

Several cryptocurrency firms filed Chapter 11 bankruptcy cases over the last two years – Celsius, Voyager, Bittrex and, of course, FTX. The next “crypto shoe to drop” that should worry counterparties are preference actions, meaning that the crypto exchange debtors, or their bankruptcy trustees, will soon try to recover payments made to creditors in the 90-day lead up to their bankruptcy filings.

Payments that may be challenged include withdrawals made by customers who had deposited their cryptocurrency assets at the debtor exchanges, meaning that any person or company who withdrew cryptocurrency assets prior to the bankruptcy may be asked to pay those withdrawals back to the debtors, thus compounding their losses. It is important to note that there are numerous potential defenses to challenged payments. Our lawyers are able to guide you through the process of dealing with preference challenges.

Proactive Approach Is the Best Approach

A preference action typically begins with the receipt of a demand letter from a debtor or its trustee, and it is strategically beneficial to timely respond to these demand letters to try to pre-empt the filing of a lawsuit. Prompt responses can often avoid future, more costly litigation. These crypto preference cases will be complex and will require expertise in both novel and complex bankruptcy and cryptocurrency law to navigate emerging and unique issues.

New and Novel Issues

Some of the issues that will arise in the crypto bankruptcies include the following:

Property of the Bankruptcy Estate

Is the cryptocurrency held by a crypto exchange property of the bankruptcy estate or does it belong to the customer?

Solvency as a Defense

Was the crypto exchange insolvent at the time of the transfer or was the bankruptcy the result of fluctuations in the value of cryptocurrency?

Valuing Cryptocurrency

Is the bankruptcy estate entitled to recover the cryptocurrency itself or the value of the cryptocurrency, and if the latter, how should the court assess value?

Safe Harbor

There are numerous safe harbors in the Bankruptcy Code that protect customers in certain financial transactions. Do any of the safe harbors apply to cryptocurrency?

Affirmative Defenses

How do you establish new value provided by the customer after it received the transferred cryptocurrency and how do you prove ordinary course of business in the crypto industry?

We Can Help

Our firm is uniquely positioned to address these questions and mount defenses to crypto preference claims. We would be pleased to arrange a call to discuss the extent of your potential exposure.

Contacts



Stephen Lerner

Partner, Cincinnati and New York
T +1 513 361 1220
E stephen.lerner@squirepb.com



Mark Salzberg

Partner, Washington DC
T +1 202 457 5242
E mark.salzberg@squirepb.com



Peter Morrison

Partner, Cleveland
T +1 216 479 8712
E peter.morrison@squirepb.com

