1(c) and 9006-1(e) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Joint Provisional Liquidators request entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**”) (i) shortening the notice and objection periods with respect to the *Emergency Motion of the Joint Provisional Liquidators of FTX Digital Markets Ltd. (I) for Relief from Automatic Stay and (II) to Compel Turnover of Electronic Records Under Sections 542, 1519(a)(3), 1521(a)(7) and 1522 of the Bankruptcy Code* (the “**Emergency Motion**”)<sup>3</sup> filed contemporaneously herewith, (ii) scheduling the hearing to consider the relief requested by the Emergency Motion (the “**Hearing**”) at the Court’s earliest convenience on or before December 16, 2022 at 10:00 a.m. (Eastern Time), and (iii) waiving the requirements of Local Rule 9006-1(c)(ii) and setting the deadline to file objections, if any, to the Emergency Motion as 12:00 p.m. (Eastern Time) one day prior to the Hearing.

**JURISDICTION, VENUE AND PREDICATES FOR RELIEF**

2. This Court has jurisdiction to consider this Motion to Shorten and the relief requested herein 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. This is a core proceeding under 28 U.S.C. § 157(b) as to which this Court has the power to enter a final

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<sup>3</sup> Capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Emergency Motion.

judgment. Pursuant to Local Rule 9013-1(f), the Joint Provisional Liquidators consent to the entry of a final order by the Court in connection with this Motion 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.

3. Venue of these Chapter 11 Cases and this Motion to Shorten is proper in this District under 28 U.S.C. §§ 1408 and 1409.

4. The predicates for the relief requested by this Motion to Shorten are section 105(a) of the Bankruptcy Code, Bankruptcy Rule 9006(d), and Local Rules 9006-1(c) and 9006-1(e).

### **BACKGROUND**

5. FTX Digital is an International Business Company incorporated in the Commonwealth of The Bahamas and operating as a digital assets business under the Digital Assets and Registered Exchanges Act, 2020 as amended, Statute Laws of The Bahamas.

6. On November 10, 2022, the Securities Commission of The Bahamas filed a petition in the Supreme Court of the Bahamas (the “**Bahamas Court**”) seeking to wind up FTX Digital.

7. On the same date, the Bahamas Court issued an order (the “**Provisional Liquidation Order**”) directing that FTX Digital be placed into provisional liquidation (the “**Bahamian Provisional Liquidation**”) and appointing Brian C. Simms KC as provisional liquidator. On November 14, 2022, the Bahamian Court enter an order appointing Kevin G. Cambridge and Peter Greaves as Joint Provisional Liquidators, along with Brian C. Simms KC.

8. On November 11, 2022 (the “**Petition Date**”), FTX Trading Ltd. and 101 other affiliates and subsidiaries which comprise the U.S. Debtors, filed petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “**Court**”), which are jointly administered in the above-captioned case.

9. On November 15, 2022, the Joint Provisional Liquidators filed a petition for recognition of a foreign proceeding under chapter 15 in the United States Bankruptcy Court for the Southern District of New York (the “**Chapter 15 Case**”). On November 28, this Court entered an agreed order to transfer venue of the Chapter 15 Case to this Court. *See In re FTX Digital Markets Ltd.*, No. 22-11217 (JTD) (Bankr. D. Del.) [Docket No. 131].

10. As described more fully in the Emergency Motion, access to the electronic records and other recorded information relating to FTX Digital’s property and financial affairs (the “**Recorded Information**”) is in the control of the U.S. Debtors. Prior to the Petition Date, FTX Digital’s access to the systems hosting the Recorded Information was abruptly cut off. As such, the Joint Provisional Liquidators have been unable to access the Recorded Information, notwithstanding their requests to counsel for the U.S. Debtors that access be restored.

11. The Joint Provisional Liquidators urgently need to access the Recorded Information to carry out their fundamental and essential obligations to identify all the FTX Digital’s assets and potential claims and maintain value for all FTX Digital’s creditors. Without access to this information, the Joint Provisional Liquidators will be unable to perform their court-mandated duties, which presents the risk that the Joint Provisional Liquidators will be unable to identify, locate, and protect assets at risk of dissipation. Moreover, unless the Joint Provisional Liquidators are able to secure access to the Recorded Information, there is a risk that critical information will be automatically deleted and forever lost.

12. Accordingly, by the Emergency Motion the Joint Provisional Liquidators seek entry of an order (i) providing limited relief from the automatic stay and (ii) requiring the U.S. Debtors to provide the Joint Provisional Liquidators with access to the Recorded Information. Because of the risk that FTX Digital’s assets will be dissipated and critical information will be

automatically deleted and irretrievably lost, the Joint Provisional Liquidators seek the Court's consideration of the Emergency Motion on an expedited basis.

**BASIS FOR RELIEF**

13. Local Rule 9006-1(c)(i) provides that, unless the Bankruptcy Rules or the Local Rules state otherwise, “all motion papers shall be filed and served . . . at least fourteen (14) days prior to the hearing date.” Del. Bankr. L.R. 9006-1(c)(i). Local Rule 9006-1(c)(ii) further provides that the deadline for objections shall be seven days before the hearing date. Del. Bankr. L.R. 9006-1(c)(ii). Local Rule 9006-1(e) provides, in pertinent part, that “[n]o motion will be scheduled on less notice than required by these Local Rules or the Fed. R. Bankr. P. except by Order of the Court, on written motion . . . specifying the exigencies justifying shortened notice.” Del. Bankr. L.R. 9006-1(e).

14. The Joint Provisional Liquidators submit that good cause exists for the relief requested herein. As noted above and described more fully in the Emergency Motion, the Joint Provisional Liquidators have asked counsel for the U.S. Debtors for access to and cooperation with sharing the Recorded Information. These requests have been denied, frustrating the ability of the Joint Provisional Liquidators to carry out their duties under Bahamian law and creating the risk that the Joint Provisional Liquidators will be unable to identify, locate, and protect assets at risk of dissipation. Further, there is an additional risk that critical information will be automatically purged and forever lost. Thus, the Joint Provisional Liquidators must seek, on an expedited basis, relief from the automatic stay and an order compelling the U.S. Debtors to provide access to the Recorded Information.

15. Moreover, the Joint Provisional Liquidators submit that there is no prejudice to the U.S. Debtors in granting the relief requested herein. By the Emergency Motion, the Joint

Provisional Liquidators are only requesting a limited modification of the automatic stay and an order requiring the U.S. Debtors to *share* the Recorded Information.

16. Accordingly, the Joint Provisional Liquidators respectfully submit that good cause exists pursuant to Bankruptcy Rule 9006 and Local Rule 9006-1 for the relief requested herein.

**CERTIFICATION REGARDING LOCAL RULE 9006-1(e)**

17. In accordance with Local Rule 9006-1(e), prior to filing this Motion to Shorten, counsel to the Joint Provisional Liquidators notified counsel to the U.S. Debtors and the Office of the United States Trustee (the “U.S. Trustee”) regarding the relief requested herein. Counsel to the U.S. Debtors has informed counsel to the Joint Provisional Liquidators that the U.S. Debtors oppose the relief requested herein. As of the filing of this Motion to Shorten, the U.S. Trustee has not informed counsel to the Joint Provisional Liquidators of its position on the relief requested herein.

**NOTICE**

18. Notice of this Motion has been provided to the following parties, or, in lieu thereof, their counsel via overnight mail and/or electronic mail: (i) the U.S. Debtors; (ii) the U.S. Trustee; and (iii) any such other party entitled to receive notice pursuant to Bankruptcy Rule 2002.

WHEREFORE, for the reasons set forth herein, the Joint Provisional Liquidators respectfully request that the Court enter the Proposed Order, granting the relief requested in this Motion to Shorten and such other and further relief as may be just and proper.

Dated: December 9, 2022

/s/ Brendan J. Schlauch

**RICHARDS, LAYTON & FINGER, P.A.**

Kevin Gross (No. 209)  
Paul N. Heath (Bar No. 3704)  
Brendan J. Schlauch (Bar No. 6115)  
David T. Queroli (Bar No. 6318)  
One Rodney Square  
920 N. King Street  
Wilmington, DE 19801  
Telephone:(302) 651-7700  
Facsimile:(302) 651-7701  
gross@rlf.com  
heath@rlf.com  
schlauch@rlf.com  
queroli@rlf.com

—and—

**WHITE & CASE LLP**

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Brett L. Bakemeyer (admitted *pro hac vice*)  
1221 Avenue of the Americas  
New York, NY 10020  
Telephone:(212) 819-8200  
jessica.lauria@whitecase.com  
cshore@whitecase.com  
brian.pfeiffer@whitecase.com  
mark.franke@whitecase.com  
brett.bakemeyer@whitecase.com

Thomas E Lauria (admitted *pro hac vice*)  
Richard S. Kebrdle (admitted *pro hac vice*)  
200 South Biscayne Boulevard, Suite 4900  
Miami, FL 33131  
Telephone:(305) 371-2700  
tlauria@whitecase.com  
rkebrdle@whitecase.com

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

**EXHIBIT A**

**Proposed Order**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re

FTX TRADING LTD., *et al.*<sup>1</sup>

Debtors.

Chapter 11

Case No. 22-11068 (JTD)

(Jointly Administered)

**ORDER SHORTENING THE NOTICE AND OBJECTION PERIODS  
WITH RESPECT TO THE EMERGENCY MOTION OF THE JOINT  
PROVISIONAL LIQUIDATORS OF FTX DIGITAL MARKETS LTD. (I) FOR  
RELIEF FROM AUTOMATIC STAY AND (II) TO COMPEL TURNOVER OF  
ELECTRONIC RECORDS UNDER SECTIONS 542, 1519(A)(3), 1521(A)(7)  
AND 1522 OF THE BANKRUPTCY CODE**

Upon the motion (the “**Motion to Shorten**”)<sup>2</sup> of Brian C. Simms KC, Kevin G. Cambridge, and Peter Greaves, in their capacity as the duly appointed joint provisional liquidators of FTX Digital Markets Ltd. (the “**Joint Provisional Liquidators**”), for entry of an order (this “**Order**”) shortening the notice and objection periods with respect to the Emergency Motion, all as more fully set forth in the Motion to Shorten; and the Court having reviewed the Motion to Shorten and all pleadings related thereto; and the Court having held a hearing, if any, to consider the relief requested therein; and the Court having considered the arguments of counsel made, and the evidence adduced at the hearing on the Motion to Shorten, if any; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the

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<sup>1</sup> 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 (the “**U.S. 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 U.S. Debtors’ claims and noticing agent at <https://cases.ra.kroll.com/FTX>.

<sup>2</sup> Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Motion to Shorten.

District of Delaware dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion to Shorten having been provided under the circumstances and in accordance with the Bankruptcy Rules and the Local Rules, and it appearing that no other or further notice need be provided; and the Court having determined that the legal and factual bases set forth in the Motion to Shorten establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation thereon and sufficient cause appearing therefor:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion to Shorten is GRANTED as set forth herein.
2. The hearing to consider the relief requested by the Emergency Motion will be held on **December \_\_\_\_, 2022 at \_\_\_\_:\_\_\_\_ (Eastern Time)**.
3. Objections to the relief requested by the Emergency Motion, if any, must be filed on or before **December \_\_\_\_, 2022 at 12:00 p.m. (Eastern Time)**.
4. The Joint Provisional Liquidators are hereby authorized and empowered to take all actions as may be necessary to implement and effect the terms and requirements established in this Order.
5. The Court has and will retain jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

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

In re:

FTX TRADING LTD., *et al.*<sup>1</sup>

Debtors.

Chapter 11

Case No. 22-11068 (JTD)

(Jointly Administered)

**Ref No. 199**

Objection Deadline: TBD

Hearing Date: TBD

**DEBTORS' OBJECTION TO MOTION FOR ENTRY OF AN ORDER SHORTENING  
THE NOTICE AND OBJECTION PERIODS WITH RESPECT TO EMERGENCY  
MOTION (I) FOR RELIEF FROM AUTOMATIC STAY AND (II) TO COMPEL  
TURNOVER OF ELECTRONIC RECORDS UNDER SECTIONS 542, 1519(A)(3),  
1521(A)(7) AND 1522 OF THE BANKRUPTCY CODE**

FTX Trading Ltd. and its affiliated debtors and debtors-in-possession (collectively, the “Debtors”) hereby submit this objection (this “Objection”) to the *Motion of the Joint Provisional Liquidators of FTX Digital Markets Ltd. for Entry of an Order Shortening the Notice and Objection Periods (the “Motion to Shorten”) with Respect to the Emergency Motion of the Joint Provisional Liquidators of FTX Digital Markets Ltd. (I) For Relief from the Automatic Stay and (II) To Compel Turnover of Electronic Records Under Sections 542, 1519(A)(3), 1521(A)(7) and 1522 of the Bankruptcy Code [D.I. 199] (the “Motion to Compel”).*

In support of this Objection, the Debtors respectfully state as follows:

**PRELIMINARY STATEMENT**

1. The relief sought by the Joint Provisional Liquidators (“JPLs”), though couched in ordinary terms, is actually quite extraordinary. It is not a request for information;

<sup>1</sup> 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>.

rather, it is a request for access—full and total access to all of Debtors’ cloud-based systems. It is a request for live, dynamic access that would be provided immediately to the government of The Bahamas and to Messrs. Samuel Bankman-Fried and Gary Wang, who are located in The Bahamas and working closely with Bahamian officials. The Debtors simply cannot allow this to occur.

2. The JPLs have identified no exigency that would justify the Motion to Shorten and, in any event, the substantive relief is not warranted and presents massive and unjustifiable security risks to the Debtors, their assets, their customers and creditors. It is also inconsistent with the Debtors’ cooperation with the many investigations by U.S. law enforcement and regulatory authorities now underway into the failure of the Debtors.

3. *First*, there is no emergency. To the extent there is any risk to the assets, documents, or information, the Debtors are taking all steps to ameliorate such risk. The JPLs can do nothing more to ameliorate any risk than is already being done by the Debtors. A month has passed since these Chapter 11 Cases (defined below) were filed on November 11, 2022. The JPLs’ access to the Debtors’ cloud-based environments was limited on November 12, 2022 following substantial and unauthorized access, at a minimum, by Messrs. Bankman-Fried and Wang at the direction of the JPLs and the Securities Commission of the Bahamas (the “Commission”). In the meantime, the Debtors have reached out repeatedly to the JPLs and the government of The Bahamas—the Prime Minister, the Attorney General and the Securities Commission of The Bahamas (the “Commission”—the true party in interest—about level setting the factual record and having frank conversations about a path forward. In response, the Debtors have received nothing other than a stone wall; a complete refusal to provide any information whatsoever, including an accounting of diverted assets. The JPLs know that this

stonewalling will continue. They admit as much in their papers. (Motion to Compel ¶ 19 (“[A]ny such protocol would be subject to authorization by the Bahamian Court and *it is not certain such relief will be granted.*” (emphasis added)).)

4. *Second*, the JPLs fail to identify any basis that would justify their request for expedition, other than to protect FTX Digital Markets Ltd. (“FTX DM”) assets supposedly at risk of dissipation. The JPLs simply state that such a risk exists, but provide no evidence to support it. They satisfy no burden to justify the relief. This is because no such risk exists. The Debtors are working day and night to secure all assets wherever located. If in the course of this exercise assets of FTX DM have been or are secured, those assets will remain secured. Likewise, all records have been backed up, saved and/or cloned, as appropriate. Nothing is at risk of disappearing so long as the relief requested by the JPLs is not granted.

5. The Debtors remain ready, willing, and able to sit down with the JPLs and the Commission to work out a mutually acceptable protocol that provides the Debtors, the JPLs, and the Commission with transparency as to asset identification, location, and value of all collected and secured assets, so long as this exercise is 100% reciprocal and provides iron-clad protections that the Debtors’ records, assets, and systems will never again be subject to review or manipulation by Messrs. Bankman-Fried and Wang or anyone aligned with or associated with either of them.

6. There is no cause to shorten the notice and objection periods for their Motion to Compel. The Motion to Shorten must be denied.

## **BACKGROUND**

### **A. The Debtors and Their Chapter 11 Cases**

7. On November 11, 2022 and on November 14, 2022 (as applicable, the “Petition Date”), the Debtors filed with the Court voluntary petitions for relief under title 11 of

the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”). The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Joint administration of the Debtors’ cases (the “Chapter 11 Cases”) was authorized by the Court by entry of an order on November 22, 2022 [D.I. 128]. As of the date hereof, no creditors’ committee, trustee, or examiner has been appointed in these Chapter 11 Cases.

8. Additional factual background relating to the Debtors’ businesses and the commencement of these Chapter 11 Cases is set forth in the *Declaration of John J. Ray III in Support of Chapter 11 Petitions and First Day Pleadings* [D.I. 24], the *Declaration of Edgar W. Mosley II in Support of Chapter 11 Petitions and First Day Pleadings* [D.I. 57], the *Supplemental Declaration of John J. Ray III in Support of First Day Pleadings* [D.I. 92], and the *Supplemental Declaration of Edgar W. Mosley II in Support of First Day Pleadings* [D.I. 93] (collectively, the “First Day Declarations”).

#### **B. Provisional Liquidation of FTX DM**

9. During the week beginning Sunday, November 6, 2022, it became clear that the FTX Group was facing a liquidity crisis and that the ability of its constituent entities to operate as going concerns was in doubt. As a result, withdrawals were halted on November 8, 2022 for FTX.com (encompassing both FTX Trading Ltd. and FTX DM). Messrs. Bankman-Fried and Wang were in close and frequent contact with the Commission and the Attorney General throughout the week. As to FTX.com, on November 9, 2022, Mr. Bankman-Fried sent an email to the Attorney General in which he stated “we have segregated funds for all Bahamian customers” and “**would be more than happy to open up withdrawals for all Bahamian customers on FTX, so that they can, tomorrow, fully withdraw all of their assets, making**

**them fully whole.”** (Emphasis in original). (Ex. A.)<sup>2</sup> Debtors’ investigation to date shows that Mr. Bankman-Fried did open withdrawals on the FTX.com exchange for certain customers for a period of approximately 25.5 hours, from 10:30 a.m. on November 10, 2022 to noon on November 11, 2022, during which time nearly \$100 million in cryptocurrency was withdrawn by approximately 1,500 individuals and entities purporting to be Bahamian customers for know your customer (“KYC”) purposes.

10. No other customers of FTX entities were given such an opportunity for preferential treatment. Notably, the opening of this window took place *after* the commencement of the provisional liquidation proceedings in The Bahamas and *after* U.S. counsel was engaged to begin contingency planning for Chapter 11. The Debtors continue to investigate the identities of those who received these withdrawals, including whether they actually satisfied applicable KYC and other legal requirements. The Debtors reserve all rights with respect to such withdrawals, including without limitation, the right to claw back any payments.

11. By order dated November 10, 2022, FTX DM was placed into provisional liquidation in the Commonwealth of the Bahamas (the “Bahamian Liquidation”) by the Commission pursuant to its authority under the Digital Assets and Registered Exchanges Act (the “DARE Act”). On the same day, the Bahamian court overseeing the Bahamian Liquidation appointed Brian Cecil Simms as the then-sole provisional liquidator. The sworn declarations in support of the relief were filed under seal. The proceedings took place on an *ex parte* basis. The Debtors are not aware of what, if anything, was represented to the Bahamian court with respect to the opening of the exchanges for “Bahamian” customers.

<sup>2</sup> All exhibits are from the Declaration of James L. Bromley, dated December 12, 2022, submitted with this Objection.

12. On November 11, 2022, John J. Ray, II was appointed as Chief Restructuring Officer and Chief Executive Officer of the Debtors pursuant to an omnibus corporate authority signed by Mr. Bankman-Fried. (*See* Ray First Day Declaration ¶ 1.) Prior to assuming those roles, Mr. Ray had no relationship of any sort with any FTX company, with Mr. Bankman-Fried, Mr. Wang, Mr. Singh, or any other officer or director of any FTX company. Shortly after his appointment, Mr. Ray provided corporate authority to commence the Chapter 11 Cases. (*Id.* ¶ 2.) Given that the Commission had commenced a provisional liquidation against FTX DM on November 10, 2022, no chapter 11 petition was filed with respect to FTX DM. (*Id.* ¶ 42.)

### C. Debtors' Cloud-Based Assets

13. As the Chapter 11 Cases were being filed, Debtors and their representatives worked tirelessly through the night to secure assets, including two important systems belonging to the Debtors: Amazon Web Services (“AWS”), which hosted the Debtors’ FTX.com trading platform and holds Debtors’ digital assets; and Google Cloud Platform (“GCP”), which holds a copy of the main data tables from AWS for analytics purposes. Debtor Alameda Research, Ltd. (“Alameda”) contracted for, pays for, and has the right to control access to, these web services. The servers on which these web services are housed are located in the United States.

14. On the evening of November 11, 2022, while Debtors were in the process of securing these assets and others, it became clear that the systems that control Debtors’ digital wallets were being accessed by one or more unidentified and unauthorized actors. The Debtors and their advisors worked through the night into the early morning hours of November 12, 2022 to block such access and move digital assets to secure cold wallets. Also on November 12, 2022, the Debtors observed the minting of new FTT tokens.

15. During this period—and subsequently—information emerged that Debtors' systems and assets were accessed from at least two sources. (See Ray First Day Declaration ¶ 75.) One source continues to be under investigation. The second source, based on evidence collected by Debtors, shows without doubt that the Commission—after the filing and public announcement of the Chapter 11 Cases—instructed Messrs. Bankman-Fried and Wang to mint a substantial amount of new tokens and transfer hundreds of millions of dollars' worth of those new tokens and other digital assets to cold storage under the control of the Commission. The Debtors' investigation of this unauthorized access is ongoing and is yielding new information by the day.

16. Postpetition, on November 12, 2022—after these actions already had been undertaken—“the Commission sought an additional Order (the ‘November 12 Order’) from the Supreme Court of The Bahamas for authority under the DARE Act to transfer *all digital assets of FTX* into digital wallets under the exclusive control of the Commission for the benefit of clients and creditors of [FTX DM].” (Emphasis added.) The existence of this Order was not revealed to Debtors until November 23, 2022, when the Commission issued a press release in response to Debtors’ motion to transfer (discussed below). (See Ex. B.)

17. As with the November 10 proceedings, the proceedings leading to the November 12 Order were conducted on an *ex parte* basis and under seal. The Debtors did not receive (i) notice that the Commission was seeking entry of the November 12 Order; (ii) an opportunity to be heard in respect of the November 12 Order; (iii) a copy of the pleadings filed by the Commission in support of the application for the November 12 Order; or (iv) a copy of the November 12 Order itself. Moreover, despite repeated requests, Debtors have not received from

the JPLs any detail as to what assets the Commission seized, how they were transferred, or why they reference FTX assets as opposed to FTX DM assets.

18. With knowledge of the Commission's unauthorized access to Debtors' systems, but no knowledge of the November 12 Order, Debtors' counsel wrote a letter to Christina Rolle, Executive Director of the Commission, and Mr. Simms, the then-sole provisional liquidator, informing each of the Chapter 11 Proceedings and the existence of the automatic stay of Section 362(a) of the Bankruptcy Code. (Ex. C.) Debtors have not received a response to that letter, which was sent on November 13, 2022.

19. On November 14, 2022, Kevin G. Cambridge and Peter Greaves were also appointed as JPLs, to serve alongside Mr. Simms. Again, no notice of these appointments was provided to Debtors.

**D. The JPLs and Bahamian Government Ignore Debtors' Offers to Coordinate**

20. On November 15, 2022, lawyers from Holland & Knight LLP (then-counsel for the JPLs) requested an introductory call with Debtors' counsel. During that call, Debtors' counsel proposed the development of a consensual protocol to facilitate coordination between the Chapter 11 Cases and the Bahamian Liquidation. Then-counsel for the JPLs told Debtors' counsel that they would consider the proposal but never responded.

21. On November 16, 2022—five days after the Petition Date and with no notice to Debtors—the JPLs filed a Chapter 15 Petition for Recognition of a Foreign Proceeding relating to FTX DM in the United States Bankruptcy Court for the Southern District of New York (“SDNY”), captioned *In re FTX Digital Markets Ltd. (in Provisional Liquidation)*, Case No. 22-BK-11516 (MEW) (the “Chapter 15 Case”). The JPLs sought entry of an order pursuant to chapter 15 of the Bankruptcy Code to, among other things, recognize the Bahamian Liquidation as a foreign main proceeding pursuant to 11 U.S.C. §§ 1502, 1517(a) and (b)(1), and

appointing the JPLs as FTX DM foreign representatives pursuant to 11 U.S.C. §§ 101(24), 1509 and 1517(a). Among other things, the JPLs alleged that some or all of the Chapter 11 Cases are illegitimate, that the center of main interests for the “FTX Group” and the “FTX Brand” is in the Bahamas, and strongly suggested that upon recognition the JPLs will seek to dismiss some or all of these Chapter 11 Cases.

22. On November 17, 2022, Debtors filed an emergency motion to transfer the Chapter 15 Case to this Court for coordinated proceedings with the Chapter 11 Cases [D.I. 22].

23. The first day hearing in the Chapter 11 Cases was conducted on November 22, 2022 (the “First Day Hearing”). At the First Day Hearing, the JPLs consented to the transfer of the Chapter 15 Case to this Court, subject to certain limitations and conditions, and the Court entered an order transferring the Chapter 15 Case to this Court on the same day [D.I. 131].

24. On November 27, 2022, Debtors wrote to the Prime Minister (the Honorable Philip Davis) and Attorney General (the Honorable Leo Ryan Pinder) of The Bahamas “to open a new line of communication so that [the Debtors and the Bahamian government] can collectively move forward on a coordinated basis” and offered “to speak with [them] at [their] earliest convenience about how the Government of the Bahamas can participate directly and meaningfully in the Chapter 11 Proceedings on behalf of itself and Bahamian citizens in general.” (Ex. D.)

25. Later on the same day, November 27, 2022, the Attorney General of the Bahamas addressed the Bahamian nation on the so-called “current situation regarding FTX Digital Markets Limited” (the “AG’s Address”). (Ex. E.) The AG’s Address admits that the Commission’s regulatory mandate only extends to FTX DM. Nevertheless, the AG’s Address also makes clear that the Bahamian government wants to control all FTX bankruptcy

proceedings—not just those of FTX DM—by purporting to take steps to protect “the interests of FTX’s customers and creditors.” (Ex. E at 2 (emphasis added).) The AG’s Address again called into question the legitimacy of these Chapter 11 Cases, asserting Debtors’ counsel made “inaccurate allegations” in its filings before this Court and suggesting that Debtors’ “legal strategy” is being driven by the “prospect of multi-million dollar legal and consultant fees.” (Ex. E at 5.) The AG’s Address acknowledged the Commission’s involvement in the unauthorized access of Debtors’ assets, stating that the Commission had “secured the assets of [FTX DM] to be held on behalf of and *for the benefit and restitution of clients and creditors of FTX*,” (Ex. E at 2 (emphasis added)), but provided no details as to what occurred and omitted any reference to the ongoing collaboration with Messrs. Bankman-Fried and Wang.

26. On December 1, 2022, following the AG’s Address, Debtors wrote to the Prime Minister and the Attorney General, again offering “to discuss areas where cooperation would be mutually beneficial.” The letter also set out a detailed summary of the facts known to the Debtors and requested again that the Bahamian authorities provide information to the Debtors as to what assets had been secured by the Commission. (Ex. F.)

27. On December 7, 2022, Bahamian counsel for the Debtors, Peter D. Maynard and Co. (“Maynard”), received a letter from Bahamian counsel for the Commission, Delaney Partners (“Delaney”), that—for the first time—acknowledged Debtors’ November 13 and December 1 Letters. (Ex. G.) Notably, the Commission’s Letter “decline[d] to provide certain information [Debtors] seek as to” the assets seized. (Ex. G at 3.) Further, the letter stated that the Commission had “no comment on [Debtors’] suggestion that [they] and The Bahamian Joint Provisional Liquidators enter into one or more joint protocols to facilitate the efficient conduct and mutual respect for the pending insolvency proceedings.” (*Id.*)

28. At around 1:00 PM on December 7, 2022, Debtors' counsel received a letter from the JPLs' current counsel, White & Case LLP, that stated they "urgently require immediate access to [FTX DM's] electronic records that are contained on certain of the systems controlled by the Chapter 11 Debtors" and requested unfettered access to all of Debtors' systems, including Slack, Google Mail/Google Chat, Google Drive, AWS, and Google Cloud Platform BigQuery. (Ex. H.) The letter demanded that the JPLs be provided access "by no later than 5PM EST on Thursday, December 8, 2022"—just over 24 hours after Debtors' counsel received the request. (Ex. H at 1.)

29. On December 8, 2022, Debtors' counsel responded to the letter by email, offering "an in person meeting next Wednesday to see if we can take the temperature down." (Ex. I.) The next morning, counsel for the JPLs responded, "[w]e'll discuss on our end and consider schedules/availability and will get back to you." (Ex. I.) The email said nothing about their intent to file the instant Motions.

30. The interactions between the Debtors, the JPLs, and the Commission—which the JPLs largely omit from their Motions—are clear: Debtors have made repeated overtures to JPLs and Commission to meet and those overtures were met with avoidance and obfuscation. The JPLs and the Commission have refused to provide responses to Debtors' questions about the assets "secured" by the Commission. Instead, the JPLs file baseless motions seeking extraordinary relief on an unnecessarily truncated timeframe.

31. The Bahamas has an interest in the Chapter 11 Cases, and customers in The Bahamas will file claims against the Debtors. The same can be said for many countries. The Debtors have established cooperative relationships with regulators and local insolvency

professionals appointed to oversee the resolution of subsidiary companies around the world. The Debtors seek the same in The Bahamas.

### **ARGUMENT**

32. Bankruptcy Rule 9006(c)(1) authorizes this Court to reduce the notice period required for a hearing, but only “for cause shown.” Although the Court has the discretion to shorten the notice and objection periods with respect to a motion, the moving party must specify “*the exigencies justifying shortened notice.*” Del. Bankr. L.R. 9006-1(e) (emphasis added).

33. The JPLs have failed to identify any exigency that would justify a shortened notice and objection period. These Chapter 11 Cases were filed on November 11 and, as they acknowledge in their Motions, the JPLs’ access to the Debtors’ cloud-based environments was limited on November 12. For nearly a month, the JPLs have taken no action with regard to their access, despite having an opportunity to do so, and have largely ignored the attempts by Debtors’ counsel to develop an information-sharing protocol.

34. The JPLs assert that they “have made *many* attempts to obtain access” (Motion to Compel ¶ 15), but that is simply untrue. In doing so, the JPLs claim to have instructed “employees to attempt to gain access” (*id.*) to the Debtors’ systems. In fact, the Debtors have received numerous requests from Mr. Bankman-Fried and others for passwords and access to the Debtors’ systems. Each one of these requests has been rejected. These requests for access to the Debtors’ systems cannot seriously be construed as an attempt by the JPLs to resolve this issue. In fact, they highlight the recklessness with which the JPLs and the Bahamian authorities are approaching the security of the Debtors’ assets and systems. The last time these individuals had access to the Debtors’ systems, they used such access to transfer assets belonging to the Debtors. That the JPLs and the Commission state with zero specificity

that assets have been secured by the Commission gives no comfort that other assets were not transferred to non-secure locations or that going forward such access will not be used to attempt exactly the same thing.

35. Setting those “attempts” to the side, the JPLs’ current counsel cite to only two interactions with Debtors’ counsel related to their so-called request for information (a December 1 Zoom call and a December 7 letter), both of which occurred less than a week before the JPLs filed this request for urgent relief. To the extent any exigency does exist—it does not—it resulted entirely from the JPLs’ failure to engage with Debtors’ counsel on the issue. The JPLs’ dilatory behavior should not be rewarded by now having their Motions heard on an expedited basis.

36. Still more, the JPLs’ Motions belie any claim of exigency. The JPLs submit that an expedited hearing is warranted because there is a “risk that the Joint Provisional Liquidators will be unable to identify, locate, and protect assets at risk of dissipation” and “there is an additional risk that critical information will be automatically purged and forever lost.” (Motion to Compel ¶ 14.) The JPLs acknowledge, however, that the Debtors have “created a recent ‘clone’ of the live database” in order to preserve the information sought. (Motion to Compel, Ex. A.) The JPLs fail to explain, nor could they, how information could be “purged and lost forever,” when Debtors have already taken steps to preserve the information. Similarly, the JPLs do not explain how access would help them to “protect assets at risk of dissipation.” These explanations are pretexts for the JPLs’ true goal, to get access to the dynamic databases. Indeed, if the JPLs had any serious concern about information being purged through automatic deletion, they would have identified the repositories as to which they are concerned and the date they believe such information would be purged. They have not.

**CONCLUSION**

37. The JPLs have not identified any exigencies justifying shortened notice and the Motion to Shorten must be denied in all respects.

Dated: December 12, 2022  
Wilmington, Delaware

**LANDIS RATH & COBB LLP**

*/s/ Adam G. Landis*

Adam G. Landis (No. 3407)  
Kimberly A. Brown (No. 5138)  
Matthew R. Pierce (No. 5946)  
919 Market Street, Suite 1800  
Wilmington, Delaware 19801  
Telephone: (302) 467-4400  
Facsimile: (302) 467-4450  
E-mail: [landis@lrclaw.com](mailto:landis@lrclaw.com)  
[brown@lrclaw.com](mailto:brown@lrclaw.com)  
[pierce@lrclaw.com](mailto:pierce@lrclaw.com)

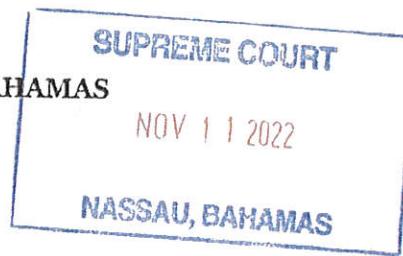
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**SULLIVAN & CROMWELL LLP**

Andrew G. Dietderich (admitted *pro hac vice*)  
James L. Bromley (admitted *pro hac vice*)  
Brian D. Glueckstein (admitted *pro hac vice*)  
Alexa J. Kranzley (admitted *pro hac vice*)  
125 Broad Street  
New York, NY 10004  
Telephone: (212) 558-4000  
Facsimile: (212) 558-3588  
E-mail: [dietdericha@sullcrom.com](mailto:dietdericha@sullcrom.com)  
[bromleyj@sullcrom.com](mailto:bromleyj@sullcrom.com)  
[gluecksteinb@sullcrom.com](mailto:gluecksteinb@sullcrom.com)  
[kranzleya@sullcrom.com](mailto:kranzleya@sullcrom.com)

*Proposed Counsel for the Debtors  
and Debtors-in-Possession*

COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
COMMERCIAL DIVISION



2022

COM/com/

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)

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ORDER FOR APPOINTMENT OF  
PROVISIONAL LIQUIDATOR

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Before His Lordship, the Honourable Mr. Chief Justice Ian Winder

Dated the 10 day of November, A.D., 2022

UPON THE APPLICATION by an unfiled Summons for Directions dated 10<sup>th</sup> November 2022 on behalf of the Petitioner/Application, the Securities Commission of The Bahamas (“the Applicant”) for an Order that Mr. Brian Cecil Simms KC be appointed provisional liquidator of FTX Digital Markets Ltd. (“the Company”).

AND UPON HEARING Mr. Gladstone Brown of Counsel for the Applicant, and Mrs. Sophia T. Rolle-Kapousouzoglou with Mr. Valdere J. Murphy of Counsel for the proposed liquidator.

AND UPON reading the unfiled Petition of the Applicant.

AND UPON READING the unfiled Affidavit of Christina Rolle, Executive Director of the Securities Commission of The Bahamas and the unfiled Affidavit of Brian Cecil Simms KC.

AND UPON the Applicant undertaking by its counsel to pay any damage suffered by the Company, as a result of this order and/or the appointment of a provisional liquidator in the event that the winding up petition is ultimately withdrawn or dismissed.

AND UPON COUNSEL for the Applicant giving an undertaking to file the aforementioned unfiled Petition, Summons for Directions, Affidavit of Christina Rolle and Affidavit of Brian Simms KC as soon as reasonably practicable.

**IT IS HEREBY ORDERED that: -**

1. Mr Brian Cecil Simms KC of 3 Bayside Executive Park, West Bay Street and Blake Road, Nassau, N.P., The Bahamas be appointed provisional liquidator of the Company ("the Provisional Liquidator").
2. The Provisional Liquidator is hereby authorised to take any action that he considers fit under the Companies (Winding Up Amendment) Act 2011 ("the Act"), section 199(4) to maintain the value of the assets owned or managed by the Company or to carry out the functions for which he was appointed including,
  - a. with the sanction of the court, those powers contained in Part I of the Fourth Schedule of the Act; and
  - b. with or without that sanction the exercise of the general powers specified in Part II of the Fourth Schedule of the Act.
3. For the avoidance of doubt, the above-mentioned powers include a power to dispense with the services of the directors and other management of the Company, but the exercise of that power is without prejudice to the duties of the directors and officers under section 230 of the Act.
4. Until further order the Company's directors have no further authority to act or exercise any functions for or on behalf of the Company unless expressly instructed to do so in writing by the Provisional Liquidator.
5. Until further order of this Court the Provisional Liquidator is directed to take all and any necessary steps that he considers fit to protect the assets of the Company wheresoever situate including any assets held on trust by the Company.

6. The remuneration and expenses of the Provisional Liquidator shall be paid out of the assets of the Company in any event.
7. The Winding-Up Petition shall be adjourned to the 10<sup>th</sup> February 2023 at 10:00am.
8. The Affidavits of Christina Rolle and Brian Cecil Simms KC and other documents to be filed herein save for the petition, and provisional liquidation order shall be sealed and kept confidential until the return date which is set for 10<sup>th</sup> February 2023 or until further Order.

**BY ORDER OF THE COURT**

**REGISTRAR**

*This Order was drawn up by the Securities Commission of The Bahamas, 2<sup>nd</sup> Floor Poinciana House, North Building, 31A East Bay Street, Nassau, N.P., The Bahamas, Attorneys for the Petitioner/Applicant*

**PENAL NOTICE**

**IF YOU FTX DIGITAL MARKETS LTD., WHETHER BY ITSELF, ITS DIRECTORS, EMPLOYEES, SERVANTS, AGENTS OR OTHERWISE DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED.**

**ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE BREACH OF THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.**

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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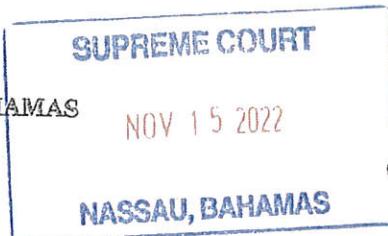
ORDER FOR APPOINTMENT OF  
PROVISIONAL LIQUIDATOR

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2022  
COM/com

*Securities Commission of The Bahamas*  
Securities Commission of The Bahamas  
2<sup>nd</sup> Floor Poinciana House,  
North Building  
31A East Bay Street  
Nassau, N.P., The Bahamas  
*Attorneys for the Petitioner/Applicant*

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 the Companies (Winding Up Amendment) Act, 2011

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

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ORDER FOR APPOINTMENT OF  
ADDITIONAL PROVISIONAL LIQUIDATORS

---

Before His Lordship, the Honourable Mr. Chief Justice Ian Winder

Dated the 14<sup>th</sup> day of November, A.D., 2022

UPON THE APPLICATION by an Ex-Parte Summons filed herein on 14<sup>th</sup> November 2022 on behalf of Mr. Brian Cecil Simms KC, the Provisional Liquidation ("the Provisional Liquidator") of FTX Digital Markets Ltd. ("the Company").

AND UPON HEARING Mrs. Sophia T. Rolle-Kapousouzoglou with Mr. Valdere J. Murphy of Counsel for the Provisional Liquidator and Mr. Gawaine Ward with Mr. Gladstone Brown of Counsel for the Securities Commission of The Bahamas.

AND UPON reading the Affidavits of Brian Simms KC, Kevin Cambridge and Peter Greaves collectively filed herein on 14<sup>th</sup> November 2022.

IT IS HEREBY ORDERED that: -

1. Messrs. Kevin G Cambridge and Peter Greaves respectively of PricewaterhouseCoopers Advisory (Bahamas) Limited and PricewaterhouseCoopers

**Limited (incorporated in Hong Kong) be appointed Joint Provisional Liquidators alongside Mr. Brian Cecil Simms KC (“the JPLs”).**

2. The appointment of Messrs. Kevin G. Cambridge and Peter Greaves will take effect on the same terms as paragraphs 2 to 5 of the Order for Appointment of Provisional Liquidator made by this Honourable Court 10 November 2022 (filed herein on 11<sup>th</sup> November 2022) pursuant to which Mr. Brian Cecil Simms KC was appointed a provisional liquidator by the Honourable Mr. Chief Justice Ian Winder, specifically:
  - 2.1. The JPLs are hereby authorised to take any action that they consider fit under the Companies (Winding Up Amendment) Act 2011 (“the Act”), section 199(4) to maintain the value of the assets owned or managed by the Company or to carry out the functions for which they were appointed including,
    - a. with the sanction of the court, those powers contained in Part I of the Fourth Schedule of the Act; and
    - b. with or without sanction of the Court the exercise of the general powers specified in Part II of the Fourth Schedule of the Act.
  - 2.2. For the avoidance of doubt, the above-mentioned powers include a power to dispense with the services of the directors and other management of the Company, but the exercise of that power is without prejudice to the duties of the directors and officers under section 230 of the Act.
  - 2.3. Until further order the Company's directors have no further authority to act or exercise any functions for or on behalf of the Company unless expressly instructed to do so in writing by the JPLs.
  - 2.4. Until further order of this Court the JPLs are directed to take all and any necessary steps that they consider fit to protect the assets of the Company wheresoever situate including any assets held on trust by the Company.

3. The JPLs are authorized to act jointly and severally.
4. That the Affidavit of Brian Simms KC filed herein on 14<sup>th</sup> November 2022 relied on in support of this application be sealed.
5. The remuneration and expenses of the JPLs shall be paid out of the assets of the Company in any event.
6. The costs of and occasioned by this application be paid out of the assets of the Company.

**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 Provisional Liquidator*

COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Commercial Division

IN THE MATTER OF the Digital Assets and  
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AND IN THE MATTER OF  
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ORDER FOR APPOINTMENT OF  
ADDITIONAL PROVISIONAL LIQUIDATORS

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2022  
COM/com

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

## 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

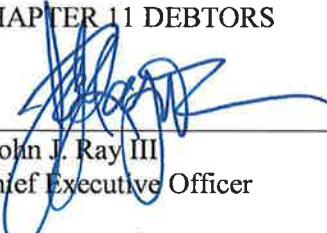
preserve confidentiality and any privilege of any party, and to respect the requests of their applicable regulators or law enforcement, *provided* that nothing in this Agreement shall oblige a Party to share privileged material with any other Party. Each Party will ensure that the other Party receives 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.

January 30, 2023

Kevin Cambridge and Peter Greaves  
PricewaterhouseCoopers  
2 Bayside Executive Park  
West Bay Street & Blake Road  
Nassau / Bahamas

Brian Simms, KC  
Lennox Paton  
3 Bayside Executive Park  
West Bay Street & Blake Road  
Nassau / Bahamas

**Re: Confidentiality Arrangements**

FTX Trading Ltd. and its affiliated debtors and debtors-in-possession (collectively, the “Debtors”), in their jointly administered chapter 11 cases (the “Chapter 11 Cases”) in the United States Bankruptcy Court for the District of Delaware (the “U.S. Bankruptcy Court”), understand that Kevin Cambridge and Peter Greaves of PricewaterhouseCoopers (“PwC”), and Brian Simms, KC of Lennox Paton (“LXP”) have been appointed by the Supreme Court of The Bahamas (the “Bahamas Court”) as joint provisional liquidators (collectively, in such capacity and not in a personal capacity, the “JPLs”) of FTX Digital Markets Ltd. (“FTX DM”) in its provisional liquidation proceeding (the “FTX DM Provisional Liquidation”).

On January 6, 2023, the Chapter 11 Debtors and the JPLs entered into a Settlement and Cooperation Agreement (the “Cooperation Agreement”), which Cooperation Agreement is still subject to the approval of the Bankruptcy Court and the sanction of the Bahamas Court. The Cooperation Agreement provides that, among other things, the Parties (as defined below) will share information in their possession concerning the matters contemplated by the Cooperation Agreement subject to, among other things, mutually satisfactory arrangements to preserve confidentiality. This letter agreement (the “Agreement”) sets forth those confidentiality arrangements. Nothing in this Agreement is intended to abridge, alter or

amend the Cooperation Agreement or the obligations set forth therein. Each of the Debtors, on the one hand, and FTX DM, on the other, is referred to in this Agreement as a “Party” or together the “Parties.”

**1. *Certain Defined Terms.*** For purposes of this Agreement, the following terms shall be defined as follows:

“Confidential Information” means, all non-public information, documents and communications of whatever kind or nature that was or is furnished by a Party or its Representatives to the other Party or its Representatives on or after January 1, 2023, whether orally, in writing, or any other form and whether or not designated in writing as “Confidential” by the Disclosing Party or its Representatives; *provided* that Confidential Information shall not include any information, documents or communications of any kind that: (i) became or becomes available to the public generally other than as a result of a breach of this Agreement; (ii) became or becomes independently available to the Receiving Party or its Representatives on a non-confidential basis from a source (other than the other Party or such other Party’s Representatives) that was not known to the Receiving Party to be prohibited from disclosing the information publicly or to the Receiving Party by a contractual, legal or fiduciary obligation; (iii) was or is independently developed by the Receiving Party or any of its Representatives without the use of Confidential Information and not in violation of this Agreement; or (iv) was or is obtained by the Receiving Party or any of its Representatives through subpoena, formal discovery, or other process (it being understood that, if the disclosure of such information is governed by an applicable protective order, sealing or similar court order, then such order shall have primacy over this Agreement and shall govern the disclosure of such information with respect thereto).

“Disclosing Party” means a Party that discloses or whose Representatives disclose Confidential Information.

“Insolvency Proceedings” means the Chapter 11 Cases and the FTX DM Provisional Liquidation (or any subsequent winding up proceedings in respect of FTX DM).

“Platform Confidential Information” means all Confidential Information pertaining to the FTX.com platform that relates to one or more of the Debtors and FTX DM (it being understood that Platform Confidential Information does not include Confidential Information that relates solely to one or more of the Debtors, or solely to FTX DM).

“Receiving Party” means a Party that receives or whose Representatives receive Confidential Information.

“Representatives” means, collectively, with respect to any Party, such Party’s affiliates and its and their respective officers, directors, managers, counsel, advisors, consultants, outside auditors, agents, employees or professionals.

**2. *Duty of Confidence and Use of Confidential Information.***

a. Each Receiving Party shall treat all Confidential Information received from the other Party or such other Party's Representatives as confidential, shall use such Confidential Information only in connection with the Insolvency Proceedings and/or the discharge of the duties of the Parties and their Representatives in their respective Insolvency Proceeding, and shall not disclose such Confidential Information except as permitted by this Agreement.

b. Each Receiving Party shall be directly liable to the other Party for any failure of such Receiving Party's Representatives to comply with the terms of this Agreement, except to the extent such Representative and the other Party shall have entered into a separate written confidentiality agreement, in which case the Receiving Party whose Representative(s) failed to comply with the terms of this Agreement shall have no liability for any failure of such Representative to so comply.

c. Nothing in this Agreement, nor any disclosure of Confidential Information hereunder, shall constitute a transfer of any right, title or interest in, or a grant of any license or right to use or otherwise exploit, any Confidential Information, or any intellectual property rights relating thereto (including, without limitation, any rights in data, databases, inventions, trade secrets, works of authorship, proprietary information, discoveries and improvements) now or subsequently owned or controlled by either Party or its affiliates, in each case, whether directly or by implication, estoppel or otherwise. For the avoidance of doubt, nothing in this Agreement affects any right, title or interest in any intellectual property owned by either Party.

d. Each of the Parties will promptly inform the other Party, via, in the case of the Debtors, Sullivan & Cromwell LLP ("S&C"), and, in the case of FTX DM, via the LXP, of any inadvertent or other disclosure of Confidential Information received from the other Party or such other Party's Representatives that violates this Agreement and has been or may have been made by the first-mentioned Party or (to the extent that such Party has actual knowledge of such disclosure violation) by any of that Party's Representatives in violation of this Agreement.

**3. *Permitted Disclosure of Confidential Information.***

a. A Receiving Party and any of its Representatives may disclose any Confidential Information (i) to such Receiving Party's Representatives who have agreed to be bound by the terms of this Agreement with respect to the use and non-disclosure of such Confidential Information and (ii) with the prior written consent (which may be conveyed via email) of the other Party or its legal counsel.

b. Subject to the requirements set forth in paragraph 3(c) hereof, a Receiving Party and any of its Representatives also may disclose any Confidential Information (i) to any legal, judicial, administrative, governmental, or regulatory authority (which, for the avoidance of doubt, the Parties acknowledge and agree shall include Securities Commission of The Bahamas, the Attorney General of The Bahamas, and all other governmental or regulatory

authorities in The Bahamas, the U.S. Securities & Exchange Commission, the U.S. Department of Justice, and the U.S. Attorney General) to the extent such Receiving Party or such Representative has the duty, or is requested or required (including pursuant to statutory or fiduciary duties to which such Party is subject or otherwise) to make such disclosure, (ii) in any Insolvency Proceeding or any other related court proceedings (including in connection with any litigation, contested matter or otherwise), or (iii) to the extent that such Receiving Party or such Representative has the duty to, or is requested or required (including, without limitation, by deposition, interrogatory, request for information or documents, subpoena, regulatory request, civil investigative demand or similar request, requirement or process) to make such disclosure (x) in order to comply with applicable law, regulation, rule, order, professional standard, (y) by legal, judicial, administrative, regulatory or other similar process, or (z) in connection with an audit or inquiry by any governmental or regulatory authority.

c. If a Receiving Party or any of its Representatives has the duty to, or is requested or required to, disclose Confidential Information pursuant paragraph 3(b) hereof, then such Receiving Party or its Representative, as applicable, shall, to the extent practicable and subject to any modifications of this Section 3(c) required by the Bahamas Court in relation to assistance provided by the JPLs with respect to any investigations of governmental authorities, provide the other Party with prior written notice, with no less than fourteen (14) days prior to such disclosure, of its intention to disclose any Confidential Information of the other Party pursuant paragraph 3(b) hereof, to the extent allowed by law, rule and regulation. If after receiving such written notice from the Disclosing Party, (i) the other Party seeks and obtains a protective order or other appropriate remedy (at their own expense) from a court or other governmental authority of competent jurisdiction, and (ii) that protective order or other remedy (x) is binding upon the person or authority to which the Disclosing Party has a duty, or is required or requested, to make the disclosure, and (y) is entered by such court or other governmental authority prior to any date by which the Disclosing Party must make such disclosure, then the Disclosing Party or its Representative, as applicable, may disclose only such portion of the applicable Confidential Information that the Disclosing Party or such Representative reasonably believes is legally required to be disclosed at such time pursuant to such protective order or other remedy and agrees not to disclose any other portion of the Confidential Information in a manner not otherwise permitted by this Agreement.

d. In addition to the disclosure permitted by paragraphs 3(a) and 3(b) above, a Receiving Party or any of its Representatives may disclose Platform Confidential Information provided by the other Party to the extent that the Receiving Party has determined in good faith that such disclosure is reasonably necessary in connection with the discharge of such Receiving Party's duties in connection with its Insolvency Proceeding; *provided* that no such disclosure shall be permitted hereunder unless such Receiving Party has given the other Party five (5) calendar days' advance written notice (which may be by email) of such disclosure and been available to consult with such other Party in good faith concerning the scope and method of such disclosure.

e. Nothing in this Agreement limits in any way either Party's ability to disclose or use (i) Confidential Information not received from the other Party or such other

Party's Representatives or (ii) any Confidential Information that relates solely to the Receiving Party.

**4. Remedies.** Given the valuable and commercially sensitive nature of the Confidential Information, the Parties acknowledge that each Party may be irreparably damaged by any disclosure or use of Confidential Information in breach of this Agreement. Without prejudice to the rights and remedies otherwise available, each of the Parties agrees that the other shall be entitled, without the requirement of posting a bond or other security, to seek equitable relief, including an injunction or specific performance, in the event of any breach or threatened breach by the other Party or any Representative of such Party of the provisions of this Agreement. Such remedies shall not be deemed to be exclusive remedies but shall be in addition to all other remedies available at law or equity to the other Party or such other beneficiary.

**5. No Reliance.** Each Party understands and acknowledges that neither the other Party nor any of its Representatives make any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information. Each Party agrees that neither the other Party nor any of its Representatives shall have any liability to the other Party or any of their respective Representatives arising out of, relating to or resulting from the receipt or use of the Confidential Information or any errors therein or omissions therefrom.

**6. Contact with the Parties.** FTX DM and its Representatives shall make all requests for Confidential Information (or consent to disclose Confidential Information) through S&C, Alvarez & Marsal, or other external advisors approved by S&C. The Debtors and their Representatives shall make all requests for Confidential Information (or consent to disclose Confidential Information) through the JPLs, or other external advisors approved by the JPLs.

**7. No Waiver of Privileges.** Nothing in this Agreement is intended to or does affect any party's rights to legal professional privilege. Furthermore, the inadvertent production of any document or other information under the terms of this Agreement shall be without prejudice to any claim that such material is protected by the work product doctrine and/or privileged under the attorney-client, legal professional privilege (including both legal advice privilege and litigation privilege) or any other applicable privilege, and the producing Party shall not be held to have waived any rights by the inadvertent production. If a claim of inadvertent production is made pursuant to this paragraph with respect to documents or information then in a Party's custody, the producing Party shall promptly provide the other Party with written notice thereof and the other Party shall promptly return to the producing Party that material as to which the claim of inadvertent production has been made (including all copies thereof) and no use shall subsequently be made of such documents or other information for any purpose.

**8. Governing Law (*dépeçage*); Exclusive Jurisdiction; Waiver of Jury Trial.** The obligations of FTX DM and its Representatives hereunder and any rights or remedies of the Chapter 11 Debtors arising out of or relating to any breach of such obligations (collectively, the "New York Law Covered Matters") shall be governed by and construed in

accordance with the laws of the State of New York, without giving effect to applicable principles of conflicts of law to the extent that the application of the laws of another jurisdiction would be required thereby. The Parties hereby irrevocably consent to the exclusive jurisdiction of the U.S. Bankruptcy Court over any action or proceeding arising out of or in relation to any New York Law Covered Matter. The obligations of the Chapter 11 Debtors and their Representatives hereunder and any rights or remedies of FTX DM arising out of or relating to any breach of such obligations (collectively, the “Bahamas Law Covered Matters”) shall be governed by and construed in accordance with the laws of The Bahamas, without giving effect to applicable principles of conflicts or law to the extent that the application of the laws of another jurisdiction would be required thereby. The Parties hereby irrevocably consent to the exclusive jurisdiction of the Bahamas Court over any action or proceeding arising out of or in relation to any Bahamas Law Covered Matter. The Parties waive any objection to any action or proceeding on the basis of *forum non conveniens*. The Parties hereto irrevocably agree to waive all rights to trial by jury in any such action or proceeding and irrevocably consent to the service of any and all process to any such action or proceeding by the mailing of copies of such process to each party in its address set forth herein.

**9. *Term.*** Notwithstanding anything to the contrary contained herein, the obligations of the Parties under this Agreement shall terminate upon the latest to occur of (a) the date that is eighteen months following the date hereof, and (b)(i) in the case of the obligations of FTX DM to the Debtors, (x) the effective date of any chapter 11 plan of reorganization of the Debtors that was confirmed by the U.S. Bankruptcy Court, (y) the date upon which the Chapter 11 Cases are converted to cases under chapter 7 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.*, and (z) the date upon which the Chapter 11 Cases are dismissed with prejudice, and (b)(ii) in the case of obligations of the Debtors to FTX DM, (x) the effective date of any plan or scheme in respect of FTX DM that was sanctioned by the Bahamas Court, (y) in the event of a winding-up order being made in respect of FTX DM, on the date that the Debtors are informed (via S&C) that the Agreement is not being adopted by the official liquidators for the purposes of the liquidation, and (z) the date upon which the FTX DM Provisional Liquidation Proceeding is dismissed with prejudice.

**10. *Miscellaneous.*** If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement which shall otherwise remain in full force and effect, but only to the extent that the original intent of this Agreement would not be altered in any material respect. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether written or oral, with respect thereto. No delay or failure of either party to exercise any right or remedy available to it pursuant to this Agreement shall operate as a waiver of such right or remedy. For the convenience of the parties hereto, any number of counterparts of this Agreement may be executed by the parties hereto, each of which shall be an original instrument and all of which taken together shall constitute one and the same Agreement. Delivery of a signed counterpart of this Agreement by facsimile or .pdf transmission shall constitute valid sufficient delivery thereof.

*[Signature Page Follows]*

In witness whereof, this Agreement is executed as of the date first above written.

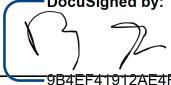
**FTX TRADING LTD. on behalf of itself and its  
affiliated debtors and debtors-in-possession**

By   
Name: John J. Ray III  
Title: CEO

Notice Address:  
FTX Trading Ltd.  
125 Broad Street  
New York, New York 10004-2498  
Attention: FTX Mail Room

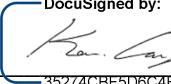
Agreed to and accepted:

**FTX DIGITAL MARKETS LTD. (In Provisional Liquidation)**

By  DocuSigned by:  
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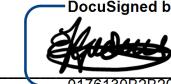
Name: Brian Simms, KC

Title: Joint Provisional Liquidator (without personal liability)

By  DocuSigned by:  
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Name: Kevin Cambridge

Title: Joint Provisional Liquidator (without personal liability)

By  DocuSigned by:  
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Name: Peter Greaves

Title: Joint Provisional Liquidator (without personal liability)

Notice Address:

Lennox Paton  
3 Bayside Executive Park  
West Bay Street & Blake Road  
Nassau, Bahamas

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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THIRD AFFIDAVIT OF BRIAN SIMMS KC  
(Joint Provisional Liquidator of  
FTX Digital Markets Ltd.)

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2022  
COM/com/ooo60



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