



September 11, 2023

Submitted electronically to: rule-comments@sec.gov

Secretary
Securities and Exchange Commission 100 F Street NE
Washington, DC 20549-1090

Re: File No. S7-11-23 -- Daily Computation of Customer and Broker-Dealer Reserve Requirements under the Broker-Dealer Customer Protection Rule 15c3-3.]

Dear Sir/Madam,

Retail Market Participants welcomes the opportunity to respond to the July 12, 2023 proposal of the Securities and Exchange Commission (the “Commission” or the “SEC”) to require certain broker-dealers to compute the reserve requirement under Exchange Act Rules 15c3-3 and 15c3-3(e) (the “Customer Protection Rule” and the “Customer Reserve Formula,” respectively) on a daily basis (the “Proposal”).

Retail Investors supports the goal of the Proposal to reduce risk to customers and proprietary accounts of broker-dealers (“PAB”) should computing broker-dealers incur mismatches between amounts on deposit in Special Reserve Bank Accounts (“Special Accounts”) and large influxes of cash from customers and PABs on days that a reserve computation is not currently required to be prepared.

Retail Investors appreciates the immortalization of confessions from Financial Institutions, Market Makers, Family Offices, Hedge Funds, ISDA Members, Crypto Exchanges, & Swaps Counter-Parties on the U.S. Securities and Exchange Commission’s (the “SEC” or “Commission”) release on proposed Rule 13f-2 (“Proposal”) under the Securities Exchange Act of 1934. Financial Institutions ISDA Counter-Parties, Hedge Funds, Crypto Exchanges, & Family Offices full knowledge Signed ISDA and Swaps Contract “directly or indirectly, actually or synthetically, relating to such Transaction or any connected hedging activity” “that can be



used to create a long or short exposure to the Shares or Index” thereby creating “Synthetic Buyer” or “Synthetic Seller”. Utilizing “Share Swap Transaction”, “Share Basket Swap Transaction”, “Index Swap Transaction”, “Index Basket Swap Transaction” a “Custom Index Basket”, “Broker-Dealer Swap Tokenized Shares on Exchange”, & “Digital Asset Securities-Based Swap” without having to own the underlying Shares/Assets or deposit reserves.

Broker-dealer customer protection rule to require certain broker-dealers to perform their customer and broker-dealer reserve computations and make any required deposits into their reserve bank accounts daily rather than weekly. These Rules for daily reserve computation requirements should apply to Broker-Dealers, Security-Based Swap, Crypto-Based Swap, USD/Stable Coin-Swaps, Digital Asset Securities-Based Swap, & Dealers with respect to their Digital Asset/Security-Based Swap customers.

The documentation & confession using financial instruments such as “rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, swap tokenized stock, swap dollar pegged Circle’s USDC, USD/Stable Coin-Swaps, Digital Asset Securities-Based Swap or any other similar transaction (including any option with respect to any of these transactions)” as defined within ISDA agreements. These instruments & “securities-based swaps underlying certain” EquiLend, FTX, Alameda Research, & Archegos’ “positions in order to raise or depress the price of and induce others to purchase those securities”

Steig Olson, Esq (Quinn Emanuel Urquhart & Sullivan, LLP)

“Now, they also conspire to make sure no one else would support these platforms either. Here's an example”

“In February 2010, as this document shows, AQS made a big announcement. A major agent lender Bank of New York Mellon was going to join and support its platform. Goldman Sachs heard about this and quickly was alarmed”

“William Conley, the head of Goldman Sachs's stock lending desk called Kathy Rulong at Bank of New York Mellon on the phone, and as he bragged to his team he, "Beat Kathy up on this.”

“What that means is, is Mr. Conley demanded that Ms. Rulong get on a plane and fly from Pittsburgh to New York City, come to his office, so she could sit in his office and



hear more threats from Goldman Sachs about the financial punishment her bank would receive if they continued to support AQS, and so Bank of New York Mellon stopped supporting AQS”

“Bill Conley did the same thing to State Street, a similar thing happened in Northern Trust, but regulators kept pushing for central clearing, and defendants recognized it was coming in some form. So in 2015 -- remember as they had said they would -- they reconvene that CCP working group. And there they agreed to a set of core principles about how to block the threat”

“The first one says it all, "Bilateral trading model must be maintained." That is, they pledged that even as central clearing was adopted in this market, none of them would support multilateral trading”

“Now fortunately we have some of the notes from that discussion so we have so more detail. Those notes show that Morgan Stanley brought this up by saying, What we really need to do is preserve the, "bilateral pricing model." That is the high prices they could charge in the OTC market where people have to come to them bilaterally and don't have multilateral options, and all defendants agreed to that”

“Let's hear again from Mr. Gemelli, Credit Suisse's board rep”
(Media played)
(Media stopped)

“And it worked, the market is still bilateral today. All these new entrants failed. So in short, your Honor, we have very strong evidence of defendant's conspiracy in this case, and all of it is common to the class”

“Now we're also capable of proving that this conspiracy had classwide impact using common proof. Here we lean on our experts, who are among the most respected financial economist in the world”

Daniel L. Brockett (Quinn Emanuel Urquhart & Sullivan, LLP)

“Credit Suisse executive who sat on the EquiLend board told SLX that EquiLend was like the Mafia run by five families. He also stated that nothing would happen in the market with regard to SLX's platform unless the five families agreed jointly that it should happen”

“Credit Suisse managing director recommended getting together all of the members of the family to discuss AQS and SLX in light of regulatory developments. At or about the



same time, the head of securities lending at Bank of America also expressed an intent to convene a meeting of the five families”

“There was similar pressure applied to customers. The dealers pressured existing participants not to trade on AQS or SLX and made similar threats to entities about withholding banking services if they were to use either of these platforms. For example, major hedge funds – Renaissance Technologies, D.E. Shaw, Millennium, and SAC Capital – were all refused access to these platforms, and each were told the same thing: If you don't like this decision, you could take your business elsewhere. That is what all of the prime brokers told the hedge funds when they sought access to the AQS and SLX platform”

“Goldman Sachs also threatened Bank of New York Mellon when it learned that BNY intended to use AQS. Goldman threatened to cancel all open stock lending trades and to refuse to do business with BNY in the future if BNY were to support either one of these platforms. So, again, you have common threats that were made to market participants who sought access to these platforms”

“All of the dealers caused EquiLend, which they controlled, not to support these new platforms. And then, in the end, all of the banks on the EquiLend board supported the acquisition of the assets of both of these platforms, not for the purpose of making any commercial use out of them, but for the purpose of shelving them and shutting them down as independent competitive forces in the marketplace”



Charles Washburn (Partner at Manatt, Phelps & Phillips, LLP):

From: Washburn, Charles
Sent: Tuesday, July 24, 2018 10:57 AM
To: 'Nourafshan, Alexander@DBO'
Subject: RE: Confidential Treatment Re: BlockFi
Importance: High

CONFIDENTIAL

Alex,

I hope this message finds you well.

I am following up to check on the status of our request for an interpretive opinion, a copy of which request I have attached for ease of reference. As you know, it was received by the Department on May 15.

As discussed in more detail in the opinion request, the position taken by the Department to-date that a licensee under the California Financing Law ("CFL") cannot hold collateral I respectfully believe is based on a clear misreading of vestigial language in Section 22009 of the CFL defining the term "finance lender," which hopefully you see as well.

As also discussed in the request, this incorrect Department position is causing substantial harm to our client BlockFi Lending LLC. In particular and as noted in the request for expedited treatment, I understand from the client that a competitor, Unchained Capital, Inc., was granted a CFL license by the Department (60DBO-78867) and based on the Department's web site that license is still active. The client further advises that Unchained Capital is still doing a lending business in California and is still holding crypto currency as collateral in connection

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with those loans while at the same time BlockFi Lending is unable to lend in California on similar terms with respect to holding collateral based on this Department position.

Thank you in advance for your assistance, and I would again be happy to discuss any questions you may have regarding the analysis.

Best regards,

Chuck



Crypto Currency as Collateral for Loans with California Banks (i.e. Silicon Valley Bank, First Republic Bank, Signature Bank). These Crypto Currency Collateral Rehypothesized for Loans “Venture Portfolio included in 438 investments, totaling approximately \$4.5B” with California Banks.

Venture Portfolio Summary



As of the Petition Date, the Venture Portfolio included 438 investments, totaling approximately \$4.5B in funded assets:

Type	Key Investments	Count ¹	Funded ²	% of Total
Equity Investments	Genesis Digital Assets 80 ACRES FARMS Stocktwits toss ANTHROPIC iex tripledot Chipper YUGALABS YYFG NETWORK HiddenRoad brinc	213	\$2,930	65%
	SKYBRIDGE Paradigm PANGEA mkraken VENTURES L2 VENTURES COLLIDE CAPITAL CURATED Madison Capital Canenical Crypto	40	\$732	16%
Tokens	Bitcoin Ethereum Cardano Solana Dogecoin XRP Uniswap Chainlink Polkadot Avalanche Cosmos Stellar Bitcoin Cash Monero Dash Zcash Ethereum Classic Bitcoin SV Tezos Filecoin Algorand VeChain EOS IOTA NEO Qtum Zilliqa Ontology NEM Dash Zcash Ethereum Classic Bitcoin SV Tezos Filecoin Algorand VeChain EOS IOTA NEO Qtum Zilliqa Ontology	174	\$507	11%
Loans	dave HelixNano CONSENSYS PLAYUP	11	\$368	8%
Total Venture Portfolio	Over \$4.5 billion in funded investments³	438	\$4,538	100%

1. Number of investments based on individual investment type (equity, fund, token, loan)
 2. Funded capital includes cash, crypto and other transferred assets. Investment totals exclude non-debtor investments
 3. Includes funded values for investments exited to date (see p. 28); excludes \$782M of non-debtor assets (see p. 32), including Mt. Olympus (\$400M funded), K5 Global (\$300M funded); value of funded investment not indicative of potential recoverable value

“Indeed, internal counsel from the various prime brokers held a call among themselves earlier that day, agreeing that lawyers would be present on any calls between the brokers, and that the lawyers would read a script on each call making clear that no broker was permitted to disclose its Archegos-related positions”, including Counter-Parties HUDSON BAY CAPITAL MANAGEMENT LP, BARCLAYS CAPITAL INC., BNP PARIBAS, MERRILL LYNCH INTERNATIONAL, NATIONAL FINANCIAL SERVICES LLC, STATE STREET BANK AND TRUST CO., UBS SECURITIES LLC, BNP PARIBAS SECURITIES CORP., GOLDMAN SACHS & CO. LLC, MERRILL LYNCH PROFESSIONAL CLEARING CORP.,



UBS AG, PALOMA PARTNERS MANAGEMENT COMPANY, BOFA SECURITIES, INC., CITIGROUP GLOBAL MARKETS INC., DEUTSCHE BANK AG, DEUTSCHE BANK SECURITIES INC., J.P. MORGAN SECURITIES LLC, MERRILL LYNCH PROFESSIONAL CLEARING CORP., MORGAN STANLEY & CO. INTERNATIONAL PLC, BARCLAYS BANK PLC, CITIGROUP GLOBAL MARKETS INC., CREDIT SUISSE SECURITIES (USA) LLC, DEUTSCHE BANK AG, DEUTSCHE BANK SECURITIES INC., GOLDMAN SACHS INTERNATIONAL, J.P. MORGAN CHASE BANK, NA, MERRILL LYNCH INTERNATIONAL, MERRILL LYNCH PROFESSIONAL CLEARING CORP., SG AMERICAS SECURITIES, LLC, THE BANK OF NEW YORK MELLON, THE BANK OF NOVA SCOTIA, UBS SECURITIES LLC, UBS SWITZERLAND AG, WELLS FARGO BANK NA, SS&C TECHNOLOGIES, INC., SAMLYN CAPITAL, LLC, BARCLAYS CAPITAL INC., FIDELITY PRIME SERVICES, J.P. MORGAN CLEARING CORP., MORGAN STANLEY & CO., INC., NATIONAL FINANCIAL SERVICES LLC, BARCLAYS CAPITAL INC., FIDELITY PRIME SERVICES, MERRILL LYNCH INTERNATIONAL, MORGAN STANLEY CAPITAL SERVICES, LLC, THE NORTHERN TRUST INTERNATIONAL BANKING CORPORATION, MORGAN STANLEY FUND SERVICES (CAYMAN) LTD., “CS participated in block sales of overlapping positions on April 5 and 14, 2021, liquidating approximately \$3 billion and \$2.2 billion, respectively, on those dates. Otherwise, CS liquidated its other historic Archegos positions through open-market, algorithmic trading. As of April 22, 2021, CS had liquidated 97% of its Archegos exposure.” “Goldman was organizing block sales of certain ADR positions and invited CS to participate. CS ultimately participated in three such Goldman-led block trades, selling shares in Baidu, Tencent, and Vipshop Holdings. In these trades, Goldman did not disclose to CS the number of shares it was putting up in the block, and there was no agreement with Goldman as to which broker’s shares were being sold first and/or how the sales would be distributed. Apart from the block, CS engaged in algorithmic trading that day, aiming to stay within 2-3% of average daily volume. Ultimately, CS sold just over \$3 billion notional on March 26, approximately \$1.27 billions of which was sold in the Goldman-led block sales.”

Prime Brokers Dealers/Family Office/Major Hedge Funds Member confession and admissions

“...I and others executed trades that allowed the fund to amass market power and certain securities traded on U.S. exchanges. Archegos used security-based swaps to gain exposure to these securities while concealing the true size of the fund’s positions from the market and our trading counterparties. Once Archegos gained market power in these securities, I and others used this power to trade in such a way as to artificially manipulate the prices of the securities. Acting at the direction of the head of the fund [Hwang], I traded to increase the prices of names in which Archegos held long positions and reduced the prices of securities in which the fund hel[d] short positions. I did this by, for example, buying large amounts of a stock when the price dropped in response to negative news or trading premarket when I knew the fund’s activity would have a greater



impact on price. I manipulated the prices of these securities in order to influence others in the market to buy or sell the securities in ways that would benefit Archegos'[s] key positions and increase Archegos'[s] purchasing power through variation margin." "each were told the same thing: If you don't like this decision, you could take your business elsewhere. That is what all of the prime brokers told the hedge funds"

Using positions in “highly-liquid, larger cap issuers” towards “less liquid, China-based issuers, as well as relatively smaller cap U.S. media and technology companies” “artificially increase the market value” & “artificially inflate the share prices”.

These ISDA Counter-Parties & Swaps Contracts use “manipulative trading in those stocks interrupted the natural interplay of supply and demand for those stocks – and distorted their underlying economic value for the Counterparties and other market participants – by causing at least two sets of false pricing signals in the market: (1) that the Top 10 Holdings stocks were held by a relatively broad range of market participants, reflecting a relatively broad supply and demand for those stocks – when, in fact, a single buyer (Archegos) was surreptitiously, and by fraudulent means, dominating the market for those stocks; and (2) that the prices of those stocks, both daily and over time, reflected normal market forces when, in fact, their steep climb (and ultimate precipitous fall) was due at least largely to Archegos’s fraudulently dominating the market for, and engaging in manipulative trading of, those stocks.” “These swaps allow clients to obtain "synthetic" leveraged exposure to the underlying stocks without actually owning them.” Also known instruments “derivative known as a total return swap ("TRS")”.

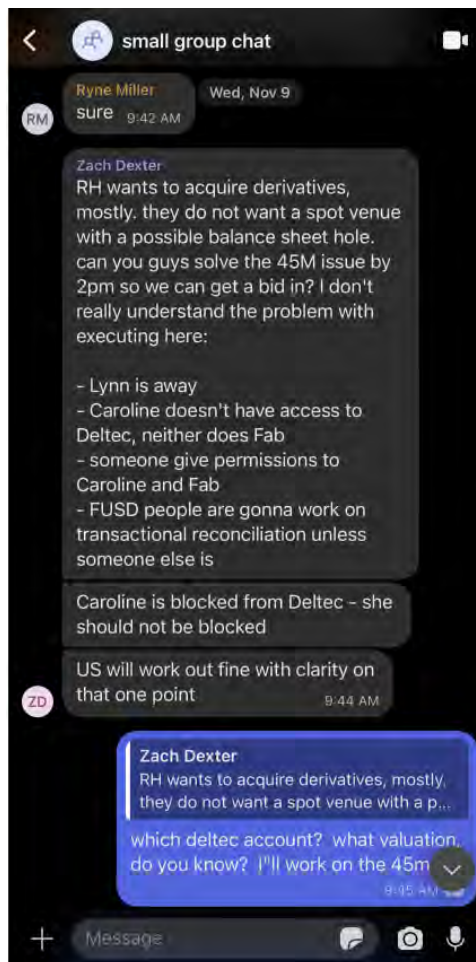
Before making recommendations regarding the Proposal, it is important to put some ISDA members, Prime Broker Banks, Family Offices, Crypto Exchanges, & Counter-Parties own confession, admissions and documentation around the shortcomings of the current system

and the Commission’s goals with this proposal in order to evaluate whether the proposal will be successful.

“Short selling volume and transactions data cannot easily explain changes in short interest, exposing a gap between these two types of existing data.” Furthermore, these data sets are subject to differences in reporting lag, and can misrepresent the amount of short selling due to mismarking, manipulation & method by Hedge Funds, Family Offices, Brokerages, Financial Institution, Crypto Exchanges, Counter-Parties & ISDA members.



Crypto Exchanges Sam Bankman-Fried FTX, Alameda Research Response to Signal Auto Deleting Messages with Ryne Miller (Sullivan & Cromwell Partner; Lead Bankruptcy Counsel/Former CFTC Legal Counsel) & Zach Dexter (CEO LedgerX received licenses from CFTC) in regards to “RH [Robinhood] wants to acquire derivatives” “Caroline [Ellison] doesn't have access” “she [Caroline Ellison] should not be blocked”



Crypto Exchanges confession and admissions; Sam Bankman-Fried FTX, Alameda Research, Coinbase Custodian w/ LMK Labs (OTC Swaps), Maclaurin Investment, West Realm Shires, Clifton Bay, & Island Bay Ventures:

“Say you Tokenize Stocks. Instead of waiting 2 days to settle, you can swap AAPL-token <> USD-token on a blockchain”



Zixiao Wang (Gary Wang) FTX, Alameda Research, Coinbase Custodian w/ LMK Labs (OTC Swaps), Maclaurin Investment, West Realm Shires, Clifton Bay, & Island Bay Ventures Guilty Plea Transcript:

“THE COURT: First, in connection with any swap or contract of sale of any commodity in interstate commerce or contracts for future delivery on or subject the rules of any registered entity”

Caroline Ellison FTX, Alameda Research, Coinbase Custodian w/ LMK Labs (OTC Swaps), Maclaurin Investment, West Realm Shires, Clifton Bay, & Island Bay Ventures Guilty Plea Transcript:

*“there are three elements to this crime:
First, in connection with any swap or contract of sale of any commodity in interstate commerce or contract for future delivery on or subject to the rules of any registered entity”*

Nishad Singh FTX, Alameda Research, Coinbase Custodian w/ LMK Labs (OTC Swaps), Maclaurin Investment, West Realm Shires, Clifton Bay, & Island Bay Ventures Guilty Plea Transcript:

*“THE COURT: There are three elements to this crime:
First, in connection with any swap or contract of sale of any commodity or interstate commerce or contract for future delivery to on or subject the rules of any registered entity”*

“THE COURT: Thank you. Do you understand, Mr. Singh, the elements of the charge of conspiracy to commit commodities fraud as distinguished from the substantive offense of commodities fraud?”

“THE DEFENDANT: I do”

“IEX has asserted that the FTX entities fraudulently induced IEX into entering into the Share Exchange Agreement”

“I, Alex Mashinsky, Chief Executive Officer of Celsius Network LLC (together with the above captioned debtors and debtors in possession, the “Debtors”), and certain of its Debtor and non-Debtor affiliates (collectively, with the Debtors, “Celsius” or the “Company”), hereby declare under penalty of perjury”



“Swap. In addition to offering consumers the ability to purchase cryptocurrencies on its platform, Celsius offered users the ability to “swap” (“trade” or “convert”) eligible cryptocurrencies for another type of eligible cryptocurrency without paying a fee (the “Swap Service”)”

These are significant and material shortcomings in the transparency of US capital markets, but the Commission neglects to acknowledge the impact of these shortcomings. The lack of transparency into short positions has led to deep mistrust & manipulation by these Financial Institutions in markets for retail investors, and especially for newer retail investors. The Commission risks alienating these investors and driving them away from US capital markets if they do not act to provide transparency and certainty for them.

We Need Increased Transparency

Despite the pushback from industry firms who face increased compliance costs & spotlight shining on the method of manipulation, we fully support the Commission in this rulemaking, and urge the Commission to go further with these disclosures. Our movement is born from frustration over the many complex and conflicted aspects of market structure, with a lack of transparency and visibility into the inner workings around short selling being a primary driver of our retail investor supporters. The lack of transparency around short positions, the inability to adequately quantify short interest, and the ability for firms to skirt regulation through derivative positions such as options and security-based swaps are making a mockery of our free and open markets. The inadequate ability to properly measure and understand economic short exposure leads to supply/demand imbalances in markets and affects trading prices.

We often lament the fact that regulators in other jurisdictions have done more, moved further, and advanced the cause of transparency far more significantly than we have in the US. As other commentators have noted, the EU adopted a short sale reporting regime that essentially requires “immediate public disclosure of large short positions,” by individual issuers. Despite this onerous disclosure regime that goes much further than the Proposal, we agree that “a study

of the impact of the EU’s regulation finds no evidence that the disclosure requirements have resulted in increased coordination or have resulted in short sellers being targeted for short squeezes.” The concerns from the industry and from the short selling community are simply not valid.



Harmonizing the Proposal with European standards would provide significant benefits, both from a transparency perspective and from the short-selling investment manager's perspective - it is far easier to comply with the same rule across multiple jurisdictions than to manage varying standards and rules from country to country.

It is also important to note, from the perspective of how to set an appropriate threshold for disclosure that, as the Commission acknowledges, the European threshold of 0.5% is being gamed, and therefore setting a threshold substantially higher than that will lead to even further gaming of the threshold and disclosure avoidance. There should be little doubt that firms will attempt to game any threshold that is set, as has happened with 13F long disclosures for many years. Given the European experience with a very low threshold, we would argue that it is important to set the threshold as low as possible to mitigate any effects and impacts from firms attempting to game the threshold.

Despite the constant concerns expressed in comment letters about “reverse engineering trading strategies” and the concern voiced in the proposal that there would be a “risk of retaliation towards short individual sellers... as well as the ability for market participants to engage in copy-cat strategies,” the same can be said of current 13F disclosures. Indeed there is an entire industry that follows 13F and other similar disclosures (e.g., politician trades) and allows for copy-cat strategies.

The value of transparency and the need for investors, both retail and institutional, to understand the holdings of investment managers, as well as to form an accurate picture of short interest and short trading dynamics should far outweigh these concerns. The Commission has agreed with this view in crafting 13F policies, the EU has agreed with this view with their disclosure regime, and the Proposal should be expanded to include robust public disclosure at the individual manager level of this information.

Finally, we would further urge the Commission to set a goal to harmonize reporting & Deposit Reserve Computation timelines for all relevant disclosures, from 13F long and short disclosures to reporting timelines for FINRA and the SROs to ensure that data is released consistently, to avoid misunderstandings and misconceptions.



Choice and Control are Fundamental Investor Rights

Much like the reasoning behind recent proposals from the Commission around ESG Disclosures, retail and institutional investors want to know the composition of the positions of the funds that they are investing in. While retail investors may not always have access to the type of funds that accumulate significant short positions, they may still be in the position of doing business with such firms, and they deserve to know when such firms are betting against core portfolio positions that they may be holding and may be very passionate about.

The feedback from the industry has several consistent themes, but primarily it is focused on disguising short selling activity and reducing transparency. This is antithetical to the Commission's objectives with the Proposal. Investors, both retail and institutional, cannot properly exercise their right to choose investments, counterparties and other relationships without visibility into the firms that they are investing in or doing business with. An appropriate level of transparency is absolutely required to empower investors to act in their own best interests in an informed manner.

All Short Exposure Must Be Included

The Proposal as currently crafted has a huge hole that must be remedied, one that the Commission is well aware of - "an investor wishing to profit from the decline of a security's value can also trade in various derivative contracts, including options and security-based swaps." The failure to include derivative exposure in this rule will inevitably result in firms exploiting the loophole and will drive more and more firms into the less regulated and less transparent space of derivatives. As the Commission acknowledges in the proposal, "trading in derivatives frequently leads to related trading in the stock market as derivatives' counterparties seek to hedge their risk." Derivatives have an impact on the market, and can have a detrimental effect on the price of stocks, as EquiLend, Archegos, FTX, Alameda Research, & Celsius demonstrated so clearly. While the positions held by EquiLend, Archegos, FTX, Alameda Research, & Celsius were not disclosed anywhere publicly because they had exploited a loophole in 13F disclosures, the impact on the market was material and overwhelming. Indeed, had these derivative positions been adequately disclosed, it is likely that institutional broker-dealers would have had enough information to mitigate the impact of EquiLend, Archegos', FTX, Alameda Research, & Celsius trading would have been able to recognize the significant exposure that resulted from the leverage they extended via total return swaps & Digital Asset Securities-Based Swap, and would have prevented the crisis from developing in the first place.



In much the same way, it is critical for institutional broker-dealers and for retail and institutional investors to understand the extent to which individual firms have high levels of short exposure to individual stocks or ETFs, regardless of whether that exposure is via equity, through the use of derivatives or through other novel mechanisms that the Commission has not considered. Markets are changing and evolving, and as regulators impose new disclosure requirements on firms, those firms will figure out ways to game or avoid those disclosures. That's what EquiLend Prime Brokers, Archegos, FTX, Alameda Research, & Celsius did with swaps, and that's what other firms might do with other novel ways of gaining short exposure. One example of this could be through security tokens on crypto exchanges. Another could be through the use of fungible or nearly fungible holdings in foreign affiliates - all equity, derivatives, & Digital Asset Securities.

If one of the primary goals that the Commission is seeking to achieve with the Proposal is to give retail and institutional investors, along with regulators, better visibility into economic short exposure, it is imperative that all short exposure is included.

We would also encourage the Commission to include ETF creation and redemption activities. "ETFs constitute 10% of U.S. equity market capitalization but over 20% of short interest and 78% of failures-to-deliver." Authorized participants are incentivized to "operationally short" ETFs, and often fail to deliver these shares. This is a potential source of stress on financial markets, and "the potential source of stress on the financial system appears to have shifted from common stocks during the pre-crisis period to ETFs during the post-crisis period." As such, transparency into the ETF creation and redemption process is more important now than ever before. Whether that transparency starts strictly with regulatory transparency versus public disclosure is one that the Commission will have to decide - we would urge full public disclosure of ETF activities in order for the public to more accurately and adequately evaluate the risks involved in trading ETFs, and to better understand the short interest numbers in ETFs that can vary wildly.

Hedging Indicator

If the Commission insists on continuing with the aggregated disclosures, we would offer one suggestion for an important change. The current proposal for categorizing a position as not hedged, partially hedged or fully hedged could lead to serious problems and misrepresentations of actual economic short exposure, which is the first shortcoming identified by the Commission.



Aggregated information could actually end up being very misleading, by painting an inaccurate picture of the size of short positions despite the “hedging” distribution disclosure. “Partial” hedging could be manipulated or abused to mask true short positions (e.g., by hedging an immaterial portion of the position to flag it as “partially hedged”), and overall gross position disclosures could overstate short positions when net positions are not accounted for. A better solution would be to have the actual amount of position hedged, which could range from 0% to 100%+ if the manager’s long position is larger than the manager’s short position. This is similar to one of the alternatives proposed by the Commission, to report the delta value of hedged positions. This would be a critically important addition to the Proposal and make it far more informative if aggregation is the direction the Commission goes.

Bona Fide Market Making Reporting

We believe it is important that the Proposal’s provision that would “require CAT reporting firms that are reporting short sales to indicate whether such reporting firm is asserting use of the bona fide market making exception under Regulation SHO” is included in the final rule proposal. While we are encouraged by this, as it signals that surveillance teams and regulators are finally trying to better understand the use of this exception, we believe it to be an antiquated exception that is no longer applicable in modern markets, and which should be eliminated. The bona fide market making exemption is being abused, as illustrated by recent enforcement actions, and provides an unreasonable competitive advantage for firms who do not have affirmative obligations to make continuous markets on lit exchanges. As the Commission acknowledges in the proposal, “[f]irms that do not need to obtain a locate prior to effecting a short sale, on the basis of the bona fide market making exception, have a competitive advantage over firms that are required to obtain a locate because these firms can trade more quickly and more easily adjust to or take advantage of changing market conditions.”

It is also possible that market makers are using the bona fide market making exception to include transactions and arrangements where other broker-dealers or customers are using the market maker’s exception to avoid compliance with Regulation SHO. It is important that the SEC and FINRA have the surveillance tools and data necessary to police markets, and including this data in CAT should be an easy decision.

While it is outside the scope of the Proposal, we believe that market structure reform should focus on leveling the playing field, and fostering more robust and verdant competition in markets. Repealing regulation that affirmatively advantages certain firms over other firms is an important step in that direction.



Conclusion

Retail Investors appreciate the opportunity to respond to the Proposal & Immortalization of confessions from Financial Institutions, Market Makers, Family Offices, Hedge Funds, Crypto Exchanges, ISDA Members, & Swaps Counter-Parties. Especially, Sam Bankman-Fried (CEO FTX) Signal Messages with Ryne Miller (Sullivan & Cromwell Partner/Former CFTC Legal Counsel) & Zach Dexter (CEO LedgerX) in regards to how Equities from Companies where “RH [Robinhood] wants to acquire derivatives” swapped for Digital Asset derivatives. Once Physical Equities Swapped with Broker-Dealer USD Pegged Stable-Coin will never perform reserve computations and make any required deposits into their reserve bank loan accounts daily or weekly or eternally; due to misleading information; example USDC/USDT are Backed 1 to 1 with US Dollar Values. Charles Washburn (Partner at Manatt, Phelps & Phillips, LLP) “a lending business in California and is still holding crypto currency as collateral in connection with those loans”. Which governmental body/agency will confirm those Digital Asset/Security or USD-Pegged Stable-Coin are backed with Physical Assets with Same Values used as Collateral for Loans?

Thank you for considering our comments and we would be happy for Prime Broker Dealers, ISDA Members, Crypto Exchanges, & Swaps Counter-Parties contracts and admission to answer any questions or further explain any of the points.

Sincerely,
[Retail Investor]

[Sun Tzu: Know the enemy and know yourself in a hundred battles you will never be in peril. When you are ignorant of the enemy but know yourself, your chances of winning or losing are equal. If ignorant both of your enemy and of yourself, you are certain in every battle to be in peril.]

M4SBIOWO

1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2 -----x
3 IOWA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM, et al.,

4 Plaintiffs,

5 v.

17 Civ. 6221 (SLC)

6 BANK OF AMERICA CORPORATION,
et al.,

7 Defendants.

Oral Argument

8 -----x
9 April 28, 2022
10:09 a.m.

10 Before:

11 HON. SARAH L. CAVE,
12 U.S. Magistrate Judge

13 APPEARANCES

14 COHEN MILSTEIN SELLERS & TOLL PLLC

15 Attorneys for Plaintiffs

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1 (Case called)

2 THE DEPUTY CLERK: Counsel beginning with plaintiffs,
3 please state your appearance for the record.

4 MR. BROCKETT: Good morning, your Honor.

5 Dan Brocket from Quinn Emanuel for the plaintiffs.

6 THE COURT: Good morning.

7 MR. OLSON: Steig Olson from Quinn Emanuel for the
8 plaintiffs.

9 THE COURT: Okay.

10 MS. LEVENS: Emmy Levens from Cohen Milstein also for
11 the plaintiffs.

12

13 MR. EISENKRAFT: Michael Eisenkraft, Cohen Milstein,
14 the plaintiffs.

15 THE COURT: Good morning. I know we have a lot of
16 defendants. I guess if I could take the people who are sitting
17 at the table for defendants, and then if there's anybody from
18 the other defendants who wants to note their appearance, you
19 can do that.

20 MR. WICK: Good morning, your Honor.

21 Robert Wick, Covington & Burling, I represent JP
22 Morgan.

23 MR. PLAYFORTH: John Playforth, Covington & Burling,
24 also representing JP Morgan.

25

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1 MR. MASTORIS: George Mastoris, Winston & Strawn on
2 behalf of the Goldman Sachs.

3 MS. YABLON: Good morning, your Honor.

4 Staci Yablon, also Winston & Strawn, Goldman Sachs.

5 MR. PASKIN: Good morning, your Honor.

6 Michael Paskin, Cravath, Swaine & Moore for Morgan
7 Stanley.

8 MS. ROSENBERG: Good morning, your Honor.

9 Lauren Rosenberg, Cravath, Swaine & Moore, also on
10 behalf of Morgan Stanley.

11 THE COURT: Good morning.

12 Anyone else who wants to note their appearance for the
13 record?

14 MR. WILSON: Peter Wilson from Katten Muchin Rosenman
15 on behalf of UBS.

16 THE COURT: All right. Good.

17 So as far as masks go, I will keep mine off because
18 I'm far enough away from all of you. If you could keep yours
19 on while you're seated, but anyone who's either at the podium
20 or standing, you can take your mask off or down. It will just
21 make it a lot easy for us to hear everybody and have a clear
22 record for our wonderful court reporter we have this morning.

23 So we set aside two and a half hours for each side
24 today. My thought is we'll get started and we'll go for about
25 an hour or so and then take a break. I'll hear from the

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1 plaintiffs obviously first. And then I think after we've gone
2 for about an hour and take a break, we can assess, does it make
3 sense to let the defendants respond for a bit and then go back
4 to the plaintiffs? We'll sort of play it by ear and see how
5 things are going.

6 I have all the binders that you gave me as well as all
7 the filings. So who will be taking the lead for the
8 plaintiffs.

9 MR. BROCKETT: Your Honor, this is Dan Brockett.
10 Because of the number of issues on the motion, we'd like to
11 divide the argument among three speakers. My partner Steig
12 Olson will first address questions of liability and impact
13 particularly as they relate to the predominance prong. You see
14 we have something up now up here.

15 I will then address the damages model, the allege
16 conflict issue and other elements of Rule 23. And then finally
17 Emmy Levens of Cohen Milstein will address disputes surrounding
18 the issue of platform costs and the FTAIA.

19 And the only other thing I'd like to say by way of
20 preliminary order is that we'd like to reserve 35 to 40 minutes
21 of our time for rebuttal.

22 THE COURT: Great Of course. All right.

23 On the defendants side, I will sort of take your run
24 of show when we get to your part of the argument.

25 Mr.Olson, if you want to get started, get yourself

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1 situated at the podium. And like I said, you can take your
2 mask off there.

3 MR. OLSON: Thank you, your Honor. Good morning
4 again. Perhaps two quick preliminaries before we dive in. The
5 Court had requested a better more legible copy of one exhibit.
6 We have that. We can hand that up now.

7 THE COURT: Yes. Have someone approach. This is much
8 better. Thank you.

9 MR. OLSON: That's number one. Number two is, as you
10 see we have a presentation. By agreement with defendants, now
11 we are prepared to hand them hard copies of our presentation as
12 well as the Court with the Court's permission. Our colleagues
13 will approach the bench. Thank you.

14 Are you ready, your Honor?

15 THE COURT: Yes.

16 MR. OLSON: As Mr. Brockett said, I will begin with
17 predominance focusing on liability and impact, and then I will
18 hand the presentation back to Mr. Brockett to pick up damages.

19 Your Honor, the nature of this case is such that
20 common issues predominant, and that is because defendants
21 conspiracy affected the very structure of the stock loan
22 market.

23 At trial, we will prove that defendants conspired to
24 block and boycott new offerings, including multilateral trading
25 platforms, that would have made the U.S. stock loan market more

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1 competitive, more transparent and more efficient for stock loan
2 borrowers and lenders, that is, our class members.

3 Defendants took those benefits away from these class
4 members and left all of them trapped in an opaque and
5 inefficient market without the types of trading options that
6 investors enjoy in many financial markets. Because defendants'
7 conspiracy affected all class members in the same fundamental
8 way, the issues in this case are all common to all class
9 members.

10 And because common issues predominate, we are capable
11 of proving all aspects of our case on a classwide basis,
12 including liability, impact and damages.

13 THE COURT: Can I just pause you for one second, Mr.
14 Olson. You're only seeking certification under 23(b)(3),
15 right?

16 MR. OLSON: Correct, your Honor.

17 THE COURT: But you are seeking injunctive relief, so
18 what's happening with 23(b)(2)?

19 MR. OLSON: Your Honor, we are seeking both aspects of
20 relief as part of a 23(b)(3) class.

21 THE COURT: Okay.

22 MR. OLSON: Let's start with liability. This is the
23 biggest issue in the case. The question that will dominate at
24 trial. We will seek to prove that defendants conspired. They
25 will try to show they didn't, and all of the contested issues

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1 of liability will be common to the class. Now I'll just give a
2 brief overview of our common liability evidence.

3 First, we have common evidence about motive, why
4 defendants conspired. The common evidence will show that
5 defendants conspired to protect their highly profitable role as
6 intermediaries in the middle of the U.S. stock loan market.
7 Now in the stock loan market as the Court knows, stocks are
8 transferred temporarily from a lender, here on the right, to a
9 borrower.

10 Lenders, often called beneficial owners, are often
11 pitching funds that have large stock holdings. They often lend
12 through agents called agent lenders. On the other side are the
13 borrowers, who are often hedge funds or proprietary trading
14 funds. The prime brokers sit in the middle. They make
15 borrowers and lenders come to them and have bilateral
16 negotiations. That is why the market is called
17 over-the-counter or OTC.

18 Now, your Honor, this structure has two important
19 economic characteristics that systematically lead to worse
20 prices for class members.

21 First, the market is opaque. There is nowhere for
22 borrowers and lenders to go, like an exchange, where they can
23 see all of the latest prices in the market. There is nowhere
24 they can go to see recent transaction prices paid by others,
25 nowhere they can see the range of quotes dealers might provide.

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1 They have no way to know which dealers are providing the best
2 quotes at any point in time.

3 In so many modern markets in so many aspects of our
4 life, it is easy to find the competitive prices that exist in
5 the market at any moment, not in this one.

6 Second, the market has high search costs. Now search
7 costs, which we'll talk a lot about today, are not a line item.
8 They're not a specific cost that borrowers and lenders pay, but
9 they are economic costs that borrowers and lenders have to
10 bear.

11 Borrowers and lenders in this OTC market have to
12 actively search for price quotes through a series of bilateral
13 negotiations with the prime brokers. Often even today in our
14 modern world, this searching occurs by having to pick up the
15 phone and get someone to talk to you on the other end.

16 In so many markets today, comparison shopping is easy
17 and costless. Think of shopping for airline fares. We use to
18 have to call a travel agent, wait for someone to answer, see
19 what they quoted, hang up the phone, pick up, call another one.
20 That's how we comparison shopped.

21 Today we can hop on Kayak with a few clicks of a
22 button and see all the competitive prices available to us.
23 Here, borrowers and lenders cannot do that. They have to
24 expend lots of time and effort just to shop.

25 So these two features of the OTC market, price opacity

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1 and high search costs are well-known, and it is also well-known
2 that they harm borrowers and lenders.

3 Here is the SEC in November 2021, proposing a rule to
4 increase transparency and efficiency in this market, the U.S.
5 stoke loan market, by requiring that all trades be reported to
6 a central repository.

7 Here is the first sentence of the SEC's proposed rule
8 making, "The securities lending market is opaque." As the SEC
9 also said, "The lack of public information and data gaps
10 creates inefficiencies in the securities lending market. The
11 gaps in securities lending data render it difficult for
12 borrowers and lenders alike to ascertain market conditions and
13 to know whether the terms they receive are consistent with
14 market conditions."

15 Now, the OTC market structure also harms class members
16 by imposing high search costs. Financial economist have shown
17 that markets or investors must work to find price quotes.
18 Dealers can charge supercompetitive prices.

19 The seminal work here was done by Peter Diamond and it
20 won the Nobel Prize in 2010. This is from the Nobel Prize
21 award. As the committee said, "Diamond found that even a
22 minuet search cost moves the equilibrium price very far from
23 the competitive price." He showed that the only equilibrium
24 outcome is the monopoly price. I'll explain that in a moment.

25 This fundamental insight about how search costs hurt

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1 investors has generated a lot of follow-up research, and our
2 experts have been at the forefront of much of that work.

3 Basically it shows that when dealers know that
4 investors face high search costs, they can charge
5 supercompetitive prices. They can use that knowledge to charge
6 higher prices.

7 Now here's an example to illustrate the point, and
8 this an example that our expert Dr. Zhu gave. Let's say that
9 the competitive price for a security is 150 basis points to buy
10 or sell it. Let's say that the economic search cost for each
11 inquiry the investor has to make to get a price quote is 10
12 basis points per inquiry. Remember, that's an economic cost,
13 not a line item.

14 A dealer in that circumstance will never quote 150
15 basis points, the competitive price, because they will know
16 that for the investor to even seek another price quote, they
17 will have to pay 10 more basis points. So the dealer would
18 begin by thinking about quoting a 159 basis points above the
19 competitive level, because that's the price, that's the highest
20 price that will not incentivize the investor to go look for
21 another price quote. It's right below that 10.

22 But it's actually much worst than this, and this is
23 the Diamond insight, because when all dealers know this is the
24 circumstance in the market, they all know that their baseline
25 price is actually 159, not the 150. And then each dealer knows

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1 that actually they can charge nine more basis points so the
2 investor will not go and make the other inquiry. They'll
3 charge 168.

4 But now that everyone knows it's 168, they will
5 actually charge the nine more, and it goes on and on until it
6 reaches the monopoly price, so this is the insight that even a
7 relatively small search cost can lead to monopoly pricing.

8 THE COURT: So in your example, if we could just go
9 back. So the monopoly is the 159?

10 MR. OLSON: It's going to be higher than that. The
11 monopoly price is the highest possible price that someone could
12 charge without losing money. It will depend on the exact
13 market what that is, but it is going to be above the 159. It
14 could be the 177. It could be the 186. The point is, with
15 search costs, dealers zoom all the way up to the Monopoly
16 price.

17 THE COURT: And in the but-for world, it would be 150?

18 MR. OLSON: Correct, your Honor. The competitive
19 price is the 150, correct. Now, this work has been refined.
20 There are nuances to it, but this is the fundamental insight
21 and I'm going to return in the context and apply it to this
22 case in a few moments.

23 So these flaws make the U.S. stock loan market
24 inefficient and antiquated. This comes from an analysis from a
25 2012 analysis by a leading U.S. clearinghouse, that I will not

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1 name today, but they were studying this market internally. And
2 as they concluded internally, "The securities lending
3 environment has long been inefficient and antiquated.
4 Operating without an exchange or other electronic trading
5 platforms. Contracts have been bilaterally negotiated and
6 market participants have not been able to appropriately gage
7 supply and demand since reliable and transparent pricing has
8 been lacking. The opacity in the marketplace has diminished
9 consumer confidence and has stalled the securities lending
10 market potential."

11 Basically that point is, this also suppresses output.
12 There's less lending and borrowing than there would be in the
13 competitive market. So the problems were well-known. The
14 solutions are also well-known.

15 In many other financial markets, exchanges and
16 electronic trading platforms entered to improve the market.
17 Exchange is a multilateral trading platforms, make markets
18 transparent solving the opacity problem, and they dramatically
19 reduce the costs of searching, solving the search cost problem,
20 and they entered and tried to do that here too. But as this
21 same analysis from that same clearinghouse in 2012 observed,
22 these current market events have spawn a development of new
23 exchanges in electronic trading platforms, such as LendEX.

24 THE COURT: Let me stop you for one second.

25 (Pause)

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1 THE COURT: Go ahead.

2 MR. OLSON: AQS, another one that entered, and that's
3 also called Quadriserv, a prominent one discussed in case.
4 SecFinex, which was backed by the New York Stock Exchange and
5 its founders then later founded SL-x, and ISEC. These entered
6 to provide efficient trading and price transparency to the
7 stock loan market, but the defendants blocked all of them.
8 None exist today.

9 How did they do this? The common evidence shows that
10 defendants saw these threats as far back as 2001, and they
11 joined together to fight them.

12 Now, 2001 was the year that Quadriserv or AQS was
13 founded to develop a central marketplace for stock loan
14 transactions, and that's the same year that defendants formed
15 EquiLend, to combat, in their own words, the threat of
16 disintermediation. That's a term that they used to refer to
17 these new entrants, such as AQS and Quadriserv, that would
18 threaten their highly profitable privilege roles
19 intermediaries. These are their own words, come from their own
20 files.

21 Exhibit 4 the one on top was a slide deck prepared for
22 an EquiLend board of directors meeting. It answers the
23 question, "Why was EquiLend formed?" Quite candidly, "Threat
24 of disintermediation forced firms to come together to create
25 EquiLend." The next snippet is from a JP Morgan doc, document

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1 from 2008, "EquiLend was born as a cartel."

2 So following the 2008 financial crisis, regulators
3 began pushing for central clearing in financial markets. This
4 increased that disintermediation risk for defendants, because
5 central clearing often leads straight to multilateral trading.

6 So in early 2009 under EquiLend, defendants formed
7 what they called a CCP working group, central clearing working
8 group within EquiLend. Now the name is misleading. Defendants
9 didn't use this group to work to bring central clearing to the
10 market. They used the group to get on the same page about how
11 to oppose bringing central clearing to the market.

12 They all agreed they would oppose central clearing,
13 and they agreed that none of them would become involved with
14 any trading platform linked to a central clearing solution.

15 In June 2009, the prime broker defendants through
16 their board representatives adopted the CCP working groups'
17 agreement to boycott platforms connected to CCPs, that's what's
18 reflected here. We have three call outs from a longer
19 document.

20 The first one notes that after all of the them agreed
21 they wouldn't support central clearing, they all agreed they
22 would keep using EquiLend to share information about what's
23 going on in the marketplace about central clearing.

24 Secondly, they said, and we'll make sure we reconvene
25 this working group when we need to if there are any

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1 developments we need to address to oppose central clearing.

2 And the last call out is the most significant. It
3 says, To the extent any firm changes it's direction on this
4 initiative -- any firm, that's any bank -- i.e., becomes
5 involved with an MTFCCP, they will notify EquiLend. An MTF is
6 a multilateral trade facility or platform, and a CCP is a
7 central clearing solution.

8 THE COURT: So just stepping back from what the
9 defendants alleged conduct is, I just want to make sure I
10 understand the difference between the platform and the central
11 clearing house?

12 MR. OLSON: Yes.

13 THE COURT: Those are owned and operated independently
14 by two different firms or entities?

15 MR. OLSON: Typically, yes, your Honor.

16 So, for example, with AQS, which is one of the central
17 platforms that we allege was boycotted, AQS was working with a
18 central clearing party called the OCC, which is a prominent
19 clearing house.

20 A clearing house solves the solution of needing to
21 know who your counter-party is. You don't need to know who
22 your counter-party is because the central clearing house
23 becomes the counter-party, and the central clearing house takes
24 on all the risk, so you don't have to worry about risk anymore.
25 So that's why in a financial crisis, regulators pushed it so

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1 much.

2 THE COURT: So you necessarily need both, you need the
3 platform and you need the clearing house?

4 MR. OLSON: To have a platform, you typically need a
5 clearing house, yes. But the flip side of that is, once you
6 have central clearing, platforms typically follow very quickly,
7 and so that's why defendants saw this as such a threat.

8 THE COURT: Can a platform have more than one clearing
9 house?

10 MR. OLSON: A platform could potentially have work
11 with two clearing houses and have two different solutions.
12 Often it's one, but it could be more.

13 THE COURT: Okay.

14 MR. OLSON: So Jean Gemelli was one of Credit Suisse's
15 board representatives at EquiLend for 10 years.

16 Let's hear what he has to say about what was discussed
17 at EquiLend's meetings.

18 (Media played)

19 (Media stopped)

20 MR. OLSON: These new entrance were the platforms.
21 This is a remarkable admission. Competitors are supposed to
22 make independent decisions about what new entrance to support
23 or sign up within and which ones they were not going to.
24 They're not supposed to coordinate their business plans, but
25 that is what defendants did here as the common evidence shows.

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1 Now, they also conspire to make sure no one else would
2 support these platforms either. Here's an example.

3 In February 2010, as this document shows, AQS made a
4 big announcement. A major agent lender Bank of New York Mellon
5 was going to join and support its platform. Goldman Sachs heard
6 about this and quickly was alarmed.

7 William Conley, the head of Goldman Sachs's stock
8 lending desk called Kathy Rulong at Bank of New York Mellon on
9 the phone, and as he bragged to his team he, "Beat Kathy up on
10 this."

11 What that means is, is Mr. Conley demanded that
12 Ms. Rulong get on a plane and fly from Pittsburgh to New York
13 City, come to his office, so she could sit in his office and
14 hear more threats from Goldman Sachs about the financial
15 punishment her bank would receive if they continued to support
16 AQS, and so Bank of New York Mellon stopped supporting AQS.

17 Bill Conley did the same thing to State Street, a
18 similar thing happened in Northern Trust, but regulators kept
19 pushing for central clearing, and defendants recognized it was
20 coming in some form. So in 2015 -- remember as they had said
21 they would -- they reconvene that CCP working group. And there
22 they agreed to a set of core principles about how to block the
23 threat.

24 The first one says it all, "Bilateral trading model
25 must be maintained." That is, they pledged that even as central

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1 clearing was adopted in this market, none of them would support
2 multilateral trading.

3 Now fortunately we have some of the notes from that
4 discussion so we have so more detail. Those notes show that
5 Morgan Stanley brought this up by saying, What we really need
6 to do is preserve the, "bilateral pricing model." That is the
7 high prices they could charge in the OTC market where people
8 have to come to them bilaterally and don't have multilateral
9 options, and all defendants agreed to that.

10 Let's hear again from Mr. Gemelli, Credit Suisse's
11 board rep.

12 (Media played)

13 (Media stopped)

14 MR. OLSON: And it worked, the market is still
15 bilateral today. All these new entrants failed. So in short,
16 your Honor, we have very strong evidence of defendant's
17 conspiracy in this case, and all of it is common to the class.

18 Now we're also capable of proving that this conspiracy
19 had classwide impact using common proof. Here we lean on our
20 experts, who are among the most respected financial economist
21 in the world.

22 Our leading impact expert here on the left is
23 Dr. Haoxiang Zhu whose academic career focused on studying
24 these exact issues about the impact of OTC market structure and
25 investors that are relevant in this case. He has published

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1 seminal leading work in the field, and Dr. Zhu is not a
2 litigation expert for hire. He has never been one in any other
3 case. He's just an expert on these issues. Indeed in December
4 2021, he was appointed by the SEC to serve as the director of
5 its division of trading and markets, that's the division that
6 regulates these very financial markets at issue. His expertise
7 here clearly cannot be questioned.

8 And the same is true of our other experts who focus
9 more on damages, Professor Parag Pathak, won the Bates Clark
10 medal in 2018. His colleague Paul Asquith at MIT has published
11 foundational research on the very issues that are relevant to
12 this case.

13 Now I'll just note a couple of differences with
14 defendants' experts. First, their financial economist who
15 focuses mostly on impact here on the left is Professor Terrence
16 Hendershott. We're going to hear a few clips from his
17 testimony today.

18 As the Court will see rather than building on his
19 academic work, as our experts have done, Professor Hendershott
20 in this case is forced to downplay his own academic work to
21 support defendants' positions in this case.

22 Defendants other economic expert is Professor McCrary.
23 His background is different. He was briefly an assistant
24 economics professor. Today he's a law professor.

25 Unlike the other experts in this case, he has never

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1 published any papers on the market structure issues relevant
2 here, including about OTC markets or the impact of search
3 costs, but he is a prolific defense expert. We'll note that in
4 just the past four years alone, he identified 45 litigation
5 engagements, nearly every one for corporate defendants.

6 So to begin with our proof of common impact. In over
7 90 pages of his opening report, Dr. Zhu analyzes rigorously the
8 economic structure of the U.S. stock loan market and the record
9 evidence. That analysis leads him to the following baseline
10 economic conclusions about impact:

11 First, economic theory demonstrates that the OTC
12 structure of the market imposes market-wide harms on class
13 members for some of the reasons I've already mentioned.

14 Second, he concludes that a anonymous multilateral
15 trading with central clearing was economically viable in this
16 market by January 1, 2012.

17 Third, he concludes the introduction of multilateral
18 trading platforms would have benefited all or virtually all
19 class members. And fourth, he discusses how the additional
20 price transparency would also have benefited all class members.

21 Now, I mentioned that Professors Pathak and Asquith
22 focus mainly on damages. They do offer one additional reason
23 why economic theory supports a finding of classwide impact in
24 their report, the beginning part of their report before they
25 get to damages.

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1 Specifically, they model the spread revenues the prime
2 brokers enjoy from their intermediary position, and they show
3 that they are above competitive levels. These large spreads
4 are reflected in the orange rectangle on the left-hand graph.

5 As they explain, these spreads are above competitive
6 levels, and the significance of this graph is, price is
7 inflated and quantity is suppressed below which would prevail
8 in a competitive market which they model on the right side. So
9 that's the beginning.

10 Now, next, having established a baseline economic
11 theory of classwide impact, Dr. Zhu test that theory using a
12 variety of economic and quantitative test suited to the
13 question.

14 Specifically, he applies an economic search model of
15 how dealer prices respond to platform entry. Second, he
16 conducts a yardstick analysis of other comparable financial
17 markets.

18 And third he conducts a quantitative analysis of the
19 limited AQS trading data that existed before it was put out of
20 business by the defendants. In each of these tests he
21 concludes confirm his baseline economic conclusion of classwide
22 impact. And this is a tried and true methodology what Dr. Zhu
23 used here, as the recent *Olean* decision which we submitted to
24 the Court indicates.

25 As the Court is aware, *Olean* is a recent En Banc

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1 decision from the Ninth Circuit. It's in a way I think
2 fortunate it came before this decision because it's a
3 comprehensive analysis of the law that governs the Court's
4 decision.

5 I'll note it was authored by Judge Ikuta. That's
6 significant because she was the jurist who wrote the dissent in
7 the Wal-Mart v. Dukes case before the Ninth Circuit, and it was
8 her reasoning in that dissent that was then later adopted by
9 the Supreme Court in overturning class certification in that
10 case, so she is one of the most esteemed jurist of class
11 certification issues in the country. And I'll say frankly,
12 your Honor, we agree with all of her analysis about the law and
13 it comports with the Second Circuit.

14 Now *Olean*, a price fixing case, involving tuna
15 suppliers, there the plaintiffs' expert Dr. Mangum uses similar
16 methodology to our experts. He first examined the economic
17 structure of the market and its finding supported a baseline
18 economic conclusion, that the collusion would affect class
19 members on a classwide basis, and he then used a number of
20 different econometric tools to evaluate whether they supported
21 his theory, and the Ninth Circuit affirmed that approach.

22 THE COURT: I know this is the most recent case that
23 you say follows Dr. Zhu's methodology. Is there any Second
24 Circuit case, even older, either district court or Second
25 Circuit that follows something the same or similar to what

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1 Dr. Zhu did?

2 MR. OLSON: Yes. Your Honor, this basic approach of
3 analyzing the structure of the market and then using
4 econometric tests has been used in a number of cases.

5 Actually, I think -- well.

6 THE COURT: If you're going to get to it, fine. If you
7 could answer that at some point, that would be helpful.

8 MR. OLSON: What I would mention to your Honor is
9 the *Air Cargo* decision by Magistrate Pohorelsky from the
10 E.D.N.Y., which I will discuss in a moment. It's very similar.
11 The *Restasis* case is another one that comes to mind, but this
12 is a tried and true approach that's often used in these cases.

13 THE COURT: Thank you.

14 MR. OLSON: Now his tests. Dr. Zhu first test his
15 economic theory of classwide impact by applying an economic
16 search model to this market.

17 Now it's worthy of note that Dr. Zhu didn't just come
18 up with this model for this case. He developed this model in
19 his academic work with his co-authors outside of this
20 legislation. That model was then peer reviewed and was
21 published in a leading financial journal where it in fact was
22 chosen as the first price winner the year it was published.

23 The model was developed to test a similar proposition
24 as what it's used to test here. Under what circumstances do
25 financial benchmarks help traders in OTC markets? And

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1 Dr. Zhu's model -- his model answers that question under a
2 variety of scenarios which he elaborates on in the paper. In
3 short, his model found that using a benchmark to increase
4 transparency in the OTC markets can yield widespread benefits
5 for traders.

6 The passage here on the left is where he introduces
7 the search model which then he goes on to develop over the
8 course of many, many pages. On the right of the concluding
9 remarks -- which I'll quote briefly.

10 "In the absence of a benchmark, traders have no
11 information other than their own search costs, and what they
12 learn individually by shopping around for an acceptable quote.
13 Dealers exploit this market opaqueness in their price quotes,
14 adding a benchmark alleviates information asymmetry between
15 dealers and their customers, so that was the general
16 conclusion, and then he gives some variety of circumstances
17 that he test that conclusion.

18 THE COURT: Here benchmark is basically a proxy for
19 your platform?

20 MR. OLSON: A benchmark in a lot of ways is a proxy
21 for the platform, and that's a point he actually makes in the
22 paper. Now one thing that the papers considers as a variable is
23 how different traders will react to the introduction of a
24 benchmark, and there the model uses this concept of fast
25 traders and slow traders.

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1 Fast traders have no search costs. They can get the
2 best price immediately. Slow traders have hire search costs.
3 In reality, it's a continuum, but this is the principle that's
4 used for the model, and it allows the model to analyze
5 different scenarios.

6 For example, in this paper, the model assumes that
7 fast traders will enter the market immediately after a
8 benchmark is produced and buy from the dealer that offers the
9 lower price, so it's just a variable in a concept that he used
10 in this the paper.

11 THE COURT: So he talked about in paragraph 280 of his
12 report. He says -- I think you're talking about the same
13 thing -- he says, there's a table above it and it shows better
14 pricing for all class members, regardless of the stock loan
15 temperature of the customer status is fast or slow.

16 What I don't understand is how the table shows that?
17 I don't know if you have a simple way of explaining that.

18 MR. OLSON: That's exactly what I'm about to try to
19 do. Let me try it.

20 So applied to this case, Dr. Zhu's model shows that
21 when search costs go down for some class members, prices
22 improve for all. And to test that -- and this is where I'll
23 try to explain it to your Honor -- Dr. Zhu uses this concept of
24 fast and slow traders to ask the model the key impact question.
25 What happens to the prices dealers' charge when search costs go

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1 down for some traders, but not all of them?

2 And as he explains, that's effectively the same way of
3 asking, What happens to dealer prices when some traders start
4 using a multilateral trading platform, because search costs go
5 down to virtually zero on such a platform. Think again of
6 logging onto Kayak. It just takes a few seconds, a few clicks.

7 So formulaically, how does he do this? As he notes
8 here in paragraph 275, he models this. He makes this change to
9 his model. He changes the variable MU. Specifically, he
10 increases MU by 22 percent, which is essentially estimating
11 that 22 percent of traders move to a platform in the but-for
12 world.

13 So the initial MU that is fast traders in his model is
14 28 percent. Now he models that additional 22 become fast by
15 moving to a platform, so that leads to his new variable of MU
16 and I'm going to explain more.

17 THE COURT: So 50 percent?

18 MR. OLSON: 50 percent, correct.

19 His model as he says, using that and other
20 conservative assumptions, which he discusses in his report, his
21 model shows that all or virtually all class members benefit
22 from the introduction of a platform. Whether or not they
23 actually use the platform in the but-for world, and whether or
24 not they are sophisticated in the real world, this holds true
25 even when a relatively small portion of class members actually

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1 begin using the platform.

2 Now, this is the table where he summarizes the models
3 inputs and outputs. As you see on the left, this is the actual
4 quantitative data from the transactional data in this case that
5 he uses as inputs to his model, and he uses robust amount of
6 transactional data.

7 These data inputs show the prices that are paid on
8 what we call the L1, which is the lending side, L2 on the
9 borrowing side, and the actual world for what we call cold
10 stock which are general collateral or pretty easy to find, warm
11 stock or hot stock which is sometimes called hard to borrow.

12 Again, this is the actual data from our market that he
13 uses for this model, those prices and then the spread. And
14 then the next column over has a variety of entries. I'll focus
15 on the MU. You can see there. This is his own highlighting.
16 The actual world versus the but-for world. This is the test.
17 This is the critical thing. What happens when we change the
18 MU, the percent of fast traders, and he's increased it by .22.

19 "S" is the search cost. This model actually estimates
20 the economic search cost per inquiry that each investor has to
21 make. That's what "S" is. It's calculated through the model.
22 It's a complex calculation, but that's what "S" provides there.

23 And then by running this all through the model which
24 is, based on the economics of how dealer set prices, then the
25 model implications are in the right column which again is the

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1 actual world versus the but-for world. And what you can see is
2 that for every combination, the bid ask spread, which is
3 essentially the price, is lower in the but-for world than in
4 the actual world. And that applies no matter what happens.

5 So it's not -- you can actually look at this
6 diagonally. There will be some traders who are slow in the
7 actual world who become fast. Those are the ones who go on the
8 platform, and that's -- if you look diagonally -- you'll see
9 that their benefits are very, very large. But as this model
10 shows, even the slow traders, even the people who stay slow,
11 their prices are going to improve, the price distribution that
12 they get from dealers are going to improve in the but-for world
13 as well.

14 And so as Dr. Zhu sums it up -- and this is the
15 economic principle that all these numbers are showing. Those
16 who use the platform benefit directly from the enhanced
17 competition. You have many dealers. Those who stay OTC benefit
18 from the price discipline imposed by the platform. The
19 platform has brought a large volume of competition to the
20 market that disciplines prices across the market, and that's
21 what his model demonstrates quantitatively.

22 THE COURT: So to use your Kayak example, just because
23 it's a little easier than using these numbers, the reason why
24 Kayak or another platform brings the prices down, it brings the
25 prices down for me if I use the platform. How is my using the

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1 platform benefiting somebody who doesn't use the platform?

2 MR. OLSON: There's been economic papers which will
3 prove this too in this market. The reason is, the old travel
4 agents that you had to call on the phone. They use that
5 diamond search model. Where they knew they could quote a
6 higher price than the competitive price because it was going to
7 take a lot of time and effort for you to get someone else on
8 the phone and get another quote.

9 Now they know that it won't necessarily take you that
10 additional time at all. Now they know if they quote a price
11 that's 10 basis points above the competitive level, you
12 might -- they don't know for sure, and this is a point
13 Dr. Zhu makes -- whether someone is fast or slow is not
14 observable to the dealer. So they don't know, but they know
15 it's possible, that the minute you hang up with them they're
16 going to get on Kayak. And since they know that, they have to
17 discipline the quote they give you. That's the fundamental
18 insight of the model. That's why it won the first prize when
19 it was published. That's why it applies to this case.

20 THE COURT: What about the time it takes for that
21 discipline to have an effect? Does his model take that -- do
22 we need to take that into account?

23 MR. OLSON: Well, that's probably more addressed in
24 the yardstick analysis, which I'll get to. But the short
25 answer is, it happens very, very quickly. Because once the

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1 platform goes on, it's right there. The other analogy Dr. Zhu
2 uses in his own report is Amazon. When you walk into a store
3 now, the people selling you the things in the store know that
4 you might pull out your smart phone and check the price on
5 amazon, and so they can't quote a price that's way higher than
6 what's on Amazon. They won't get the sale. This is how
7 economics works.

8 Now one notable thing for the Court to understand is
9 that Professor Hendershott, the only financial economist that
10 defendants have as an expert and their lead impact expert,
11 doesn't and criticize Dr. Zhu's economic search model. And the
12 reason for that, likely, is because he was actually one of the
13 many financial economists who reviewed the paper in the model
14 before it was published and provided comments. Having done
15 that, he understands the model. He understands that it is
16 well-supported in the economics, so he doesn't criticize it.

17 Instead, the defendants' criticisms come through
18 Professor McCrary, the law professor who has no relevant
19 academic experience with these OTC market structure issues.

20 Now our experts addressed every single one of
21 Professor McCrary's critiques before turning them on pause on
22 the legal standards, and this will get me to the *Air Cargo*
23 case.

24 As *Olean* explains, citing the Supreme Court decision
25 in *Amgen*, we don't have to prove we will win at trial to gain

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1 certification. We don't have to prove that the jury will
2 necessarily choose to believe our experts over the defendants'
3 experts. We just need to prove that we are capable of proving
4 our case to a reasonable juror on a classwide basis by relying
5 on our experts' work, notwithstanding the defendants'
6 critiques, that's the legal standard we clearly needed.

7 And as I said before, the law in this Circuit is the
8 same. As Magistrate Judge Pohorelsky explained in the *Air*
9 *Cargo* litigation where an expert actually gave a similar type
10 of model illustrating market structure.

11 Expert testimony as he says, quote, "Need not be
12 flawless or impenetrable." Meaning, everything is subject to
13 critic. As he said, Indeed almost no testimony ever is, and
14 the fact finder will ultimately weight the testimony
15 accordingly. He said, here the sole questions for the court in
16 this battle of the experts.

17 One, is the expert evidence common to the class? Here
18 it is. Search model is common to the class, the other analyses
19 are too. Is it methodologically capable of answering the
20 question? Of course, here it is. As we just went over, this
21 model is capable of answering the question, When some people go
22 to a platform, does that discipline prices across the market?
23 So is the yardstick analysis, etc. And could a reasonable fact
24 finder rely on it? Of course they could. Here, it wasn't just
25 fact finders that relied on this model, it was peer reviewed

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1 and published and one the first prize in a leading economics
2 journal.

3 Now to his credit, Magistrate Judge Pohorelsky said
4 this standard before the Supreme Court three years later,
5 essentially adopted it in the *Tyson* case. This no reasonable
6 fact finder standard is the legal standard that governs, and
7 the magistrate judge in that case was ahead of the Supreme
8 Court there.

9 So Professor McCrary's criticisms, which I won't go
10 into all of them, but they are unsupported, unpersuasive at
11 every turn. Here's one example. Professor McCrary purports to
12 acknowledge that search models are, "commonly used in the
13 economic literature on search," but then just asserts that
14 they're not applicable to this market. "But they are not
15 applicable to OTC stock lending shorting services, period."

16 He doesn't cite a single economic paper supporting
17 this conclusion. There is none. He just says it. And, in
18 fact, he's clearly wrong. It's not just our experts who say
19 that. Financial economist have applied this very model to OTC
20 stock lending markets to study the very types of questions at
21 issue in this case.

22 Here is a February 2021 paper applying Dr. Zhu's
23 model. It's called DDZ here because he's the "Z" as co-authors
24 to the Brazilian stock lending market to determine the impact
25 on investors of changes to the loan fee benchmark in that case.

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1 And notably as our experts point out, the authors
2 overall in this found that the overall benefits of increased
3 transparency were positive across the markets, so this rejects
4 many of Professor McCrary's unsupported assertions that somehow
5 his model can't be applied to this market.

6 Now, Professor McCrary makes another argument. You
7 might hear it today. He says, "The results of this model don't
8 apply to class members who wouldn't actually use the platform."

9 Now we've already talked about why that's wrong, your
10 Honor. It's because when I call the travel agent on the phone,
11 the travel agent doesn't know if I'm going to use Kayak or not,
12 but has to account for that possibility.

13 Professor McCrary doesn't cite any economic papers
14 finding this conclusion that somehow in a market like this the
15 dealers could pick out people who wouldn't benefit from any
16 price discipline. He just asserts it. He says they could
17 figure out which traders wouldn't use the platform and just
18 punish them, keep their prices high even while everyone else
19 gets discipline. There's no economic support for that.

20 This is Professor Pathak who is essentially taken over
21 for Professor Zhu after he moved over to the SEC, and this is
22 in the surreply report, and he explains that the economics
23 underline Dr. Zhu's model squarely rejects this notion. For a
24 dealer to pull this off, they would have to have absolute
25 perfect knowledge that it was impossible for the class member

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1 to use a platform. The economics is very clear on this.
2 Defendants haven't pointed out anything to the contrary.
3 That's the only way they could really gouge somebody.

4 And in the real world, prime brokers can only have
5 imperfect knowledge. There's no way to have that perfect
6 knowledge about what they can't observe, which is what the
7 class members doing in the background. Dealers in OTC markets
8 have uncertainty about the outside options for class member,
9 and that uncertainty makes prices improve when platforms enter.

10 We've talked a lot about the search model. Dr. Zhu
11 didn't stop there. He also conducted a yardstick analysis to
12 further test his core finding, that when search costs go down
13 for some, prices improve for all. Specifically analyzes other
14 financial markets where developments increase transparency and
15 reduce search costs to see what happen there.

16 And as he explains, every comparable market that I
17 studied had market-wide benefits for all or virtually all
18 traders in the market. And as he further explain in response
19 to your Honor's question, that always happened very quickly.
20 That includes in the stock market which is his first yardstick,
21 because for the many reasons he's explained is the most
22 comparable.

23 Dr. Zhu explains and quantifies, uses a lot of data,
24 to show how limited improvements and competition in the stock
25 market had large quick market-wide benefits for investors.

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1 These include the SEC's introduction of an order handling rule.
2 I won't get into the details of that, but Dr. Zhu does --
3 Spreads quickly and dramatically fell across the marketplace
4 every type of trade.

5 So defendants -- a yardstick analysis of course is an
6 accepted impact analysis. So defendants say, well, your Honor,
7 this one doesn't work because the stock market is not analogous
8 to the stock lending market because one involves buying and
9 selling stock. One involves borrowing and lending.

10 THE COURT: Are there any markets where it didn't
11 work?

12 MR. OLSON: No, I don't believe there any markets.
13 That is Dr. Zhu's conclusion, and that's why defendants feared
14 this so much. That's why we see them conspiring because they
15 knew what would happen.

16 (Continued on next page)

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1 MR. OLSON: This distinction doesn't work, as
2 Dr. Zhu points out, analogous to home sales and home rentals.
3 Defendants are essentially saying, because one is selling, one
4 is renting, they are completely different. They don't inform
5 each other.

6 But as Dr. Zhu points out, people who are looking for
7 a place to live often consider renting or buying as
8 alternatives. People that have an extra house often consider
9 selling or renting as alternatives. There are obvious
10 linkages.

11 THE COURT: I mean, the two ends of the market that we
12 have here are totally different. There is not really overlap
13 between the borrowers and the lenders.

14 MR. OLSON: No.

15 THE COURT: They are entirely different populations
16 unlike in the rental versus sale of home.

17 MR. OLSON: The point is that the stock lending market
18 involves borrowers and lenders. The stock market involves
19 buyers and sellers.

20 THE COURT: Right.

21 MR. OLSON: Defendants are saying because one is just
22 borrowing and lending, one is buying and selling, there is
23 nothing informative about the experience of the stock market.

24 Dr. Zhu is explaining that, as an economic matter,
25 that difference is not that significant.

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1 THE COURT: OK.

2 MR. OLSON: That is the point there.

3 THE COURT: OK.

4 MR. OLSON: He didn't stop at the stock market.

5 Before we even knew who defendants' expert was, he
6 also discussed the corporate bond market. This is a market
7 that provides a very strong, natural experiment here. It was
8 OTC that all these search cost problems, a platform entered,
9 and it's been widely studied by economists.

10 In fact, one of those economists was Professor
11 Hendershott, their expert. This is one of his papers that
12 Dr. Zhu cited before he knew he was an expert for them where,
13 Professor Hendershott looked at the introduction of market
14 access in electronic platform in 2010. Now, market access is
15 an auction, it is not a full exchange. But it is a platform
16 and it allows investors to get multiple quotes.

17 And Professor Hendershott found it quickly led to more
18 competition and better prices. Indeed, in his paper, he said
19 that investors saved \$2 billion a year, and that was a
20 conservative estimate. He said repeatedly, This calculation is
21 conservative. It actually ignores other benefits to
22 competition that investors received.

23 But once he was hired in this case, as I said, he has
24 to try to obscure the significance of his own academic finding.

25 (Video played)

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1 Your Honor, I'm going to move a little quickly, but
2 suffice to say, Professor Hendershott's effort to quibble with
3 his use of the word conservative is not persuasive. The SEC
4 relied on the corporate bond market's experience as a
5 yardstick, too. Foreign stock loan market support, Dr. Zhu's
6 concluded, these are all discussed in the papers.

7 THE COURT: I get the point.

8 MR. OLSON: Brazil as well. The final analysis --
9 I'll be quick here, it's in the paper -- he also tests this
10 by looking at the quantitative data from AQS in the real world,
11 even though it was being crippled by the boycott, borrowers and
12 lenders were paying less on virtually all of their trades. He
13 finds that to be further quantitative support.

14 All right. Let's get to defendants' arguments. They
15 say, Hold on here. You overlooked something. There is this
16 super important thing that prime brokers provide called
17 maturity transformation services, recall and rerate protection,
18 and Dr. Zhu failed to look at it and so none of this holds up.

19 These arguments fail for several reasons. For one,
20 as we have seen, Dr. Zhu proves all class members get better
21 prices even if they wanted to continue to use prime brokers and
22 get whatever services they provide, because of that price
23 discipline.

24 But, more importantly, defendants utterly failed to
25 support their claims that prime brokers provide these economic

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1 available services. The expert reports discuss dozens of
2 detailed studies of the market. Many discuss the role of the
3 prime brokers. We asked Professor Hendershott to identify one
4 article that supported his claims that dealers provide these
5 services. He couldn't. Not one piece of economic literature
6 says anything about prime brokers providing these protections.

7 (Video played)

8 He couldn't identify one article. He blames it on the
9 lack of data. In fact, a lot of economic literature has tons
10 of data. He had a lot of data. They still use virtually none
11 of it to support their claims about these protections.

12 Professor Hendershott did no empirical work on recall
13 protection. Dr. McClary looked at a few days for two stocks.
14 For a rerate, McClary did no empirical work. Professor
15 Hendershott did analysis of one stock on prime broker.

16 To visualize just how little data they used, this is
17 a representation of all the data defendants' experts had
18 available to them. There are approximately 165,000 squares
19 here. They used, if you rate -- I'm having a little trouble
20 with the screen if there is anything you can do -- they used
21 just the data on the bottom left, 80 total CUSIP days, to
22 support their claims about these rerate and recall protections.
23 This is cherry-picking in the extreme. If they actually could
24 prove this, they would be able to cite a lot more data.

25 Instead, they mainly rely on ambiguous snippets from

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1 documents and self-serving declarations, often drafted by the
2 alleged coconspirators, like Mr. Wipf and Mr. Kelleher, two of
3 the people we accuse of being practicably involved in the case.
4 That is what they have relied on. The high-tech case they
5 pointed out really didn't hold up.

6 They also put in a couple industry experts, but these
7 just recycle those self-serving declarations. This is
8 Mr.Pridmore, who purports to be a lending expert. He says,
9 actually, you know, the costs of platforms are too high to
10 lend. Footnote, what does he cite, your Honor? One of these
11 declarations from one of the coconspirators. Then, at his
12 deposition, he admitted he just took whatever they said at face
13 value and did no independent analysis.

14 So here is the bottom line on recall protection.
15 At most, prime brokers provide a very weak form of recall
16 protection, where if a loan is recalled, their clients can
17 substitute a new loan for the recall loan. They don't protect
18 the client from having to pay a higher rate. That would be
19 rerate protection. It might be valuable, but it doesn't
20 happen. And that weak form of recall protection has little
21 economic value and can be and is provided by platforms,
22 including, as Dr. Zhu points out, the Indian Stock Lending
23 Exchange today, it has automated recall protection.

24 The bottom line on rerate protection is defendants
25 were utterly unable to prove that prime brokers provided at

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1 all. Professor Hendershott's sum total of his work on the data
2 was to present two charts of JCPenney stock. He didn't run any
3 known economic test on those charts. He claimed, through his
4 visual inspection, he could see smoothing of the rates on the
5 charts. This is what he offers to the court to prove his case,
6 smoothing.

7 (Video played)

8 Of course it was here. It was his own term. Your
9 Honor can see the transcript. He doesn't go on to be able to
10 identify whatever he even means by smoothing.

11 Our experts have shown, in fact, that in a sur-reply,
12 Professor Hendershott tried to scale it back to a slightly
13 different analysis. He still didn't define smoothing. Our
14 experts have shown that whatever smoothing means, if it
15 happened, it actually harmed the class members that Professor
16 Hendershott identified rather than help them.

17 In the end, this one is worth hearing because
18 defendants' arguments about these protections and
19 services only underscore how opaque and inefficient the OTC
20 market is for class members.

21 (Video played)

22 He had no answer.

23 THE COURT: What about the prime brokerage agreements,
24 there is not a retrade provision?

25 MR. OLSON: No. There is not a recall provision.

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1 There is no protection provision in any of the contracts.

2 But this encapsulates all of it, because Professor
3 Hendershott gets up and says, This thing is so valuable, rerate
4 protection is so valuable, prime brokers provide it.

5 We say, How would you shop for it if you were in this
6 market? He could not answer the question. He eventually
7 stumbles around to say, Maybe I would call people on the phone,
8 try to get them to talk to me, maybe they would tell me some
9 things and I would call other people. That only highlights how
10 opaque and inefficient the market is for class members. It
11 would improve in the but-for world with more transparency.

12 All right. One other argument I would like to present
13 briefly. Professor Hendershott said, Listen, if platforms in
14 the OTC market would shrink, the services would be reduced,
15 things would be worse for people who want into OTC. He cites
16 this textbook. He says this textbook proves it, and he cited
17 this -- the language is in green -- within any given market
18 structure, liquidity is greatest when transaction costs are
19 lowest when all traders trade in the same structure. He is
20 saying this textbook says everyone is better when they don't
21 have choices, when we all trade OTC.

22 But the textbook goes on to explain that these
23 concerns are not well-founded in a market like this one. It
24 says these concerns would be well-founded if traders in various
25 market fragment did not know about -- and respond to -- market

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1 conditions in the others. If people who want to trade OTC
2 didn't know about the platform, and some people couldn't do
3 both. It says when traders can, when some can trade in both --
4 this is the second highlighted language -- and choose and
5 observe price in both, then it coalesces into a unified complex
6 and a unified market where traders have choices.

7 As Dr. Zhu points out, this is when you have two
8 reservoirs where liquidity can flow between the two and that
9 case liquidity actually increases. Fundamentally, your Honor,
10 on information leakage, they say no one would want to use
11 platforms, don't want to give away information. That is wrong
12 very quickly.

13 First of all, in the OTC world, all traders have to
14 give away a lot of information to the prime broker. Having a
15 platform increases their options for hiding what they are doing
16 and making it more obscure. They have more places they can go
17 to place trades. When you place trades on exchange, you don't
18 identify who you are or your positions. Investors in many,
19 many markets, including the stock market, have ways to minimize
20 the risk of giving up information and platforms. Fundamentally
21 all their arguments fail for this basic reason. All class
22 members are harmed by being denied competitive choices and
23 options. As our experts explain, competition benefits
24 everyone, a world of choice is always better, and of course
25 that is what Professor Hendershott proved with the corporate

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1 bond market.

2 Thank you.

3 THE COURT: The anonymity feature of your proposed
4 platform is so that people don't know what other people's --
5 firms don't know what other firm's trading strategies are.

6 MR. OLSON: I'm sorry. Yes.

7 THE COURT: But there is a reference to, I think in
8 Dr. Zhu's report, in one place he says it is possible it could
9 be not anonymous.

10 So is the anonymity a required feature or not a
11 required feature of the platform?

12 MR. OLSON: Not all platforms are anonymous. The AQS
13 model, sort of central to our case, was. Exchanges are
14 anonymous. Most multilateral trading platforms are anonymous.
15 There are some more interim steps which we think, frankly,
16 without a boycott, there would have been a variety of things
17 for class members to choose from. There are interim steps that
18 are called request for quote models, and sometimes those can be
19 anonymous, sometimes not.

20 THE COURT: OK.

21 MR. OLSON: Any of those options would have been
22 better for class members. Any of them would promote the price
23 competition and discipline. The best is the AQS-type model,
24 which is actually anonymous.

25 THE COURT: The best, but not necessarily required,

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1 the anonymity feature?

2 MR. OLSON: Correct. It is not the only way of having
3 multilateral trading.

4 THE COURT: OK.

5 MR. OLSON: All right. Your Honor, I have gone, I
6 think, my time limit. I'll pause there.

7 THE COURT: That's a good place to stop.

8 Why don't we take five minutes and we'll be right
9 back.

10 MR. OLSON: Thank you.

11 THE COURT: Thank you.

12 (Recess)

13 Mr. Olson, I had one followup question about Professor
14 Zhu, before we shift to damages, if I can just ask you.

15 In paragraphs 174 to 82 of his first report, he
16 references to DTCC evaluating a central clearing counterparty,
17 I think, in 2017.

18 Do you know what became of that effort?

19 MR. OLSON: This is not a softball, your Honor. Folks
20 will correct me if I'm wrong, but I believe that the DTCC has
21 launched some sort of clearing solution --

22 THE COURT: OK.

23 MR. OLSON: -- for the stock lending market.

24 THE COURT: OK.

25 MR. OLSON: But the point there is defendants --

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1 because of what we have said, it's moving forward right now,
2 it's being tested -- but defendants are not allowing it to
3 connect to a multilateral trading platform. Even if that
4 clearing solution takes place because of the conspiracy, there
5 won't be a trading platform with it.

6 THE COURT: OK. Thank you.

7 Is there evidence, when you say the defendants are not
8 allowing it to connect, what's the evidence that you have that
9 supports that?

10 MR. OLSON: Well, the evidence, the main piece is the
11 agreement they made in 2015 with those core principles, which
12 we have never seen any evidence that they are repudiated, those
13 core principles at all, and there is no multilateral trading
14 occurring in the market today. Everyone who tried was put out
15 of business and there is -- none have succeeded.

16 THE COURT: All right. Thank you.

17 All right. Damages.

18 MR. BROCKETT: Good morning, your Honor. Dan Brockett
19 from Quinn Emanuel. So, yes, let's move to the question of
20 damages.

21 The first point that I want to address on the issue of
22 damages is the burden of proof. So what is the burden of proof
23 that's imposed on a plaintiff to estimate classwide damages in
24 an antitrust case?

25 Well, the first thing to note is that this burden is

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1 lower than it is in a normal case. As you can see from the
2 quote here in the Namenda case, Chief Judge McMahon who wrote
3 that the plaintiffs' burden is to ensure that the aggregate
4 classwide damages roughly reflect the level of damages incurred
5 by the class as a whole. On a particular note, we do not have
6 a burden at class certification to quantify each class member's
7 individual damages. We need only provide a rough approximation
8 of classwide damages.

9 Now, as Judge Cote has written, the antitrust
10 plaintiff's burden is actually lightened and there are several
11 policy reasons for this. One is that the but-for world does
12 not exist because of the alleged bad acts of the defendants.
13 It would, therefore, be perverse to penalize the plaintiffs for
14 not achieving perfection in a world that the defendants
15 prevented from occurring.

16 Now, as I've said, plaintiffs need only estimate
17 aggregate classwide damages, and we can see here that point in
18 a quote by Chief Judge Wood of the Second Circuit who writes,
19 at the class certification stage, plaintiffs are not obliged --
20 I'm sorry, I'm having a little technical difficulty. It keeps
21 going off.

22 THE COURT: Mine is, too.

23 MR. BROCKETT: Chief Judge Wood wrote, at class
24 certification, plaintiffs are not obliged to drill down and
25 estimate each individual class members' damages. So the

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1 question of each class member's individual damages is an
2 allocation issue that is determined later.

3 OK. Now, for purposes of class certification, I want
4 to stress that our damages model uses a common methodology and
5 common evidence. The model can do this, first of all, because
6 it uses millions of transaction records that were produced by
7 the prime broker in discovery. These are the stock loan trades
8 that were carried out by the class members during the class
9 period. The data is enormous and all relevant trades have been
10 included.

11 Now, because the model is based on transaction data,
12 it uses evidence that is common to the class and its formulaic.
13 Once we know the actual world price, which we get from the
14 transaction data, and the estimated but-for price, it's a
15 simple math to calculate the damages to each class member on
16 every trade.

17 The model is also capable of arriving at a reasonable
18 estimate of aggregate classwide damages. It looks at each of
19 the millions of transactions, makes reasonable, indeed,
20 conservative assumptions about prices in the but-for world, and
21 then adds up the damages from each trade. Then finally,
22 although not required, the model will be able to determine the
23 damages that each class member at the time of trial.

24 Now, here is an example at a very high level of how
25 the damage model works. So, at the highest level, the model

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1 compares actual world prices to estimated but-for world prices
2 and takes the difference as damages.

3 OK. So let's look at Tesla on August 30 of 2016. So
4 this is one day in the class period. On this day, the average
5 real world lend price for Tesla was roughly 1,099 basis points
6 and the real world borrow price was 1,379 basis points. So the
7 prime broker spread was 280 basis points on this day. This is
8 from the transaction data.

9 Our experts calculate the but-for Tesla price on this
10 day was 1,235 basis points to borrow and 1,164 basis points to
11 lend. So a class member that had an active borrow or lend
12 transaction for Tesla on August 30 of 2016 would be allocated
13 damages based on their real world price as compared to one of
14 these but-for prices. And you can see here the end user has
15 144 basis points of damages and the beneficial owner has
16 65 basis points of damages.

17 That's essentially the mechanics of how the damage
18 model works.

19 THE COURT: Assuming those are the mechanics that hold
20 through trial then, how do you envision this working
21 logistically at trial?

22 That the experts would simply run all these
23 calculations and then present the calculations to the jury, or
24 something else?

25 MR. BROCKETT: Yes. At trial the experts would be

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1 called to the stand and they would present to the jury an
2 aggregate classwide number of damages. We don't envision at
3 this point -- although this could be subject to some
4 discussion -- we do not envision at this point that the jury
5 would make a separate determination of each individual class
6 member's damages, even though the model is capable of doing
7 that. But rather, there would be an allocation, prove-up
8 proceeding that would occur after the jury has made its
9 determination of aggregate classwide damages.

10 THE COURT: OK.

11 MR. BROCKETT: Now, if we move to slide eight, on the
12 process that I just described for Tesla on August 30 of 2016
13 was applied to every stock on every day across the class period
14 and the end result is aggregate classwide damages.

15 Here, you can see that number is about 5.3 billion for
16 the end user subclass and 2.2 billion for the beneficial owner
17 subclass. So all together the model shows aggregate classwide
18 damages of about \$7.5 billion.

19 THE COURT: So there is a dispute about when the class
20 period should end?

21 MR. BROCKETT: Yes.

22 THE COURT: So was data for post 2017 produced?

23 MR. BROCKETT: The data for post 2017 has not been
24 produced. We produced this number by essentially just scaling
25 up from the information that we have.

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1 THE COURT: OK.

2 MR. BROCKETT: But you are correct, we do believe that
3 we should have the transaction records post 2017. So we can
4 update the damage award, and there are really two reasons for
5 this. I have some slides on this. The first is that the
6 defendants have never withdrawn from this conspiracy. There is
7 no legal prohibition to extending damages, to extending the
8 damages period to the date of the class certification motion.

9 Secondly, but more fundamentally, nothing has changed,
10 as you had the discussion with Mr. Olson about this. The SEC
11 has pointed out, the stock market remains opaque, the
12 significant price dispersion, no multilateral trading platform
13 has ever entered the market, and there is no pre- or post-trade
14 reporting mechanism at this point in time.

15 Now, yes, you're probably about to ask me this. But
16 yes, we would need some supplemental discovery. As you can see
17 here on the screen, these are quotes from various cases that
18 support the notion that after class certification in a big case
19 like this, it is fairly routine that there is some supplemental
20 discovery that takes place. This is very routine, and we would
21 ask for some additional transaction data to be produced so that
22 we can update the damage model and there may be a few other
23 issues as well. But that is something we would have a
24 conference about after the decision on class certification to
25 determine what discovery needs the plaintiffs have and what

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1 discovery needs additional discovery needs the defendants may
2 need as well.

3 THE COURT: So would that distinguish it from Judge
4 Lynch -- the Judge Lynch case, I think it is Hnot, if that is
5 how it is pronounced -- there I think he was addressing a
6 discovery request in the first instance and followed by request
7 to amend the class period.

8 So you're saying we would be reversed here, assuming
9 the court grants the plaintiff's request to have the class
10 period go through February 2021?

11 MR. BROCKETT: Yes, that's correct.

12 Now, what do the defendants say about our damages
13 model?

14 Well, they don't really challenge the damages model as
15 a bad damages model. They actually spend only a half a page of
16 their opposition criticizing the damages model. Instead, they
17 spend most of their time attempting to highjack the damages
18 model and use it as a weapon to show alleged lack of impact.

19 Now, we can call this the Professor McCrary gambit,
20 as it is Professor McCrary, the Columbia Law professor, who
21 carries the defendants' water on this point. Now, Professor
22 McCrary attempts to use the damages model to show a lack of
23 impact is wrong or fails for three basic reasons. I'll discuss
24 each of these in turn.

25 First, as I'll discuss in the next couple of slides,

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1 impact and damages are legally separate elements of the
2 plaintiff's claim, and Professor McCrary is wrongfully
3 conflating them.

4 Second, Professor McCrary's attempt to show large
5 numbers of supposedly undamaged class members relies on a
6 blatant data input error that skews his calculations in
7 material ways. I'll walk you through that as well.

8 Third, Professor McCrary uses a netting analysis in a
9 way that is not only legally improper, but is manifestly
10 incomplete on the record before us.

11 Now, let me discuss each of these points in turn,
12 impact and damages. First and foremost, Professor McCrary
13 wrongfully conflates damages and impact. These are legally
14 separate elements of an antitrust claim, as we see in the quote
15 from Judge Castel above who has written, Courts have
16 distinguished the fact of injury from the amount of damages.
17 Impact is essentially a causation question. How do we connect
18 the conspiracy to the harm. Damages, on the other hand, asks
19 us to calculate the amount of the harm. In our case, Dr. Zhu's
20 report addresses the question of impact and the Asquith-Pathak
21 model addresses the separate question of damages.

22 Now, the Ninth Circuit recently was presented with the
23 same playbook that Dr. McCrary attempts here. In this case,
24 the Olean case, which we submitted to the court as supplemental
25 authority, the defendants tried the same gambit. They made

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1 tweaks to the plaintiff's damages model in an effort to pump up
2 the number of so-called undamaged class members. This is the
3 same thing that Professor McCrary attempts to do here. He
4 changes the parameters and inputs to the damages model, runs
5 tables purporting to show large numbers of undamaged class
6 members, and then he claims that he's defeated impact and
7 defeated class certification.

8 But the Ninth Circuit rejected this same attempt and
9 explained that defendants' tweaks to the damages model were at
10 most critiques defendants could litigate at trial. Applied
11 here, Professor McCrary's defendants' argument about supposed
12 undamaged class members is, at most, a rebuttal defendants'
13 argument for trial. It does not defeat class certification,
14 especially given that Professor McCrary offers no model of his
15 own and makes no factual findings as to the number of supposed
16 undamaged class members.

17 Now you may ask, you may fairly ask, your Honor, how
18 is it that a class member could be impacted yet show no damages
19 under the damages model? Well, the answer is simple. Our
20 damages model makes a number of conservative simplifying
21 assumptions that do not seek to capture every facet of the
22 market. To give one example, our experts deploy a single
23 but-for price for each stock on each day. One but-for price
24 for each stock for each day. But in reality, the borrow price
25 for each stock likely fluctuates throughout the day. A stock

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1 could have one price in the morning and another price in the
2 afternoon. Our damages model does not attempt to capture these
3 inter-day price swings. Our damages model simply, instead,
4 estimates only a single but-for price per day.

5 So you could have a class member who bought at one
6 price in the morning and there have been a big swing in the
7 price of the stock by the afternoon, and the model would
8 estimate a single but-for price, and where the defendant --
9 where the plaintiff actually purchased the stock, OK, was a
10 better price than the but-for price. And that circumstance,
11 there would be no damages assigned to that trade. But that
12 doesn't mean that class member is not impacted under Dr. Zhu's
13 analysis. Again, once causation, once the quantum or the
14 amount of damages.

15 Now, the second fundamental error in Dr. McCrary's
16 analysis is his improper use of the data, specifically the UBS
17 data. Now, to achieve his large number of supposedly unharmed
18 class members, Professor McCrary includes millions of UBS stock
19 loan trades that he himself admits, that he himself admits
20 should have been excluded from the damages database.

21 First, almost all of these transactions were carried
22 out by the UBS wealth management group, not the UBS prime
23 brokerage business. These trades are therefore not even within
24 the scope of the class definition. The class is specifically
25 limited to transactions with the prime brokerage business of

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1 the defendants. It does not include trades with the wealth
2 management desk of these banks.

3 Now, secondly, more importantly, these UBS trade
4 records -- by the way, there are millions and millions of stock
5 loan trades that he has included from the wealth management
6 group, but these UBS records themselves demonstrate on their
7 face that they should have been excluded. 95 percent of these
8 wealth management transactions are shown in the underlying
9 records to have had a zero loan cost. A zero loan cost. In
10 other words, they are not arm's length market base stock loans.

11 The other thing Professor McCrary does is that he
12 includes thousands, hundreds of thousands actually, of internal
13 UBS accounting documents that are designated as part of the UBS
14 global ledger. These are internal transfers within UBS. They
15 are accounting entries. They are not even stock loans. Yet,
16 Professor McCrary includes over 100,000 of these in his
17 database.

18 Now, as I'm going to demonstrate now, these errors
19 significantly inflate Professor McCrary's supposed unharmed
20 class member figures. Let me show why. Now, when pressed on
21 this point, Professor McCrary essentially admitted that the UBS
22 trades should have been excluded, as you can see in the quote
23 here. He says in his report that he compiled his database to
24 replicate the data-processing methodology used by our experts.
25 But our experts exclude all nonmarket-based stock loans,

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1 including loans that show a zero loan cost.

2 Now, at his deposition, Professor McCrary admitted
3 that these UBS wealth management records with a zero loan cost
4 should have been excluded under our expert's screens.

5 (Video played)

6 THE COURT: DSS, again? DSS?

7 MR. BROCKETT: Yes. The DSS records refer to the
8 records that come from the UBS wealth management group. There
9 was a letter, actually, the defendants gave to us to help
10 understand the data, and in their original records, DSS means
11 wealth management group.

12 THE COURT: Thank you.

13 MR. BROCKETT: Now, but Dr. McCrary didn't exclude
14 these. Indeed, he stated throughout his deposition, he didn't
15 know whether they had been excluded or not. Now, what is the
16 consequence of this error? Well, I have on the screen here
17 Exhibit 11 from Professor McCrary's opening report. In it, he
18 says that 30 percent of lender accounts and 21 percent of short
19 seller accounts were allegedly unharmed.

20 Now, the first thing to notice here is that
21 Dr. McCrary does not give a breakdown by prime broker. Now,
22 that is interesting in itself. He just lumps everything
23 together, and there is a reason for that. The reason why he
24 did that, which is actually kind of sneaky, if you go to the
25 next slide, we had our experts break out the short seller

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1 accounts by prime broker. And as you can see, there is
2 something clearly wrong with the UBS data. Whereas all of the
3 other prime brokers are showing supposed undamaged accounts
4 between three percent and seven percent, UBS is showing
5 61 percent. This is the disproportionate impact of including
6 millions of zero cost loans from the UBS wealth management
7 group and the data bill.

8 When Dr. McCrary in his chart didn't show this broken
9 out by prime broker, he was trying to hide -- he was trying to
10 hide the fact that UBS was 61 percent. Now, Professor McCrary
11 at his deposition, said he didn't know whether UBS wealth
12 management trades were included in these tables or not, but
13 that is simply not believable. For any prudent economist, your
14 Honor, this 61 percent figure would raise alarm bells, and he
15 or she would have taken steps to investigate why UBS was such
16 an outlier. So either Professor McCrary was grossly negligent
17 and didn't investigate, or he did look into it and he included
18 the UBS records in the data bills anyways.

19 THE COURT: Just to give him the benefit of the doubt,
20 is prime brokerage businesses, as it is used in the class
21 definition, is that something I should define?

22 MR. BROCKETT: Yes, the class definition.

23 THE COURT: Right now it is just a lower case term.
24 If we define what prime brokerage businesses is, does that
25 minimize either --

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1 Do you want to call it a genuine ambiguity or an
2 opportunity to misconstrue, what the class definition is?

3 MR. BROCKETT: Well, I think everybody in this case
4 knows what the prime broker businesses are, your Honor. Maybe
5 we can sharpen that by giving it a definition. I think
6 everybody in this case knows the difference between the prime
7 brokerage businesses of these banks and the wealth management
8 groups of these banks, which is a completely separate business
9 unit.

10 THE COURT: OK.

11 (Continued on next page)

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1
2 MR. BROCKETT: Okay. Now, one final point about this
3 Dr. McCrary and these UBS records, and that is this:

4 The UBS raw transaction data had a source -- had a
5 column on it titled "source." You can see that in what's on
6 the screen now, the source column on the right. And Professor
7 McCrary had access to all of this information when he undertook
8 his analysis; but when he produced his work papers to us, he
9 mysteriously dropped the source field column on the right here,
10 that came to us looking like --

11 THE COURT: What do "ADP" and "GGL" stand for?

12 MR. BROCKETT: "ADP" refers to -- I believe that's to
13 the prime brokerage records from the prime brokerage desk. And
14 "GGL" refers to global general record. That's the accounting
15 entries that I was talking about.

16 Now, eventually our experts were able to reconstruct
17 the source field from the raw data, and we were able to restore
18 the source field column here. And then we could see it was at
19 the UBS wealth management transaction, were the ones that were
20 skewing the results. But by dropping the source field code in
21 what they produced to us, the defendants and Dr. McCrary made
22 it look like these UBS wealth management trades all came from
23 the prime brokerage business when, in fact, they did not. See,
24 we didn't have the source DSS ADP GGL. That was all missing in
25 the work papers that were given to us. So on this record, your

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1 Honor, a fair question is raised as to whether defendants'
2 expert attempted to conceal from opposing counsel and the Court
3 the fact that millions of these improper stock loan trades were
4 skewing the results in material respects.

5 Now, let's talk about Professor McCrary's third
6 fundamental error. And that has to do with the concept of
7 netting. So the cases in this circuit and elsewhere are clear
8 that netting of damages, that's not something that's done at
9 the class certification stage. And so, you see, there are
10 quotes from many judges from many cases on the screen.

11 Judge McMahon: Antitrust injury occurs at the moment
12 the purchaser incurs an overcharge, whether or not that injury
13 is later offset. Judge Conner, at the bottom, an impacted
14 customer is one who takes at least one transaction at a super
15 competitive price.

16 So courts in this circuit follow the one transaction
17 rule which says, if a class member is injured on at least one
18 transaction, there's antitrust impact even if that injury is
19 later offset by another trade. Now, there may be a separate
20 question of whether you net damages at trial. That's a
21 completely different question than whether there's been
22 sufficient injury for purposes of impact at class
23 certification.

24 Now, yes, there are some cases where courts in this
25 circuit have said that netting is required. We're talking

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1 about at the damage stage, not at class certification. But I'm
2 talking about Judge Schofield's decision in *LIBOR* and the
3 decisions -- I'm sorry, Judge Schofield's decision in *FX*, and
4 Judge Buchwald's decision in *LIBOR*. These are cases where a
5 benchmark is being manipulated up and down. And on some days,
6 the class members wins, and on other days it losses. Like
7 *LIBOR*, it was a benchmark set by the banks. The allegation was
8 that they were moving it up and they were moving it down in
9 whatever way would benefit them the most financially. And
10 those who are trading will have gains and they'll have losses,
11 depending on what their position is relative to where the
12 benchmark is being manipulated.

13 There are no gains in this case, your Honor. This is
14 not an up-and-down manipulation case. The conspiracy does not
15 cause a benefit to any class member. Our model compares
16 real-world and but-for prices. Sometimes the real world is
17 better than the but-for world for the reasons that I have
18 explained. But that doesn't produce a gain to a class member
19 as a result of the conspiracy; it just shows that the class
20 member did not suffer a loss on that particular trade according
21 to the damages model. So, conceptually, this is not a case for
22 netting, because there are no gains caused by the conspiracy to
23 offset the losses, that's the point.

24 Now, apart from this conceptual issue with netting,
25 there is a more practical problem here. And that is that any

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1 netting that Dr. McCrary purports to do is just incomplete,
2 okay. He cannot reliably net damages to class members using
3 the data available in this case at this time, and that's
4 because this: As the Court knows, the way the data was
5 produced in this case by agreement of the parties is that class
6 members' identities have been anonymized. The data does not
7 identify class member by name; it simply identifies accounts by
8 anonymous ID numbers. So if you can see on the schematic on
9 the screen, you have a class member. They may have multiple
10 accounts at Goldman, they have multiple accounts at JP Morgan.
11 But right now, each one of those accounts is given a separate
12 anonymous ID number.

13 You cannot consolidate accounts into one class member
14 within Goldman Sachs, and you couldn't do it certainly across
15 JP Morgan and Goldman Sachs or other prime brokers. The only
16 netting analysis that Professor McCrary is doing is in each
17 account; and yet he's netting each one of these accounts and
18 purporting to reach more broader conclusions about how many
19 class members had been injured. But he doesn't have the data
20 to do that; that's highly misleading. All he's doing is
21 netting within each account.

22 So Professor McCrary really has no idea whether a
23 class member has net damages or not. He only knows if accounts
24 have net damages. It's not possible to conduct any reliable
25 netting analysis on a class member basis at this stage of the

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1 litigation. Now, I will say that by the time of trial, we will
2 have the data to do this. And if the Court believes that
3 netting is required for purposes of the damages analysis at
4 trial, we will be able to do this on a class member basis. But
5 what Professor McCrary has done here now is incomplete; it's
6 misleading. He doesn't even disclose to the Court this
7 problem.

8 THE COURT: So the data that you need to have produced
9 to you to do that analysis, if it's necessary, is what, just
10 the identities --

11 MR. BROCKETT: The de-anonymization key by the banks.
12 At that point in time we would then be able to consolidate the
13 accounts, yes.

14 Now, so what happens when we correct Professor
15 McCrary's errors? Well, we can look here on the chart here.
16 This corrects for improper netting of accounts, and this also
17 corrects and removes the UBS issue. And you can see this is
18 from the reply report of our expert. It shows there are only
19 13 end-user accounts and 16 beneficial-owner accounts that do
20 not have positive damages under the damages model. That means
21 the vast majority of accounts, over 99 percent on both sides of
22 the market, have positive damages under the damages model,
23 after we correct Dr. McCrary's errors. So our damage model is
24 perfectly consistent with Professor Zhu's impact model.

25 Now, I want to get very quickly to the question of

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1 conflicts. This is an issue the defendants have raised.

2 THE COURT: Before you get to that, if you're the
3 right person for me to ask this. The class definition, the
4 threshold, is 100 transactions.

5 MR. BROCKETT: Yes.

6 THE COURT: Why is it 100? Why not 200, 1,000, 50?
7 How did we decide it was 100?

8 MR. BROCKETT: Because we just wanted to make sure
9 that each class member had a sufficient number of transactions
10 so that this wasn't just an idiosyncratic thing. And so we
11 wanted to mete out -- ten transactions over the class period is
12 not very many. A hundred transactions over the class period is
13 not a huge number, but we thought it was a sufficient threshold
14 number to make sure that we are picking up class members who
15 are going to be really damaged, not class members who trade
16 every once in a while on an idiosyncratic basis.

17 THE COURT: Okay. So the experts seem to take 100 as
18 the threshold they were given. If I missed it, you can point
19 it out to me, but is there someplace where they opine that 100
20 is the number that we should be using?

21 MR. BROCKETT: All the experts' models are based on
22 the assumption of 100 -- that each class member -- in order to
23 be a class member, you have to have a threshold of 100 trades.
24 So they built that into the damage analysis is what they've
25 done, yes.

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1 THE COURT: Are there other examples of cases where
2 we've used sort of a threshold as part of the class definition
3 in the antitrust context?

4 MR. BROCKETT: Yes. I think that in all cases you
5 have to define a class in such a way that you have -- that
6 you're capturing the individuals who are really being injured
7 by the conduct, as opposed to, like I said, sometimes there are
8 stray people who get caught into the class who really aren't
9 the intended focus of the conspiracy.

10 So, yes, I mean, I think in every class action you
11 have to -- you have to consider whether you have to make some
12 tweaks to the class to make sure the class is encompassing only
13 those people who are truly injured.

14 THE COURT: Okay. So do we know for the average class
15 member, is 100, sort of, the median number or -- obviously they
16 have to be over the threshold. I'm just trying to figure out
17 how quickly would a class member get to 100. Is that like a
18 year or two years or --

19 MR. OLSON: Your Honor, if can just jump in and make
20 one brief clarification.

21 THE COURT: Sure.

22 MR. OLSON: It is 100 days. Each loan date, it counts
23 as one. So one single trade that went for 100 days would
24 qualify. It is an extraordinarily low threshold.

25 THE COURT: I see. Okay.

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1 MR. OLSON: Virtually 99.99 percent of people who
2 trade are going to easily meet that threshold. The reason why
3 we used it is because in very rare circumstances there are
4 people who have special-purpose accounts where they pop in the
5 market for some purely idiosyncratic reason and just have a
6 trade for one day. They are not players in the market. And so
7 this 100 is actually a very extraordinarily low threshold and
8 is really meant to just encapsulate the people who are
9 borrowers and lenders in the market.

10 THE COURT: All right. Thank you.

11 MR. BROCKETT: Okay. To move on to Rule 23(a).

12 THE COURT: Yes.

13 MR. BROCKETT: Okay. So the defendants' main argument
14 here is that there is a fundamental conflict, they say, between
15 the lender subclass and the short-seller subclass.

16 The first thing I just want to note here is that
17 borrowers and lenders have many common interests here with
18 respect to all key elements of the case. For example,
19 borrowers and lenders both have a common interest in proving
20 liability and showing class-wide impact. Borrowers and lenders
21 have a common interest in maximizing the total damages award.
22 And finally, if there's any conflict between borrowers and
23 lenders, it relates only to the allocation of damages. But
24 even on that issue, borrowers and lenders alike have a common
25 interest in ensuring that the damages in apportioned

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1 methodologies are reliable.

2 Now, the case law overwhelmingly supports our view of
3 this, that there's no fundamental conflict here. And here you
4 see a quote from Judge Sweet from the *NASDAQ* case. This case
5 is exactly like *NASDAQ*. Defendant stood in between buyers and
6 sellers, and were alleged to have engage in anticompetitive
7 conduct to inflate the cost of their services for both sides of
8 the market and any conflict related only to allocation of
9 damages between buyers and sellers.

10 And here's a quote from Judge Kaplan from the *Auction*
11 *House* case, making essentially the exact same point.

12 So the case law in this circuit is directly on point
13 and uniformly supports the conclusion that there's no
14 fundamental conflict here.

15 Now, there's also other lines of -- there are cases in
16 the securities law context which have also uniformly rejected
17 the notion of a fundamental conflict when different groups of
18 class members argue about the time period when the stock at
19 issue was inflated.

20 Here's Judge Briant making the same point in another
21 case.

22 But on a broader level here, your Honor, as your Honor
23 knows, there are innumerable decisions that class counsel makes
24 in any class action that impacts different groups of class
25 members differently. For example, when do we start the class?

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1 When does the class period start? Well, some class members
2 would want one date over the over. But class counsel must make
3 a decision for the class as a whole. And clearly, decisions of
4 this nature do not give rise to fundamental conflicts.

5 Now, it's also the case that defendants really have no
6 interest whatsoever in how we allocate damages among the class
7 members. And here you see many quotes from many cases. For
8 example, Judge Bacharach on the top: We reject defendant's
9 challenge to the allocation of damages because defendant has no
10 interest in the method of distributing the aggregate damage
11 award among class members. That's from the *Urethane Antitrust*
12 trial. And all these quotes essentially say the same thing.

13 Now, the defendants point to Second Circuit cases,
14 particularly the *In Re Payment Cards* case and the *Literary*
15 *Works* case that concerned settlement classes. Settlement
16 classes. Okay. These were settlement-only classes, which are
17 particularly vulnerable to conflicts of interest.

18 Settlement-only classes are not battle-tested through the
19 adversary process and, therefore, are more closely scrutinized,
20 a point the Second Circuit made clear in the *Payment Card* case.
21 And my screen is gone. Okay. Yes. Thank you.

22 So I was about to point to the quote here from Judge
23 Jacobs in the Second Circuit, where he says as in *Amchem Ortiz*
24 *Literary Works*, settlements that are approved simultaneously
25 with class certification, are especially vulnerable to

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1 conflicts of interest because the imperatives of the settlement
2 process. For this reason, we scrutinize such settlements more
3 closely.

4 But here, this is a litigation class, it's not a
5 settlement class. Because this is a litigation class, both the
6 borrowers and the lenders have an interest in putting forth an
7 allocation that is reasonable and objective and can withstand
8 the defendants' attacks. So the fundamental concern expressed
9 by the Second Circuit in *Payment Cards* and *Literary Works* about
10 conflicts of interest and the settlement-only class are simply
11 not present here.

12 It also merits mention – and this is a very important
13 point, your Honor – that the class here, all the class members
14 here are going to have an opt-out right, okay. If and when
15 this class is certified, we give notice to the class. We have
16 an obligation to describe the supposed conflicts that
17 defendants are talking about, and we will disclose them to the
18 Court's satisfaction in the notice. And any class member who
19 thinks that there's a real conflict here that concerns them can
20 opt out of the class and pursue their own claim.

21 So the very fact that you have an opt-out right is
22 very significant here and distinguishes the *Payment Cards* case,
23 which involved a class where they had no opt-out right. It's a
24 mandatory no-opt-out class, and that also was a major concern
25 of the Second Circuit in the *Payment Cards* case that's not

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1 present here.

2 Now, this slide here shows that, in many respects, you
3 don't even have a conflict at this point, where class
4 certification we're going to have summary judgment, we're going
5 to have trial at which we're going to get an aggregate
6 class-wide damage. Then we have the allocation phase. The
7 only point that any conflict would arise is at the allocation
8 phase of the case, which comes after settlement and after
9 trial.

10 Finally, I just want to make one last point on
11 superiority. The defendants' main argument here centers around
12 the claim that there were a small set of seven class members
13 who earlier expressed -- get the right slide. Here we are.

14 Let me explain what happened here.

15 When we first sought data discovery from the banks, we
16 were contacted by a group of hedge funds who told us they were
17 concerned about the confidentiality of their trading
18 strategies. Now, to address this concern, we agreed, for
19 purposes of discovery, to anonymize the data, and it was
20 produced to us in this way by the banks.

21 Nonetheless, seven hedge funds decided to opt out of
22 the case at that point. This decision had absolutely nothing
23 to do with the merits of our case or whether it's properly
24 litigated as a class action. They simply did not want to have
25 to produce in this case under a protective order or not their

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1 confidential trading strategies; and so they decided to opt out
2 of the case. This doesn't say anything about superiority; this
3 doesn't defeat the fact that a class action remains the most
4 efficient way to resolve this case, all the common issues we
5 have. We have the question of liable, question of damages. I
6 mean, certainly you wouldn't want each -- you certainly
7 wouldn't want each individual class member to have to try the
8 case of liability over and over again in a massive lawsuit of
9 this kind; and so litigation of the common issues will
10 certainly promote judicial relief.

11 Now, finally, your Honor -- and this is my last comment
12 and I'm going to turn this over to Ms. Levens -- at this point
13 in time, what we have shown with respect to the three most
14 important elements of an antitrust action, and that's
15 liability, that's impact, and that's damages. We've
16 demonstrated that all three of these can be proved -- can be
17 shown -- with models that are based upon common evidence and can
18 show these issues -- prove these issues on a class-wide basis.

19 Now, the defendants argue, Well, even if that's true,
20 we have all of these individual issues we plan to litigate, to
21 which I say, Okay. So what? Bring them on. The defendants
22 have a right to litigate their defenses, that is true. But the
23 essential point is that when the plaintiffs have demonstrated
24 they have models capable of proving the three main issues in
25 the case -- liability, impact, and damages on a class-wide basis

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1 - defendants cannot defeat predominance by threatening to
2 overwhelm the trial with all of their common issues. The
3 defendants are entitled to a fair trial; they are not entitled
4 to an infinite trial.

5 And unless the Court has any questions, I'll complete
6 it there.

7 THE COURT: Not at this time.

8 Ms. Levens, please proceed.

9 MS. LEVENS: We wanted to take a few moments to talk
10 about the cost of platform trading in the but-for world. These
11 costs come up in a variety of contexts throughout the briefing
12 and expert reports, so much so that we thought it would be
13 useful to address them in their own separate module.

14 Now, at the outset we should note that the Court does
15 not need to untangle - let alone resolve - all of the parties'
16 numerous cost disputes to certificate the class. Costs are
17 just one variable in the Asquith-Pathak damages model, and of
18 limited relevance to Dr. Zhu's impact analysis. Experts
19 disagree about variables all the time. But as the *Air Cargo*
20 court recognized, these sorts of disputes, quote, deal in a
21 level of minutia that would be inappropriate for the Court to
22 resolve at this early stage. As such, costs are of limited
23 relevance to today's proceedings.

24 As to damages, defendants argue quite vigorously that
25 the cost variables incorporated into the Asquith-Pathak damages

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1 model are incorrect. But today is not the time to determine
2 whose damages estimates are correct. All plaintiffs need is a
3 damages model that produces a reasonable estimate of the
4 class's harm.

5 As for impact, Dr. Zhu's analysis predicts market-wide
6 price improvements following a shift to platform trading of
7 just a small subset of the market. Costs are relevant to this
8 inquiry only to the extent they affect the viability of the
9 platform. As long as plaintiffs have common evidence that the
10 benefits of platform trading would have exceeded the costs of
11 operating the platform, costs are no bar to viability. This
12 question of platform viability is a core common question in the
13 case, the existence of which supports certification.

14 Plaintiffs have the better argument on the common
15 question of platform viability. Countless financial products
16 have been trading on electronic platforms for decades, and
17 there's really no reason to believe that this market would be
18 any different. This is borne out by the fact that functioning
19 stock loan platforms do exist in countries untouched by
20 defendants' conspiracy.

21 Indeed, several sophisticated market participants,
22 including defendant Bank of America, the OCC, two prominent
23 hedge funds and three significant exchanges, all concluded that
24 trading in the U.S. stock loan market on an exchange would be
25 viable. In fact, some of these entities invested millions of

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1 dollars in their faith on that belief.

2 Because of defendants' conspiracy, we can't know what
3 the exact costs of operating a platform would have been in the
4 but-for world. To estimate what those costs might have been,
5 Dr. Zhu analyzed NASDAQ's operational costs, as well as the
6 fees charged by stock loan platforms in Taiwan and Malaysia,
7 and he found that, across the board, these figures were quite
8 low. His conclusion is backed up by a recent study by
9 Professor Budish, an economist from the University of Chicago,
10 who analyzed the trading fees at the three largest stock
11 exchange families, and found that those fees were incredibly
12 small: .0001 percent per side for a stock worth \$100. That's
13 the equivalent of .01 basis points.

14 To estimate the benefits of platform trading, Dr. Zhu
15 started by recognizing that in an OTC market, prime brokers pay
16 beneficial owners one price to borrow the security, they add a
17 spread, and then they loan that same security to end users at a
18 hire price that includes the spread. A platform cuts out the
19 prime broker middleman, directly connecting end users and
20 beneficial owners, who previously had no insight into the
21 prices the other party was accepting. The spread that would
22 have gone to prime brokers is made available as a benefit to
23 market participants.

24 Using common transactional data produced in this case,
25 Professors Asquith and Pathak calculated the weighted average

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1 spread in the market to be 41 basis points. Because the
2 benefits of platform trading 41 basis point are significantly
3 greater than the costs of operating a platform, Professor Zhu
4 concludes that platform trading would have been viable in this
5 market.

6 Now, in fact, Professors Asquith and Pathak also
7 calculated the weighted average spreads by temperature. And
8 viability is even more apparent in the case of hard-to-borrow
9 securities, where the average benefits of platform trading are
10 more than 20 times the estimated costs of running a platform.
11 But even for less expensive, warm and general collateral loans,
12 platform viability is straightforward.

13 And keep in mind, this analysis suggests that platform
14 trading would have been viable for all market participants, but
15 Professor Zhu's impact analysis assumes only a small percentage
16 of the market shifts to using the platform.

17 Now, Dr. Zhu's cost comparison analysis is common
18 evidence that the benefits of platform trading exceed the costs
19 of running and maintaining a platform. As such, plaintiffs
20 have common evidence that platform trading was viable, and no
21 other inquiry into the costs of platform trading is necessary
22 for purposes of proving impact.

23 Turning next to damages. Our experts opine that in
24 the but-for world, there would have been some costs associated
25 with platform trading. Specifically, they opine that in the

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1 but-for world, there would be costs associated with using a
2 clearing sponsor to access the CCP, and also fees paid directly
3 to the platform itself. To estimate what these costs might
4 have been, Professors Asquith and Pathak examined costs in
5 other markets, reviewed relevant regulations, looked at the
6 record evidence, reviewed academic literature that discusses
7 this point and, as a result of this analysis and their own
8 expertise, they concluded that a conservative estimate of the
9 costs of platform trading for purposes of calculating the
10 class's damages would be between four and 33 basis points for
11 beneficial owners, and nine and 38 basis points for end users.

12 THE COURT: When we get to trial, does that number get
13 refined somehow? That's a pretty big range.

14 MS. LEVENS: Yes.

15 THE COURT: What will we know by the time we get to
16 trial that would make that number more precise?

17 MS. LEVENS: The reason that this is a range is not
18 because it's an estimate, it's because it is based off of the
19 transactional costs that AQS charged in the market, and those
20 vary based on the temperature of the loan. So for any
21 individual stock loan, we could calculate the exact costs using
22 the data we have today and, in fact, that is how the experts'
23 damages estimates are calculated.

24 THE COURT: So part of the formula will be an exact
25 number --

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1 MS. LEVENS: Yes. This just gives the end range as to
2 give context. Together, this is what the combined costs would
3 be.

4 THE COURT: Understood. Thank you.

5 MS. LEVENS: Now, in arriving at these cost estimates,
6 Professors Asquith and Pathak incorporated a number of
7 conservative assumptions. First, they do adopt the
8 transactional platform fees charged by AQS. Even though the
9 conspiracy prevented both AQS from achieving scale and rival
10 platforms from entering the market, which would have driven
11 down platform fees, but they don't include the volume discounts
12 that's AQS actually provided during the conspiracy period.
13 Their model accounts for sponsorship costs, even though similar
14 markets have developed what are known as special CCP
15 memberships. And, in fact, one such membership model was being
16 considered in this market, and that would have entirely
17 eliminated sponsorship costs for beneficial owners. They also
18 adopt Professor Hendershott's estimate of the costs of
19 contributing to the CCP default fund, even though Dr. Zhu
20 estimates a lower amount.

21 Finally, because regulators regarded CCPs as less
22 risky, they said to enact various regulations to incentivize a
23 shift to the use of CCPs. Those incentives basically resulted
24 in a lot of benefits to the prime brokers and were regarded as
25 quite substantial. This would have allowed sponsors, including

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1 the prime brokers, to provide sponsorship services at a lower
2 price.

3 Now, the existence and magnitude of the these
4 conservative assumptions is readily apparent when one compares
5 the costs our experts are incorporating into their damages
6 model with the fees charged by similar exchanges in competitive
7 markets. This is not a situation in which plaintiffs have
8 incorporated the absolute smallest cost possible in order to
9 inappropriately inflate aggregate damages, as was the concern
10 in the *Hickory Securities* case.

11 Importantly, though, even with all of those
12 conservative assumptions, the conservative cost estimates that
13 Professors Asquith and Pathak are using are entirely consistent
14 with platform viability as you can see by comparing their cost
15 estimates with the weighted average spreads in the
16 over-the-counter market.

17 Now, the parties disagree as to what the best estimate
18 of cost would be; and the magnitude of this disagreement is
19 quite significant. Professor Hendershott, defendants' expert's
20 estimates, are quite a bit larger than our expert's.

21 Without diving too deeply into the granularity of
22 this, it is worthwhile to take a step back and take note of the
23 things about which the experts do agree:

24 First, both plaintiffs and defendants take into
25 account ways in which costs might be different for beneficial

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1 owners and end users. In calculating sponsorship costs, the
2 experts all considered the costs of regulatory capital, initial
3 margin, and contributing to the default fund. We even used
4 Professor Hendershott's estimate for default fund costs.

5 The experts all used the fees charged by AQS as a
6 starting point for estimating the magnitude of platform fees,
7 and the experts likewise all considered the likelihood and
8 potential magnitude of fixed platform fees being charged in the
9 but-for world. The experts are basically employing the same
10 framework; they just arrive at different estimates.

11 But as the court in *Restasis* made clear, neither side
12 will ever prove whether its predictions are correct. The
13 but-for world is, by definition, hypothetical. To proceed as a
14 class, plaintiffs must have a methodology that roughly reflects
15 the harm to the class. And as explained by the court in
16 *Lidoderm*, that the experts dispute what the appropriate input
17 should be does not undermine the approach or reliability of an
18 expert's damages model. And as my colleague Mr. Brockett
19 noted, defendants don't really challenge the model itself.

20 Now, we should note – even though the Court don't need
21 to decide this – we disagree with Professor Hendershott's
22 estimates. If you compare the estimates just of platform fees
23 that Professor Hendershott is advocating, with the platform
24 fees charged in competitive markets, you'll see that he's
25 advocating platform fees that would have been hundreds of times

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1 larger than what's charged in bug shooting platforms. That's
2 strains credulity.

3 Likewise, his analysis of the costs of regulatory
4 capital, if they were correct, then prime brokers in the actual
5 over-the-counter world would have been losing money on their
6 general collateral and warm loans. But there is simply no
7 evidence suggesting this is the case. These nonsensical
8 results are caused by a number of serious flaws in his
9 analysis.

10 As just one example, he fails to recognize an OCC rule
11 which allows the use of securities to satisfy initial margin
12 requirements. Now, Professor Hendershott testified that he
13 didn't know this was allowed. Defendants' other expert,
14 Mr. Pridmore, testified that he did know it was allowed; he
15 just didn't include that fact in his report. But either way,
16 this is a material omission.

17 As Professor Hendershott himself recognizes,
18 beneficial owners have significant volumes of unlent
19 securities. And since a lot of that is GC for which supply
20 outstrips demand, there is no opportunity costs for beneficial
21 owners using that GC to satisfy their initial margin
22 requirements.

23 This is just one of many points of dispute between the
24 parties about costs. We believe we have the better side of the
25 argument, as I'm sure do defendants. But defendants'

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1 insistence on resolving these disputes today is simply wrong as
2 a matter of law.

3 To calculate damages in an antitrust case, plaintiffs
4 have to try and predict what would have happened in a world
5 untainted by defendants' conspiracy. This can never be done
6 with precision, and precision is not what is required under the
7 law. As Justice Scalia succinctly put it, the calculations
8 need not be exact.

9 Defendants can present their arguments about what they
10 believe the costs of platform trading would have been. And as
11 in *Air Cargo*, the jury may consider these arguments as a basis
12 for reducing or withholding any damage award. But at this
13 stage, they do not affect the model status as acceptable common
14 proof of aggregate damages.

15 We want to briefly touch on the FTAIA, which limits
16 the extraterritorial application of the U.S. antitrust laws.

17 The FTAIA poses no bar to the class's antitrust claims
18 here. This is a case about a domestic conspiracy to block the
19 emergence of platform trading in the U.S. stock loan market.
20 Those platforms would have facilitated the borrowing and
21 lending of U.S.-listed securities. And the primary target of
22 defendants' conspiracy was AQS, a U.S. platform.

23 Finally, the class is limited to ensure that it only
24 encompasses the U.S. effects of the conspiracy. The FTAIA's
25 domestic effects exception makes it clear that this case is

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1 actionable under the U.S. antitrust laws; and plaintiffs can
2 demonstrate that fact using common evidence, including our
3 liability evidence, our expert analysis showing proximate cause
4 between the conspiracy and the class's injury and, finally, the
5 transactional data which ensures that only trades of
6 U.S.-listed stocks with U.S.-based defendants are included.

7 Yes?

8 THE COURT: If there are any courts who have wrestled
9 with this analysis, whether the FTAIA applies or not.

10 MS. LEVENS: There are several cases. *Empagran* makes
11 it clear, quoting the house report, that foreign traders can
12 have claims under the antitrust laws. The real question is
13 about the connection to U.S. commerce. These are prices
14 charged by U.S. defendants of U.S.-listed securities. There's
15 really no question that this has a massive domestic effect on
16 commerce, and it's clear under the law that that's all that's
17 required.

18 Unless there are other questions, plaintiffs will
19 reserve the remainder of our time for rebuttal.

20 THE COURT: Thank you.

21 How about we take a two-minute break so we can switch
22 over, and then the defense can go and get started.

23 (Recess)

24 THE COURT: Introduce yourself again for the record,
25 and then go right ahead.

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1 MS. YABLON: Good afternoon, your Honor. I'm Staci
2 Yablon of Winston & Strawn, counsel for the defendant Goldman
3 Sachs. I will be joined today in argument by Robert Wick of
4 Covington & Burling, counsel for the JP Morgan defendants; and
5 Michael Paskin of Cravath, Swaine & Moore, counsel for the
6 Morgan Stanley defendants.

7 Just to give your Honor a brief roadmap for
8 defendants' argument this afternoon, I will begin with a brief
9 introduction, followed by Mr. Wick, who will address adequacy,
10 explaining why class representatives and class counsel cannot
11 represent both the borrower and lender subclasses.

12 Then Mr. Paskin and Mr. Wick will address defendants'
13 argument regarding predominance. After, I will explain why
14 individual actions would be superior to a class action in this
15 case. And finally, I will explain why the class period – in
16 the event your Honor recommends certification of a class or
17 subclass, which we don't think you should do – must be limited
18 to plaintiffs' original class period, the only period for which
19 any discovery exists in this case.

20 Defendants would like to reserve ten or 15 minutes for
21 rebuttal. And for the most important question perhaps on
22 people's minds now, would note that after Mr. Wick finishes
23 adequacy, which should be in about 20 to 30 minutes, it might
24 be an appropriate time for lunch.

25 THE COURT: Okay.

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1 MS. YABLON: We have now listened for over two hours
2 as plaintiffs have inaccurately described the stock lending
3 market, the fundamental issue of this case. And more
4 egregiously, plaintiffs have spent extensive time on the issue
5 of liability that, one, is not relevant at all to a class
6 certification hearing; and two, concerns issues that the record
7 completely contradicts. In fact, let me be clear: Plaintiffs
8 will not prevail on liability.

9 But we are not here today, your Honor, to discuss
10 liability. We are here to discuss plaintiffs' motion for class
11 certification and why it should be denied.

12 During our presentation today, you will hear an
13 accurate depiction of the stock lending market, which is
14 strongly supported by the record. Understanding the actual
15 market is vital to evaluate plaintiffs' motion. It will
16 quickly become obvious that there are many individualized
17 inquiries required which necessitate denial.

18 Plaintiffs inaccurately describe stock lending and
19 borrowing as being part of a single unified market which is
20 dominated, according to them, by prime brokers who are mere
21 middlemen, providing services which plaintiffs simultaneously
22 downplay in importance, yet admit would have continued over the
23 counter in the but-for world.

24 Plaintiffs also assume that the borrowing and lending
25 market participants would have unrealistically similar

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1 interests, goals, and needs. In reality, as the record makes
2 very clear, stock lending and borrowing occur as part of a
3 highly complex dual-sided market. Prime brokers provide a
4 bridge within this market and, in so doing, they can provide
5 their borrowing clients with a multitude of individualized
6 services. And as you will hear from my colleagues this
7 afternoon, the borrowing and lending market participants
8 frequently have differing and, oftentimes, adverse interests.

9 A simple example. Say I want to buy a share of
10 Coca-Cola. I go on an exchange and I purchase it. The
11 transaction ends as soon as the sale is complete.

12 Stock lending and borrowing is completely different.
13 It creates, in the words of AQS's former CEO, Pat Cestaro, a
14 marriage between the borrower and lender. This marriage is a
15 unique feature of the stock lending market and is what
16 distinguishes this market from those the plaintiffs have
17 already mentioned this morning and as Mr. Paskin will further
18 address this afternoon.

19 And like in any marriage, it's safe to assume that
20 both parties to the transaction want to know with whom they are
21 entering into a relationship. The length of the stock lending
22 relationship is typically undefined. It can be kept open for a
23 few days, months, or even years. And like in any good
24 marriage, borrowers and lenders oftentimes have differing and
25 sometimes conflicting goals.

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1 For example, borrowers of stock want their borrowers
2 to be stable, meaning that the stock will not be recalled
3 prematurely, while lenders need flexibility to recall their
4 lent stock at will. This conflict makes sense when you think
5 about the types of entities within this dual-sided market.

6 On the one hand, you have hedge funds which make up of
7 the vast majority of borrowers, an ironic fact I would point
8 out, as there are no hedge funds currently serving as named
9 plaintiffs in this case, something we will discuss later this
10 afternoon.

11 As your Honor is undoubtedly aware, a core feature of
12 hedge funds' businesses is that of borrowing stock to support
13 their shorting strategies. Because it is impossible to predict
14 when a stock price will decline. Stock borrowers want to know
15 that their shorted stock will now be recalled before their
16 chosen strategy has a chance to perform.

17 On the other side of the market, lenders or beneficial
18 owners, which are typically long-term holders of stock, like
19 pension funds, require the flexibility to recall their lent
20 stock at will. A beneficial owner might recall its stock to
21 comply with regulatory restrictions or voting rights or simply
22 to pursue its own investment strategy. Beneficial owners
23 typically do not have any desire to deal directly with prime
24 brokers acting on behalf of their borrowing clients or the
25 borrowing clients themselves. Instead, they rely upon agent

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1 lenders to manage their lending portfolio and act as
2 intermediaries between them and the prime brokers.

3 These conflicting needs of borrowers on the one side
4 of the market and lenders on the other side, give rise to the
5 role of the prime brokers. In a stock lending transaction,
6 prime brokers act as counterparties to both the lender or
7 intermediary agent lender and the borrower. This allows prime
8 brokers to provide lenders with the flexibility to recall their
9 loan at will, while ensuring the stability of the loan for the
10 borrower and its shorting strategy.

11 How do prime brokers do this? The primary way is
12 through their unparalleled access to diverse sources of supply.
13 Prime brokers have both internal sources, like stock they own
14 or can access from positions held by other clients, and
15 external sources, including from other beneficial owner
16 relationships or agent lenders. And as you will hear later,
17 prime brokers provide their borrowing clients with an array of
18 other important services, many of which are essential to their
19 clients' ability to borrow stock.

20 During our time here today, Mr. Wick, Mr. Paskin, and
21 I will explain how this unique and complex dual-sided market
22 structure requires thousands of individualized inquiries and
23 compels denial of plaintiffs' motion.

24 THE COURT: Thank you.

25 MR. WICK: Your Honor, I'm Robert Wick. I represent

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1 the JP Morgan defendants; and at the moment, I'm speaking on
2 behalf of all defendants under Rule 23(a)(4) adequacy
3 requirement.

4 There are three reasons why the representation that's
5 proposed here is inadequate. The first is that there is a
6 fundamental conflict of interest between lenders and borrowers;
7 the second is that the two borrower-named plaintiffs, Torus and
8 SCERA are inadequate to represent a subclass of borrowers; and
9 the third is that the class includes members whose would have
10 benefited from exactly the same conduct that the plaintiffs say
11 harmed other class members.

12 Turning to the first of those three arguments, the
13 conflict between lenders and borrowers. The plaintiffs are
14 proposing to proceed here by way of unitary representation of
15 lenders and borrowers. A single pair of law firms will jointly
16 represent both lenders and borrowers; and a single group of
17 five named plaintiffs acting as a unit, acting in unison, will
18 jointly represent both lenders and borrowers, that's their
19 proposal.

20 The trouble with that proposal is that lenders and
21 borrowers have fundamental conflicts of interest that bar
22 unitary representation under Second Circuit law. Lenders and
23 borrowers always on opposite sides of the market, and that
24 means that's they have diametrically opposed interests in
25 proving up the prices at which they allegedly would have

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1 transacted with each other on anonymous trading platforms.

2 Lenders have an interest in proving that those
3 platform prices would have been as high as possible. That
4 maximizes the injury and maximizes any recovery to lenders.

5 Borrowers have exactly the opposite incentive; they have an
6 incentive to maximize their own injury and maximize their own
7 share of any recovery by minimizing any injury to lenders and
8 minimizing any recovery to lenders.

9 THE COURT: How is it different from the variety of
10 different stock exchange cases where you have purchasers and
11 sellers? So why is this case different?

12 MR. WICK: Well, the cases that it's most similar to,
13 your Honor, are *In Re ForEx* and *In Re LIBOR*. In both of those
14 cases, you have a proposed class of exchange participants. And
15 you had exchange participants who were often trading on
16 opposite sides of the market from each other. And those two
17 cases, two recent cases, *LIBOR* and *ForEx*, the court said the
18 fact that you have exchange participants who are often opposing
19 each other on the exchange market and who have opposing
20 incentives with respect to proving up what the price on the
21 exchange would have been in the absence of the challenged
22 conduct, that, in both of those decisions, the court said was a
23 fundamental conflict of interest that precluded class
24 certification.

25 The conflict of interest here is even more stark, it's

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1 even more fundamental. Because in *ForEx* and in *LIBOR*, it was
2 only some of the time that class members were trading on
3 opposite sides of each other on the exchange. Here we have a
4 class that's cleaved right down the middle: its lenders on one
5 side, its borrowers are on the other side. And they are always
6 fundamentally opposed to each other; they always have an
7 interest to maximize their own injury by minimizing the injury
8 to the other half of the class. They can't both be represented
9 by the same representatives and the same counsel.

10 THE COURT: Okay. So why not just appoint separate
11 counsel for the two subclasses?

12 MR. WICK: In the first place, you would need the
13 plaintiffs to come forward with a specific proposal of what
14 they want to do. And they've had three successive chances to
15 do that in their opening brief, in their reply brief, and in
16 their sur-surreply brief. They haven't put any proposal in
17 front of you, your Honor, for independent counsel that you can
18 evaluate and determine whether it does or doesn't satisfy Rule
19 23 --

20 THE COURT: Well, because they don't agree with you
21 that it needs to happen.

22 MR. WICK: Right. But they had 14 months to at least
23 propose a contingency plan, and they haven't done it. So I
24 can't evaluate the proposal until I see the specifics of it,
25 and then we're entitled to put in a brief about whether it is

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1 or isn't adequate.

2 The second part of the answer, your Honor, is that
3 they would need brand-new named plaintiffs. These named
4 plaintiffs are already compromised; they have already committed
5 themselves to specific positions on the issues that divide
6 lenders and borrowers. They cannot provide independent
7 representation because they've already put a stake on the
8 ground and said, This is how we are going to allocate the
9 alleged injury; this is how we're going to allocate any
10 recovery here. The stake in the ground that they've already
11 put down is their damages model. Their damages model is their
12 allocation of the alleged injury, and it is their allocation of
13 any recovery.

14 And so lenders, they need their own independent
15 representation. They need their own independent representative
16 determining whether they agree with that allocation and whether
17 it's fair to them. They don't have independent representation
18 here. So we would need to have -- to evaluate any proposal
19 along the lines that your Honor is suggesting, they would need
20 to ask permission from Judge Failla to amend their complaint to
21 add new class representatives, and they would need to ask
22 permission from Judge Failla to reopen the discovery period.
23 Because if they propose brand-new class representatives,
24 obviously we would need an opportunity to take discovery from
25 them and depose them. And so we don't have any specific

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1 proposal from them in front of us, but it's far from clear
2 whether Judge Failla would be willing to entertain an amended
3 complaint and a reopening of discovery at this stage.

4 Beyond that, your Honor, there is a clear Second
5 Circuit rule for dealing with situations where you have two
6 distinct subclasses, and you have to allocate any recovery
7 between them. And the rule is you simply cannot do that by
8 means of unitary representation. Each subclass has to have its
9 own independent class representatives; each subclass has to
10 have its own independent counsel.

11 And the plaintiffs here have already done what Second
12 Circuit law forbids: They have already, by way of unitary
13 representation, put forward a model. It's a model of but-for
14 world prices, the model of what the prices that would have been
15 in a but-for world. That model allocates the alleged injury
16 and allocates any recovery between lenders and borrowers, and
17 it was put forward without independent representation of each
18 subclass.

19 THE COURT: Right. I see you're referring to *Literary*
20 *Works*, right?

21 MR. WICK: Yes.

22 THE COURT: Okay. So there, it was the end of the
23 case. The whole case had been litigated by one set of named
24 plaintiffs and one set of class counsel. The Second Circuit
25 said at the very end, there needed to be separate

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1 representation.

2 So I guess I don't understand why -- I don't
3 understand why you need -- why we need to decide this issue now
4 or why you say the Second Circuit upholds that rule, when even
5 in that case, the case was litigated with those two supposedly
6 competing interests the whole time.

7 MR. WICK: Well, in *ForEx* and in *LIBOR*, the courts
8 both rejected class certification based on the same type of
9 conflict of interest, albeit a less severe version of it than
10 we have here.

11 In *Literary Works*, it's true that the first time
12 anybody noticed a conflict of interest was when there was a
13 proposal to approve a settlement. And so we know, at a
14 minimum, from *Literary Works*, that these are not adequate
15 counsel to negotiate a settlement with the defendants. They
16 can't do it. And I would submit, your Honor, if they are not
17 adequate counsel for purposes of representing the class in
18 settlement, they can't do the same thing at trial that they're
19 proposing to do at settlement.

20 They are proposing to show up at trial and introduce
21 their damages model; introduce their allocation of the alleged
22 injury and their allocation of the alleged recovery at trial.
23 And that's a model that they came up with by way of unitary
24 representation. So they are not adequate to represent the
25 class at trial; they are not adequate to represent the class at

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1 settlement. And if you can't represent the class at trial or
2 settlement, you're not adequate to represent then at all.

3 If I may, your Honor, I'd like to walk you through
4 three examples of exactly how the conflict of interest plays
5 out here. I'm now looking at slide three, which is example 1,
6 a conflict over allocation factors.

7 So the plaintiffs' model has some factors built into
8 it that they call W factors. And those W factors are literally
9 a dial; they are a control dial. And you spin the dial to the
10 left, you allocate more injury and more recovery to the
11 borrower class; you spin it to the right, and you do exactly
12 the opposite.

13 And the plaintiffs have already picked specific
14 settings for their dial. The setting that they picked for all
15 warm stock is 25 percent. What does it mean that they've
16 selected an allocation factor of 25 percent for warm stock?
17 This is what it means: It means that to the extent that they
18 succeed in proving up any price savings in the but-for world,
19 to the extent they prove that there would have been any price
20 savings on a warm stock, they give 25 percent of the savings to
21 lenders, they give the other 75 percent to borrowers. So
22 lenders and borrowers are locked in a zero sum game. And with
23 respect to hot stock, their W factor is 35 percent. Any price
24 savings they can prove up they'll distribute at 35 percent to
25 lenders and 65 percent to borrowers.

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1 The two diagrams here on slide three tell you how this
2 works in practice. So on the left-hand side of the diagram you
3 see a label, ten basis points average actual lending price. On
4 the right-hand side of the diagram, you see 20 basis points
5 average actual borrowing price. So in this example, we're
6 assuming that there is a specific stock loan; and that class
7 members are lending that stock to prime brokers at an average
8 price of ten basis points, and they are borrowing it from prime
9 brokers at an average price of 20 basis points.

10 The difference between that – or what they call the
11 spread – is ten basis points. And so what the W factor does is
12 they take that W factor of 35 percent in this example, they
13 multiply it by the ten basis points spread, and they come up
14 with 3.5 basis points. They add that 3.5 basis points to the
15 average lending price, and they come up with 13.5 basis points.
16 And they say that is the price at which this stock loan would
17 have occurred on a platform in the but-for world.

18 The effect of that, the practical effect of that, is
19 that they are allocating the blue portion of the alleged price
20 savings in the but-for world to lenders, and the gray portion
21 to borrowers.

22 Now, what happens if you take that injury dial, that W
23 factor, and you spin it to the right, and you increase your W
24 from 35 percent to 70 percent? And by the way, 70 percent is
25 not a randomly chosen example. Professor McCrary demonstrated

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1 in his report that for many of the very, very hot stocks,
2 there's a very good economic argument that could be made that
3 if you're going to choose a W factor, it ought to be more like
4 70 percent than 35 percent.

5 I should also mention, they continually refer to – in
6 a disparaging way – that Professor McCrary is a law professor.
7 Professor McCrary got his Ph.D. in economics. He taught
8 economics. He was offered a great position as the professor of
9 law and economics at the Columbia Law School. He is widely
10 published on econometrics and regression analysis. That's his
11 field of expertise, as well as antitrust economics.

12 (Continued on next page)

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1 MR. WICK: In any event, if you spin the injury dial
2 to the right from 35 percent to 70 percent, the effect of that
3 is you roughly double the amount of the alleged price savings
4 that goes to lenders, and you roughly cut in half the amount of
5 the alleged price savings that goes to borrowers.

6 Now, two further things, your Honor. Where you set
7 your W setting, it can make the difference between whether you
8 get something and whether you can get nothing at all. That is
9 for two reasons. The first is platform transaction fees. So
10 this diagram ignores platform transaction fees. For the sake
11 of simplicity, let's suppose you're a lender and that you lent
12 ten basis points in the actual world and but-for world you
13 would go to a platform and lend at 13.5 basis points.

14 Now, if your transaction fees for using the platform
15 are three and a half basis points, you get nothing. The
16 plaintiffs give you nothing in that situation. And so unless,
17 as a lender, you have the freedom and the independence to argue
18 for a W factor that is higher than 35 percent, you're going to
19 get nothing at all under their unitary allocation of who gets
20 what.

21 The second reason is not everybody lends or borrows at
22 the average. There is a huge amount of price dispersion in
23 this market. So if I was a particularly skillful lender and I
24 was able to lend out my stock at 13.5 basis points in the
25 actual world, then the plaintiffs unitary allocation gives me

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1 nothing. I've got 13.5 basis points in the actual world,
2 that's all I am going to get in the but-for world.

3 So what exacerbates the conflict of interest here,
4 as we see on slide four, is this very reasonable economic could
5 be made for higher W factors, for lower W factors, or for
6 varying W factors. In fact, the better economic view is that
7 you wouldn't have exactly a 35 percent W factor for every
8 single hot stock on every single day of a six-year class
9 period. There are degrees of how hot a stock can be. It could
10 be slightly hot or it can be supernova hot. And the plaintiffs
11 ignore all that. And so what we're missing, your Honor, is
12 we're missing independent representations of who can stick up
13 for borrowers and determine whether the W factors are fair to
14 them or who can stick up for lenders and determine whether the
15 W factors are fair to them.

16 A second example relates to who bears platform fees.
17 So the plaintiffs' expert say there are two different ways you
18 could think about who pays --

19 Well, let me just back up a step. Somebody has to pay
20 the anonymous trading platform. And the two candidates to pay
21 the platform are lenders and borrowers. The plaintiffs say
22 there are two different ways you can think about splitting up
23 platform transaction fees between lenders and borrowers.

24 The first way is you can think that the platform would
25 charge equal fees, symmetric fees, 50/50 to lenders and

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1 borrowers. And that is what AQS did in the actual word. They
2 split 50/50 between lenders and borrowers.

3 The second way you could think about this, and
4 according to the plaintiffs' experts is, they both say, in the
5 long run, platforms would probably reallocate all the fees from
6 lenders to borrowers and have borrowers pay all of the fees.
7 They say that is economically efficient because, in their view,
8 most of the benefits of the platform trading accrue to
9 borrowers and not to lenders.

10 And where the two experts -- Dr. Asquith and Dr.
11 Pathek, the two plaintiffs' own experts -- parted company was
12 whether that shift from symmetric fees to fees allocated
13 entirely to borrowers would or would not happen during the
14 class period. They both said it would happen in the long run.
15 One of them testified at deposition the long run included the
16 class period, the other one said that the long run was out
17 further past the class period. Those are the cites shown in
18 the fine print there.

19 Why does this matter? Is this just some technical
20 bickering over a couple of basis points? It matters a lot,
21 your Honor. It single-handedly determines whether hundreds of
22 lenders or hundreds of borrowers at a minimum are going to have
23 any chance of recovering anything at all. When you run their
24 model exactly the way they designed it in two different
25 iterations -- iteration number one, split the transaction fees

M4SsIOW4

1 equally between lenders and borrowers; iteration number two,
2 shift the fees all to borrowers -- that single-handedly
3 determines whether over 600 accounts -- over 300 lender
4 accounts, over 300 borrowers accounts -- suffer any alleged
5 injury at all.

6 So under a unitary representation scheme, the
7 plaintiffs are going to have to tell hundreds of borrowers or
8 hundreds of lenders, we want you to please lay down your lives
9 for the good of the opposite subclass. That is not adequate
10 representation.

11 THE COURT: I obviously read Judge Failla's decision
12 on the motion to dismiss. I don't remember. Did the
13 defendants argue that only the borrowers should be plaintiffs
14 or only the lenders should be plaintiffs, or was it just
15 straight across the board there was no failure to state a
16 claim?

17 MR. WICK: There was no proposal to certify a class at
18 that point.

19 THE COURT: I know.

20 But in terms of who has this claim, is it the lenders
21 or the borrowers?

22 Did the defendants make a choice?

23 MR. WICK: I don't understand the question. We did
24 not raise a conflict of interest at the motion to dismiss
25 stage, your Honor.

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1 THE COURT: OK.

2 MR. WICK: So a third and final example has to do with
3 conflict of interest over search costs. Search costs provide
4 an additional illustration of how, by virtue of the fact that
5 they sit on opposite sides of the market, lenders and borrowers
6 very often have opposite interests in issues in the litigation.

7 What is the plaintiff's search cost argument? At a
8 high level, it proceeds in two steps. Step number one, search
9 costs, they say, cause a market participant to accept worse
10 prices than they would if it didn't cost them something to keep
11 searching for other price alternatives. Two, they say that a
12 platform will come along and lower those search costs and
13 thereby will enable a market participant to get a better price.

14 Well, the trouble with that defendants' argument if
15 you're a lender is that prime brokers are the ones who bear
16 search costs when they are dealing with lenders. You don't
17 have to take my word for that, your Honor. The plaintiffs'
18 experts say it in their joint expert report. They say the
19 over-the-counter search costs associated with locating
20 hard-to-borrow shares largely arise because the broker
21 dealer -- that is the prime broker, not the class member -- may
22 sometimes have to contact many potential suppliers of shares.

23 Prime brokers are the ones bearing search costs.

24 THE COURT: Did they pass that on to the lenders?

25 I mean, you don't do that out of the goodness of your

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1 heart, right?

2 MR. WICK: Well, what Mr. Olson says is what that
3 means, if when I go to a lender and say will you lend this
4 stock to me at 100 basis points, maybe the competitive price
5 would really be 90 basis points. I'll accept a higher price.
6 I'll pay the lender 100 basis points rather than pay the cost
7 of continuing to search and go ask a different supplier what
8 its costs are. Search costs run in reverse when you're talking
9 about a prime broker searching out a supply of hard-to-borrow
10 stock from a lender.

11 THE COURT: But my question is, in that situation,
12 would the prime broker pass the cost on to the lender, pass the
13 higher cost?

14 MR. WICK: Well, the plaintiffs would probably argue
15 that if the prime broker pays the higher price, it probably
16 passes the cost to that higher price on to the borrowers. But
17 the point is, your Honor, when you take away the search costs,
18 lenders now can't get as good a price.

19 According to the theory of their search cost model,
20 the prime broker knows it will have to pay a search cost in
21 order to keep searching. So it pays the lender a higher price.
22 You take that search cost friction away, now the prime broker
23 pays a lower price to the lender under the theory of their
24 search cost model, which means that the defendants' argument
25 they are advancing to try to help borrowers is hurting the

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1 lenders. The more they reduce the search costs under the
2 theory of their search cost analysis, the more they hurt
3 borrowers.

4 And their own sources agree with me on this, your
5 Honor. As we see on slide seven, they cite predominantly the
6 Kolasinski, Reed and Ringgenberg study in their joint -- in the
7 plaintiffs' joint expert reports. And those authors conclude
8 lenders' benefit, i.e. the beneficial subclass owner benefits,
9 sometimes significantly from search costs. And they conclude
10 that their results, the results of their study, provides new
11 evidence that search costs give equity lenders -- that is the
12 beneficial owners lending their stock -- the ability to charge
13 higher prices.

14 The plaintiffs quoted the SEC's notice of proposed
15 making earlier today. Well, that same document agrees with
16 what I'm saying. There, the SEC recognizes in the first part
17 of the quote obtaining a securities loan often involves an
18 extensive search for counterparties by broker dealers. It's
19 the prime brokers that are bearing the search costs. Then the
20 SEC goes on to conclude that bringing more price transparency
21 to the market and reducing search costs may well hurt
22 beneficial owners. They could experience reduced revenues from
23 their lending activities. Direct conflict of interest in this
24 question between lenders and borrowers.

25 What is the case law say about this? Well, there are

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1 three Second Circuit decisions -- Literary Works, Payment Card,
2 Central States -- all say there is a flat-out prohibition, you
3 cannot use unitary representation where you are in a position
4 of having to allocate a recovery between two distinct
5 subclasses.

6 Similarly, the Forex litigation and LIBOR litigation
7 that we just spoke about a minute ago, both of those courts
8 faced situations similar to this one. The exchange class, the
9 class of exchange participants were sometimes on opposite sides
10 of the market. That was deemed to quote in re Forex to create
11 fundamental conflicts of interest that precludes class
12 certification. That was not a settlement context, your Honor.
13 That was a litigation context. It precluded class
14 certification. Same thing in LIBOR.

15 We have a more intense and severe conflict here
16 because here there is a more stark division between the two
17 halves of the class. Lenders are always, almost always, on one
18 side of the market. Borrowers are almost always on the
19 opposite side.

20 Plaintiffs and their counsel cannot give, cannot
21 represent either one of the subclasses. They can't split
22 themselves in half and represent one or the other. That is for
23 two reasons. Under Second Circuit law, they owe a duty of
24 undivided loyalty to each subclass that they want to represent.
25 Well, they already have a group of five named plaintiffs that

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1 are functioning as a unit. That named plaintiff group includes
2 lenders.

3 So if the plaintiffs have already committed themselves
4 to represent lenders, they cannot give undivided loyalty to a
5 class of borrowers. The same is true in reverse, your Honor.
6 The named plaintiff group includes borrowers. That prohibits
7 them from giving among the named plaintiffs. That prohibits
8 them from giving undivided loyalty to the other side of the
9 case.

10 Finally, your Honor, as I mentioned before, they have
11 already committed themselves to positions that harm both
12 subclasses. They are already committed on the question of how
13 do you allocate any recovery here, they are already committed
14 on what but-for prices are, and they have already committed
15 themselves to positions on platform fees and search costs.
16 They cannot do what an independent counsel that hadn't spoken
17 on this question before could do, and that is figure out what
18 set of positions best advance the interests of borrowers alone
19 or of lenders alone.

20 The second adequacy problem here, your Honor --

21 Actually, let me address a couple other things that
22 Mr. Brockett said before I move on. He cited the NASDAQ case
23 and said that the NASDAQ case permitted a similar conflict of
24 interest. There are three distinctions between this case and
25 the NASDAQ case.

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1 In the first place, that case was decided solely on
2 the pleadings. Judge Sweet said, on page 503, I have to decide
3 class certification at an early stage, assuming the truth of
4 the pleadings. I won't look behind the pleading. That is not
5 the law anymore. Here, we have a robust evidentiary record
6 which takes us far beyond the record Judge Sweet had in NASDAQ.

7 Secondly, because in NASDAQ, Judge Sweet was focused
8 only on the four corners of the complaint, only what was in the
9 pleadings, he didn't know how the conflict might or might not
10 play out as the case developed. He characterized the conflict
11 or the potential conflict there as hypothetical and uncertain.
12 He thought at that time there was a chance it wouldn't actually
13 materialize.

14 THE COURT: But this kind of gets back to my point
15 about the motion to dismiss. It's clear from the face of the
16 complaint we're talking about the stock loan market, and we're
17 talking about named plaintiffs who are borrowers and named
18 plaintiffs who are lenders. So if this conflict is so
19 fundamental to the very unique stock loan market, why weren't
20 you screaming at the motion to dismiss stage to say there is no
21 way that we could ever have these two groups of plaintiffs
22 together?

23 MR. WICK: We didn't know. I mean, first, it's not
24 our obligation to look ahead to class certification and tell
25 the plaintiffs how to organize themselves at the motion to

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1 dismiss stage. That is not our obligation. It is their
2 obligation to understand and identify the conflict of interest
3 and to propose some way of solving it. We didn't know whether
4 they would do that, whether they would correct course by the
5 time of class certification or not.

6 THE COURT: But what your point seems to be is that
7 this case can't be proven with these two groups of plaintiffs
8 together. That's why I'm not understanding why. I think it is
9 your issue.

10 MR. WICK: We are not arguing that they can't
11 represent the five named plaintiffs. At the motion to dismiss
12 stage, the only parties before the court are five named
13 plaintiffs. We have no objection to them -- nobody has any
14 objection to them representing the five named plaintiffs.

15 Now, the five named plaintiffs on an individualized
16 one-by-one basis, they can give their expressed written consent
17 to the conflict of interest. Absent class members cannot do
18 that, and the law is clear, you cannot rely on a right to opt
19 out of a Rule 23(b)(3) class action in order to overcome a
20 fundamental conflict of interest. There is no dispute about
21 that. There is no debate about that.

22 Page 45 of our brief, opening brief, ECF 431, we cite
23 authority on that. In Literary Works, you had a Rule 23(b)(3)
24 opt-out class, in Forex, in LIBOR, in Payment Card, in Central
25 States. All of those were Rule 23(b) -- well, one of them was

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1 23(b)(2). All the rest of them were Rule 23(b)(3). And what
2 they say is we have known since the Supreme Court's decision in
3 Amchem that their right to opt out of a Rule 23(b)(3) class
4 action does not mitigate or excuse the existence after
5 fundamental conflict of interest.

6 *So two other things about the NASDAQ case, your Honor.*
7 Judge Sweet said the conflict was hypothetical and uncertain
8 there. That was a pre Dukes v. Wal-Mart, pre In re IPO
9 decision based solely on the pleading. Here, we now understand
10 you have to decide class certification based an evidentiary
11 record, and the evidentiary record makes inescapably clear
12 there is a fundamental and unavoidable conflict of interest.
13 That already exists. It exists because they have taken a
14 position on allocation of any recovery in the form of their
15 model of but-for prices.

16 Third, and finally, your Honor, the NASDAQ case relied
17 on an incorrect legal standard that has been subsequently
18 rejected by appellate authority. The NASDAQ case said, much
19 like Mr. Brockett, there is a collective interest in maximizing
20 the overall recovery for the class as a whole. There is a
21 collective interest in establishing liability.

22 Well, what the Second Circuit later said in Literary
23 Works is, it doesn't matter that there is some common interest
24 between the class. It doesn't matter that they all have a
25 common interest in maximizing the recovery to the overall class

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1 as a whole. That doesn't excuse the existence of a fundamental
2 conflict of interest between two subclasses. You still need
3 independent representation.

4 One last thing. Mr. Brockett said, he also cited The
5 Auction House case. If you read that decision, your Honor,
6 it's a complete nothing. Nobody there pointed out or thought
7 or believed that is there really was any conflict of interest
8 in auction house. No one raised it, and it is far from clear
9 from the face of the decision that any conflict would exist
10 because there, buyers and sellers each paid their own separate
11 and independent commission to the auction houses.

12 Finally, Mr. Brockett said the defendants have no
13 interest in the allocation of a recovery. Well, I don't want
14 to jump ahead to the question of predominance. I won't get
15 into the nitty-gritty of that, your Honor. But he's exactly
16 right. The defendants don't have the incentive or the interest
17 to look out for lenders. It's not our job to look out for
18 lenders or be their representatives. It's not our job to look
19 out for borrowers and be their representatives. We represent
20 the defendants. They need their own independent counsel
21 because it's not the defendants' job to stick up for either one
22 of them.

23 THE COURT: OK. But the motion for class
24 certification was publicly filed, right?

25 MR. WICK: Yes.

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1 THE COURT: If there were any lenders or borrowers out
2 there who opposed a class being certified, they could have
3 sought to intervene and state a position on the motion. And I
4 don't think we have seen that, right?

5 MR. WICK: Look, I've never heard anyone say that the
6 fact that a class member didn't go to the trouble to read the
7 docket and intervene and object in advance to certification of
8 a class excuses a fundamental conflict of interest.

9 THE COURT: I'm not saying it excuses it. I'm just
10 saying, we already know that there are 22 firms who are
11 watching this case like a hawk because they don't want their
12 data being revealed to the world.

13 So there are examples. I forget which case it is now,
14 there is an example of one of the class certification decisions
15 that the parties have shown me where there was an intervenor
16 who filed a brief in connection with class certification.

17 So it's not unheard of, if there are issues that
18 people who are not part of -- you know, not the named
19 plaintiffs or not the firms who are already litigating the
20 case, there's no reason they can't come forward.

21 MR. WICK: Maybe they are assuming, like the
22 defendants are, assuming that this is obviously wrong and they
23 don't have to intervene because obviously a class won't be
24 certified.

25 This defendants' argument is a weaker version, your

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1 Honor, of the defendants' argument that an opt-out right cures
2 a fundamental conflict, right. After you get actual notice of
3 the class action, if your right to opt out at that point
4 doesn't cure the conflict of interest, then certainly putting
5 an affirmative obligation on the class members to scour the
6 docket and anticipate before class certification that a class
7 might be certified, and the court won't correct the error, that
8 would be putting a very heavy obligation on the class members.

9 THE COURT: Well, the other defendants' argument is
10 that we have the named plaintiffs, including lenders and
11 include borrowers, so they don't seem to think there is a
12 conflict, right?

13 MR. WICK: They are entitled to consent on an
14 individual basis, give expressed written consent to the
15 conflict of interest on their own.

16 THE COURT: You're assuming there is a conflict. What
17 I'm saying is this could signify the inference you could draw
18 from that there is no conflict.

19 MR. WICK: Correct. I think those names plaintiffs,
20 maybe they don't believe there is a conflict. Under the
21 precedent we have cited, it seems clear and we think the record
22 proves there is one.

23 THE COURT: OK.

24 MR. WICK: It may be that they have decided that the
25 conflict of interest is worth it and they are willing to

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1 consent to it, and they are entitled to do that if they give
2 their expressed written consent to it. But silence is not
3 consent. Failing to return an opt-out form is not consent.
4 The case law on that is clear. We cited, give or take, page 44
5 or 45 of our brief.

6 Turning to the second adequacy problem, your Honor,
7 neither Scera nor Torus is adequate to represent a proposed
8 borrowers class. For Scera, it's the same defendants' argument
9 I have already made. If I'm right that there is a fundamental
10 conflict of interest between the two classes, then Scera cannot
11 represent either one of them because it's got a foot in both
12 camps. It's both a lender and a borrower.

13 In re Payment Card, the Second Circuit said, named
14 plaintiffs with claims in multiple sub groups cannot adequately
15 represent the interests of any one sub group. There is a clear
16 Second Circuit rule on that.

17 What about Torus? Well, Mr. Brockett just defined
18 Torus out of the class. Earlier today he said for the very
19 first time something that he has never said in writing. They
20 have never before said that because UBS wealth management
21 customers were not customers of the prime brokerage business,
22 they are out of the class.

23 But if that is the new definition of the class that
24 he's going to adopt on the fly at an oral defendants' argument,
25 he has defined Torus out of the class. Torus was not a

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1 customer of the prime brokerage business of either Goldman
2 Sachs or Bank of America Lynch. It was a customer of a
3 separate line of business that provided barebones clearing and
4 trading services without the range of prime brokerage services
5 that customers that deal with the prime brokerage units at
6 Goldman Sachs and Bank of America Lynch get. So Torus is no
7 longer in the class, and they can't be a class representative
8 for that reason.

9 Beyond that, your Honor, Torus is a tiny proprietary
10 trading firm. It is not a hedge fund. It had total assets
11 under management during the class period between \$100,000 and
12 \$10 million. Even at the upper end of that, even under
13 \$10 million, it's far smaller than the vast majority of the
14 hedge funds that make up the vast majority of the class. It is
15 much too small to be a viable platform participant.

16 Torus is total shorting fees. I'm not talking about
17 its alleged injury. I'm not talking about its alleged damage
18 or its alleged recovery. It's total shorting fees. The total
19 fees it paid to its prime brokers every year were smaller than
20 what Dr. Asquith, the plaintiff's expert, said any short seller
21 would have. At his deposition, he adamantly denied that there
22 would be any short seller with total shorting fees of less than
23 \$10,000 a year. Well, Torus is one.

24 Dr. Asquith further agreed at his deposition that if
25 the thing he didn't believe exists actually did exist, then it

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1 would not be a typical short seller, i.e., if there really were
2 a short seller as small as Torus, he said that would not be
3 "your typical short seller." That is the deposition cites on
4 the right-hand side of the page there.

5 Finally, Torus had no understanding at all of the
6 hedge funds that make up the vast majority of the proposed
7 borrowers class. You see a quote here from Mr. Simeone, a
8 Torus trader, I don't know what a hedge fund does... I never
9 dealt with a hedge fund. I don't know what they have or what
10 they do, to be honest with you. I never came across one.

11 THE COURT: He's a trader, though?

12 MR. WICK: He's a trader for Torus. So he's the guy
13 that's actually doing the shorting for Torus.

14 So why does it matter that Torus doesn't have a good
15 understanding of hedge funds? We saw why it matters earlier in
16 this litigation, when the plaintiffs and their counsel did
17 something that so antagonized a group of 22 hedge funds that
18 they ended up hiring Davis Polk to represent them against
19 plaintiffs and their counsel. The plaintiffs demanded
20 individualized daily position trading data from all the hedge
21 funds, not understanding that hedge funds guard their daily
22 position data like the crown jewels.

23 The 22 hedge funds with total assets under management
24 about \$22 trillion reached out to plaintiff's counsel, asked
25 them to compromise, asked them to back off. The two sides

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1 couldn't agree, and so they were so frustrated. They hired
2 Davis Polk, and they had Davis Polk write to Judge Failla that
3 the plaintiffs' discovery requests demonstrated "the clear
4 divergence between the interests of plaintiffs' counsel and the
5 interests of many purported class members."

6 THE COURT: But that's not the lender-borrower
7 conflict that you're talking about. That's a different one?

8 MR. WICK: Correct. That is an inadequacy, right.
9 Argument number one, lender-borrower conflict. Argument number
10 two, Torus and Scera are inadequate to represent borrowers.
11 One reason for that is neither Scera nor Torus is in touch
12 enough with the interest of hedge funds that they derailed a
13 conflict that forced 22 hedge funds to hire Davis Polk and
14 complaint to Judge Failla about the clear divergence of
15 interest between them. If Torus and Scera were adequate class
16 representatives, if they were adequately representing the
17 interests of the hedge funds that make up the vast majority of
18 the class, we never would have come to the point where 22 hedge
19 funds, with assets of under management of \$7 trillion had to
20 hire their own law firm to stick up for their interests against
21 those of class counsel.

22 THE COURT: Right.

23 But those 22 people, again, just the point that I was
24 making before, they didn't come in on class cert and say no,
25 you should appoint one of us. No, Davis Polk is really the

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1 counsel we should be appointed for the class.

2 MR. WICK: Seven of them did something extraordinary.
3 Before they had any obligation to opt out, they preemptively
4 opted out. I've never seen that happen before, your Honor.
5 They didn't have any obligation to look at ahead at what might
6 or might not happen at class certification. There was no class
7 certification motion pending at the time.

8 THE COURT: Right. So they didn't want to have to
9 turn over their data even on a confidential basis. That makes
10 a lot of sense for the point that you were just making. They
11 guard their data like the crown jewels, and if they don't have
12 confidence in the court's confidentiality orders, they made
13 that risk assessment that, you know, they were better off not
14 participating, not potentially being part of what might be
15 certifying of the class action than to provide their data.

16 MR. WICK: Well, Mr. Brockett renewed that conflict in
17 his remarks earlier this morning. He said that we will have
18 specific identifying data on class members by the time of
19 trial. Well, that is the very issue that prompted a rebellion
20 by the 22 members of the hedge funds. They reached a
21 compromise with those two hedge funds because they agreed that
22 the data would remain anonymous and that it would not run up to
23 the present. It would be relatively old and dated data.

24 Mr. Brockett made clear earlier today he is not
25 willing to live with the compromise by which he struck peace

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1 with the 15 hedge funds that didn't preemptively opt out. He
2 now wants to get the de-anonymized data by the time of trial,
3 and he now wants to get all of the recent data that they
4 refused to give him.

5 THE COURT: Right. That's been disclosed, and so if
6 there is a notice to the class, that can be part of the notice.
7 And if people on that basis want to opt out of the class, they
8 can, right.

9 MR. WICK: Right. To opt out under clear law doesn't
10 solve a fundamental conflict of interest. That is --

11 THE COURT: You're conflating the conflict of
12 interest. I'm talking about if people don't want their data to
13 be revealed, then they can opt out. That's different than the
14 lender-borrower conflict.

15 MR. WICK: You're right. Your Honor, it is true that
16 if you opt out, you may not have to produce your data.

17 THE COURT: Right.

18 MR. WICK: The point, though, is that this is an
19 illustration of how Torus and Scera are not in touch with the
20 interests of their class members and are not adequately
21 representing them. They wouldn't have to go out and get their
22 own counsel if that were the case.

23 THE COURT: I understand your point.

24 MR. WICK: The third and final adequacy problem, your
25 Honor, is that the class includes class members that would have

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1 benefited from the alleged conduct.

2 The fundamental claim here is plaintiffs say that
3 spreads were too wide. The spreads between lending pricing and
4 borrowing pricing were too wide and that hurt some class
5 members. The proposed class here precludes many class members
6 that benefit from wide spreads. The class here includes
7 CitiBank, it includes Deutsche Bank, it includes BNP Paribas.
8 All of them are large prime brokerages, often in the position
9 of receiving the spread, not paying it. The class includes
10 State Street Customer and others, who have a program under
11 which they bypass prime brokers and lend directly the other
12 side of the market. So they are in the position of receiving
13 the spread, not paying it.

14 There was a very similar conflict of interest in
15 Forex, your Honor. In Forex, again, the claim was spread
16 inflation. The claim was that the spread in the FX market was
17 too wide and that was hurting class members. But there were
18 members of that class that were repeating the spread. And the
19 court found that that was a fundamental conflict of interest
20 that barred class certification. Exactly the same conflict of
21 interest exists here, your Honor.

22 With that, unless the court has further questions, I'm
23 ready to yield the podium, or go to lunch.

24 THE COURT: I think, yes, now makes sense to take a
25 lunch break.

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1 Is 45 minutes enough time for both sides, do you
2 think? We can come back at, say, 2:15?

3 Great. All right. Thank you.

4 (Luncheon recess)

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AFTERNOON SESSION

2:15 p.m.

THE COURT: Mr. Paskin, right.

MR. PASKIN: Yes, your Honor. Good afternoon.

THE COURT: You're going to lead with predominance?

MR. PASKIN: I will.

THE COURT: Let me just make sure we have the phone line on and we're ready to go. The court reporter is ready.

MR. PASKIN: Whenever you're ready.

THE COURT: Fire away.

MR. PASKIN: Thank you, your Honor.

Good afternoon. Michael Paskin from Cravath on behalf of Morgan Stanley.

Before we talk about predominance, I just want to spend about two seconds revisiting one of the questions you asked in the morning about why the defendants didn't raise this issue at the motion to dismiss stage.

THE COURT: Yes.

MR. PASKIN: Obviously, and sort of as was the case in the NASDAQ litigation, at the motion to dismiss stage, yes, in our briefing we talked about the complexities of stock lending market and how the dynamics were very different on both sides of the market. There, of course, was a theoretical potential for conflict at that point. But there was no sort of actual realized conflict because we didn't know how the plaintiffs

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1 would or wouldn't propose to deal with it.

2 I could certainly hypothesize -- though, I guess it is
3 not really for the defendants to hypothesize -- there might be
4 ways in which they could have approached a class certification
5 motion that appreciated the complexities and nuances and
6 different dynamics on the two sides of this market and maybe
7 created two totally separate standalone models to deal with
8 that. I don't know. That might have been one way they could
9 have at least resolved the conflicts that we raised about
10 having this unitary model to measure and then allocate harm.

11 So, at the motion to dismiss stage, I don't think
12 there was sort of already -- one, it was sort of not a problem
13 that had presented itself yet. And I also just don't think
14 that in articulating the defendants' arguments to dismiss the
15 complaint, certainly under the legal standards where the
16 conflict can't merely be hypothetical, I don't think there
17 was -- it just wouldn't make sense for the defendants at that
18 time to have raised it.

19 THE COURT: OK.

20 MR. PASKIN: Thank you, your Honor.

21 THE COURT: Yes.

22 MR. PASKIN: Let me turn to predominance.

23 So it is pretty much an undisputed proposition that
24 class certification in antitrust cases rises or falls very
25 commonly on whether plaintiffs can prove classwide injury

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1 through common evidence.

2 Without quoting too many cases, that's what the recent
3 Rail Freight case in the DC circuit says. And in the Second
4 Circuit, one case, the Cordas case -- which actually is a case
5 that the plaintiffs cite in their opening brief -- they
6 describe it as whether injury in fact can be proved by common
7 evidence, which is a pretty good very brief synopsis of it.

8 So in antitrust cases, how is this done? Almost
9 universally. It's by looking and comparing actual prices paid
10 by a plaintiff or class members in the real world to some
11 prediction of but-for world prices. That is the comparison.
12 That is the basic comparison that is done in every case. While
13 the comparison is obviously also relevant to the calculation of
14 the amount of damages, there is no legitimate debate that it is
15 also fundamentally relevant to the issue of injury.

16 In the Cordas case, 502 F.3d at 107, the Second
17 Circuit said, The extent of the difference between the but-for
18 fee and the actual fee paid is relevant to the question of
19 damages, but it is from a comparison between the two that the
20 court would be asked to decide the question of injury in fact.
21 So it is a pretty basic proposition.

22 The cases that Mr. Olson cited -- Air Cargo and
23 Restasis -- Air Cargo in particular, that is the approach that
24 they used in that case to evaluate injury. It was looking at a
25 model of taking real-world prices and comparing it to some

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1 model of but-for world prices. So remarkably that fundamental
2 comparison is not what the plaintiffs propose here to evaluate
3 classwide injury and whether there is evidence to put forth
4 purported common evidence of classwide injury.

5 If you look at their slides, slides 19 and 21 from
6 their deck, they go through all of the different elements that
7 Professor Zhu used and some of the checks on that and whatever.
8 They talk about their different components of classwide injury.
9 None of those things talk about what we're going to compare
10 real prices that were actually paid by class members to an
11 actual model of but-for pricing. They have all of these
12 different approaches, and we're going to get into those. But
13 they don't do the most fundamental comparison in assessing
14 injury.

15 The truly remarkable thing about it is that they have
16 experts who do, do that. Drs. Asquith and Pathak, they do it.
17 They say they took the actual pricing data for their damages
18 model, for their but-for pricing model, they took the actual
19 prices that were paid in the real world, and they compared them
20 to their prediction based on their modeling of but-for prices
21 in the but-for world.

22 So, but the plaintiffs, they keep saying, Don't look
23 at that. Don't use that model. That is our damages evidence.
24 That is going to come at a later time. That is not our injury
25 evidence. But no matter how much plaintiffs say to us, you

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1 know, don't look behind that curtain, we're going to look
2 behind the curtain, and the court should look behind the
3 curtain, and the court is obligated to look behind the curtain.
4 Because regardless of how plaintiffs propose to set the terms
5 of the playing field for how to evaluate this question, the
6 defendants are also entitled to put forward evidence. There is
7 no question about that.

8 It's not just whether plaintiffs' evidence and our
9 critiques of it standing alone carries the day -- and I submit
10 that it didn't -- but it is also whether all of the evidence
11 put in by both sides on the question of injury carries the
12 reasonable, the preponderance standard required.

13 So one thing that the defendants are certainly going
14 to put forward in rebutting the plaintiffs' injury evidence
15 from Professor Zhu is the Asquith and Pathak damages model.
16 Because the damages model itself, when you just plug in the
17 numbers as would be done in any antitrust case, predicts large
18 numbers of uninjured class members. And when a model predicts
19 large numbers of uninjured class members, that's fatal. That
20 means no class gets certified. That is very clear from the
21 Aluminum case and others.

22 So, Mr. Wick is going to come back a little bit later
23 and talk about our critiques of the Asquith and Pathak model
24 and why the actual number of uninjured class members is much
25 greater and all of that. But the bottom line is, under

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1 anyone's analysis, Asquith and Pathak predict uninjured class
2 members, and the plaintiffs are saying, Don't look at that.
3 Don't look at that. Look at this other stuff that we have
4 presented that doesn't even address the fundamental question of
5 how do you look -- what's the difference between what is paid
6 in the real world and what is paid in the but-for world.

7 Before I get into your discussion of what is wrong
8 with Dr. Zhu's model, there is sort of a threshold issue, and
9 the threshold issue is what are the products that we're looking
10 at here. And as the slide here states, over-the-counter loans
11 offered by prime brokers in the real world and anonymous
12 platform loans that were offered by the likes of AQS, or that
13 they hypothesize would be offered in the but-for world, are
14 fundamentally different.

15 And implicit in any pricing comparison, the kind of
16 pricing comparison that goes on in every antitrust case is
17 understanding that the products for which you're comparing
18 prices are the same in the real world and the but-for world,
19 that the value received by customers is the same. Because if
20 the value received and the products are different, well, then
21 comparing prices doesn't make any sense because you're
22 comparing prices for two different things.

23 I thought Mr. Olson's Kayak example and for comparing
24 airfares was an interesting one, because the better analogy
25 here is that, in the real world, what prime brokers offer is

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1 sort of a luxury extensive travel service. You want to take a
2 five-star European vacation and you want that to include your
3 first class airline tickets and your hotels and shuttling back
4 and forth, and access to museums and dinner reservations and
5 all of those things. And your travel agent quotes you some
6 price for it, which may be high. And you can't then say, well,
7 on Kayak, there is an option here, and it says book your flight
8 or book your flight plus your hotel or your flight plus your
9 hotel plus your rent car, and if I click on that button, well
10 it's the same as what my travel agent is going to give me.
11 It's not.

12 THE COURT: I don't know about Kayak, but Expedia now
13 let's you do that. They have caught on. So the platforms
14 catch on to the bundling, and it can happen.

15 MR. PASKIN: It can happen. I think what I'm saying,
16 your Honor, is it still isn't the same. It still isn't the
17 same because, you know, maybe your travel agent is going to
18 give you the same flight, the same hotel, the same rental car.
19 But what about all of the other stuff? What about the dinner
20 reservations that you couldn't otherwise get? What about the
21 private driver that is going to take you wherever and get you
22 access to whatever special thing?

23 There are all sorts of ways in which the loans and the
24 services that are offered by prime brokers in the real world,
25 in this stock loan market, are bespoke. So without figuring

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1 out those differences and accounting for those differences, you
2 can't make a pricing comparison saying, well, what prime
3 brokers offer is no different than what you can buy on Kayak.

4 So the slide here goes through several categories of
5 that. The one that we're going to spend the most time talking
6 about is sort of the first two. This loan stability point.
7 Mr. Olson spent the most time on that, recall and rerate
8 protection.

9 So the importance of this is paramount, because let's
10 just talk about, like, why loan stability matters to hedge
11 funds, to borrowers. When you short stock the loan, the stock
12 lending is really just sort of an ancillary service. Hedge
13 funds aren't in the business of borrowing stock. That is not
14 what they are trying to do. That is not what their investment
15 objective is. Their investment objective is we want to short
16 stock, because we predicted the price of some stock is going to
17 fall because of some news or whatever. It is overvalued. They
18 have to borrow stock in order to do that because that is the
19 way the market works. Those are the regulatory requirements,
20 etc.

21 They have no idea when the price is going to fall of
22 the underlying stock. If they did, then, you know, or if any
23 of us did, we would all be geniuses and we would all be Warren
24 Buffet because we could just, you know, make these bets and
25 collect on them, and we wouldn't have to worry about any of the

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1 risk involved in investing. The hedge funds, they don't know.

2 They say, well, gee, we think Tesla -- they gave Tesla
3 as an example -- we think Tesla is a high flyer. We think it
4 is overvalue. We think that, you know, people are going to
5 come to realize that they are going to announce bad news,
6 something is going to happen to cause the price to drop. They
7 short stock to do that. And in order to do that, they
8 obviously have to borrow stock. They don't know if that news
9 is going to come out today, tomorrow, next week, next month, or
10 next year, but they need to maintain that borrow to maintain
11 their actual investment thesis, which is shorting Tesla. Their
12 investment theory is not borrowing stock.

13 So Tesla is a particularly good example because if you
14 had a hedge fund who just this week was shorting Tesla because
15 they thought that Tesla would hit a bump in the road and they
16 would profit from that short, and on Monday they were recalled,
17 guess what happened on Tuesday? On Tuesday, after Elon Musk's
18 announcement he was buying Twitter, Tesla's stock goes down
19 10 percent. So the hedge fund that was banking on some sort of
20 news, not knowing what it was or when it would be coming, but
21 they are looking for Tesla to drop, the hedge fund that got
22 recalled on Monday, they don't get to profit from their
23 shorting investment on Tuesday.

24 So that is the stakes here, and that is what really
25 matters to them.

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1 THE COURT: Right. I think the point that -- I'm sure
2 Mr. Olson will respond to this when he gets back up. The point
3 he was making is that the prime broker really seemed to be
4 emphasizing that. Yet there is not a whole lot of evidence
5 about how that it's not in the prime brokerage agreements.

6 I mean, correct me if I'm wrong, I haven't looked.
7 But what he said is, it's not in the prime brokerage agreements
8 how much this is worth, there is not anything in the
9 literature.

10 Is there other evidence that recall -- I agree,
11 conceptually, recall and rerate seem like important things, but
12 there doesn't seem to be anything that corroborates that.

13 MR. PASKIN: Well, here it is, your Honor. This next
14 slide --

15 THE COURT: OK. Sorry for being impatient.

16 MR. PASKIN: No worries, your Honor.

17 The top bullet is Mr. Olson's point, and it is what
18 they said in their brief. They say it's usually unnecessary
19 and of limited economic value. And what we say is the bullet
20 below that. The overwhelming evidence in the record shows
21 otherwise.

22 Now, with respect to the academic literature, they are
23 right. There is no specific academic literature that says
24 recall protection or rerate protection in stock lending has
25 this value that has been measured as X. There is also no

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1 literature that says it doesn't have this value. The
2 literature is silent on this issue.

3 So the fact that the literature is silent, most likely
4 because of the lack of data to analyze, to even address that
5 question, you know, that doesn't mean that it doesn't exist.
6 Here, in this case, we have the benefit of having been through
7 years of fact discovery, and the fact discovery was extensive
8 to say the least. 100 depositions, millions and millions of
9 pages of substantive documents, and literary hundreds of
10 millions of records of transactional data that is not available
11 to any academic studying the issue or anything like that. I
12 mean, this is first-ever type access to this kind of data.

13 So the fact record here paints a very different
14 picture than what Mr. Olson says. And to be clear, you know,
15 it doesn't even have to be recall and rerate protection. It
16 doesn't have to be universally important in the mark. But if
17 it's important and valuable to some or many class members,
18 that's a problem for class certification. Because for those
19 members, we're entitled to present the individualized evidence
20 that shows that they value it differently. If the plaintiffs'
21 models haven't accounted for those differences in value, they
22 can't make a fair price comparison. That affects both Zhu's
23 work and it affects Asquith and Pathak's work, which is why we
24 are addressing it up front.

25 So I'm going to try to get through some of these

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1 slides quickly. But we have an industry expert whose name is
2 Fabio Savoldelli. He spent 25 years in the shorting business.
3 He knows this stuff well. He didn't purport to do sort of
4 econometric analyses. He is an industry expert based on his
5 actual experience in the industry, and he gave his opinion,
6 which is many short sellers really value this.

7 The plaintiffs, they have no industry experts, not to
8 rebut Mr. Savoldelli. They have no industry expert to rebut
9 our lending-side industry expert, Mr. Pridmore. They just rely
10 on their sort of econometric guys who have studied markets, who
11 have been sort of outside observers to over-the-counter
12 markets. None of them has ever worked for a moment in stock
13 lending. They don't know the actual dynamics about how the
14 market works. They can theorize about it, and they have.

15 So it's kind of telling, when you have a case where
16 you put forward industry experts and your adversary doesn't.
17 It would be one thing if when they first filed their class cert
18 motion that they didn't have that. OK. But when they saw in
19 our opposition that we had industry experts on both sides of
20 the market, and then both in their reply and in their
21 sur-surreply they respond with zero, that is pretty telling.
22 Because the evidence is overwhelming about what these market
23 dynamics are, and it comes right out of the extensive fact
24 record here.

25 So AQS executives. AQS is obviously really important

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1 here because it is the primary target of the alleged boycott in
2 this case. AQS was trying to build an anonymous trading
3 platform for stock loans. They failed. Now, they recognized,
4 as they evaluated it, they recognized the importance of this
5 issue. And I'm not going to read the quotes for your Honor.
6 Your Honor can look at them and read our cites and all that.
7 But the one that I want to point out is from Mr. DePetris, the
8 top one, talking about recall and rerate protection as the most
9 highly valued elements of the product. The reason I want to
10 talk about that with respect to Mr. DePetris is he's not just
11 the founder of AQS. He was also a paid consultant to the
12 plaintiffs. The plaintiffs paid him over \$100,000 to help them
13 in this case. Notwithstanding that, he can't run away from
14 what he said contemporaneously about what actually matters in
15 this market and what AQS hoped they could and tried to, but
16 ultimately could not solve for.

17 Also really important, hedge funds. The hedge funds
18 here, they are the borrowers class. They represent the vast,
19 vast majority of all stock borrowing. And the quotes we have
20 here, which include declarations from hedge funds and
21 deposition excerpts, we have anonymized the names here to
22 protect the confidentiality interests of the funds. But your
23 Honor can look them up in the record based on the cites, and I
24 expect they will all be names your Honor recognizes. But they
25 are major players. Multi-billion dollar hedge funds, and these

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1 are all very senior people. So they all agree, the stability
2 of the borrowers and the stability of the price are critically
3 important to certain trading strategies. It is really not a
4 controversial point, and the record evidence all goes one way.

5 I will point out, your Honor, from plaintiffs'
6 presentation slide 98, they refer to in the middle of bullet
7 point a couple of hedge funds that they say would have been
8 early adopters of the AQS platform and the exhibit that they
9 cite on page 98. It's basically an AQS roadshow piece. It's a
10 slide deck that was presented for people to investigate AQS.
11 It wasn't actually about trading on AQS.

12 When your Honor compares the notes of what the actual
13 hedge funds executive's said from our evidence with what AQS
14 said about them as potentially using their platform, I think
15 your Honor will see that there is quite a difference between
16 what was actually happening and what these people actually
17 believed and what AQS was saying to potential investors in its
18 marketing materials.

19 Prime brokers also agree with this. I'm not going to
20 dwell on the prime broker evidence, but not only from the
21 defendant witnesses, but also from non-defendant prime brokers
22 who testified to the critical importance of loan stability. As
23 I have alluded to, loan stability is also an issue on which --
24 excuse me. I'm sorry.

25 Loan stability is also an issue on which the

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1 importance and value of it varies from class member to class
2 member. Dr. Zhu himself acknowledges that the value of loan
3 stability depends on the hedge fund strategy. Because, again,
4 if you're a high-frequency trader and you're shorting a stock
5 for a couple of hours, you don't care that you can get recalled
6 or related on a daily basis. But if you're shorting Tesla,
7 hoping that at some point in the next weeks or months or
8 whatever that, like, Tesla is going to hit a stumble and you're
9 going to profit from your strategy, you really care about it a
10 lot.

11 And the only way to determine whether a class member
12 values this -- and that goes to the question of whether a class
13 member would ever be willing to switch to a platform, whether a
14 platform is a viable option, whether a class member could
15 credibly threaten to go to a platform, and whether they could
16 exert any kind of pricing pressure under plaintiffs' but-for
17 scenario placed on a platform, depends on answering these
18 questions and valuing these issues.

19 So, to make it very clear, though, the declarations
20 and everything that we have here -- and there is no evidence
21 that the plaintiffs have pointed to going the other way. There
22 is no record evidence saying this stuff isn't proper important.
23 And even if the plaintiffs were able to put in sort of
24 anecdotal evidence to that effect, that only highlights the
25 problem here. It only highlights the differences with which

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1 class members view these services and value these services, and
2 why it is so important to account for them in any assessment of
3 injury and damages.

4 Now, plaintiffs also suggest that, well, AQS and
5 platforms, they can do this too, so there is really no
6 difference. What are you talking about? Again, that's not
7 what AQS believed. AQS, this guy Poliakoff, he was the head of
8 technology, and he wrote all sorts of white papers, you know,
9 analyzing the market and hypothesizing about ways in which AQS
10 could do it. The first quote comes from an e-mail of him, the
11 bottom one, it is quotes that come out of an extensive sort of,
12 you know, white paper he wrote analyzing the market. He says,
13 a multilateral anonymous system like AQS attracts unstable
14 supply, leading to excessive rerates and excessive recalls.

15 That's not us. That's AQS. That's AQS saying that.
16 They certainly understood the market they were operating in.
17 They were trying to solve for these problems, and ultimately
18 could not, but they certainly understood the way the market
19 worked.

20 THE COURT: And the next quote, the next two quotes on
21 that same page from him, though, AQS was vulnerable because AQS
22 wasn't offering recall and rerate protection, right?

23 But a platform that did might not have that problem?

24 MR. PASKIN: Well, the issue, your Honor, is that --
25 I'm going to get to sort of what AQS did, which is essentially

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1 the way there are other examples that deal with this. It's not
2 that there is -- there is a way that platforms manage and
3 allocate recalls.

4 We can switch ahead, you know, a slide because, what
5 AQS called it, their co-founder, they called it the wheel of
6 misfortune. It's not really a very flattering term for their
7 method of doing this, because with AQS, anything that comes
8 into the system has to come out of the system. It's a closed
9 system.

10 So if a lender in the system issues a recall, a
11 borrower in the system has to get hit with it. It's a
12 one-to-one relationship, and they had an algorithm that
13 basically decided who gets hit with it today.

14 On the other side, you know, there are a couple of
15 things that prime brokers did and could do to protect their
16 clients. Number one is they could play favorites. They could
17 say, I'm not going to let my really important hedge fund
18 client, you know, get hit with a recall because I know that
19 they are doing this investment strategy. And I know a recall
20 would be really bad for them and, therefore, we're going to
21 make sure that even if the lender recalls us, we're going to
22 replace it.

23 The other thing that hedge funds can do -- excuse
24 me -- that prime brokers can do is they have other sources.
25 Ms. Yablon alluded to this in the beginning of our

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1 presentation. Hedge funds don't just pass them through. They
2 can go -- the prime brokers -- I keep missing that -- but the
3 prime brokers, you know, they also have clients who were
4 largely long at stocks and who have margin accounts. And the
5 margin agreements with prime brokers allow the prime brokers to
6 use the long shares of other clients to satisfy the shorting
7 needs, the borrowing needs of other clients.

8 So they have -- they call this rehypothecation. They
9 can go in and take client A's long stock and go lend it to
10 client B, which would be completely outside of the AQS system.
11 The AQS system has no ability and no platform, that's just a
12 mechanism for matching up lenders and borrowers, with respect
13 to stock lending, can do this.

14 The other thing that prime brokers can do, which, you
15 know, is sort of a last resort but sometimes happens, the prime
16 brokers can just go into the market and buy the stock so they
17 can lend it to the hedge fund. They don't want to do that
18 because that is the most expensive recourse for them. But in
19 order to protect their clients and to protect the trading
20 strategies of their clients, that is what they do sometimes.

21 AQS doesn't provide those services. AQS is a
22 completely neutral processor of inputs and outputs going from
23 one to the other. So whatever goes into the system has to come
24 out of the system. They don't negotiate with lenders to try
25 to, you know, convince them not to recall, which prime brokers

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1 do. They just take it and pass it on, and the wheel of
2 misfortune decides who is the unlucky hedge fund that gets hit
3 with it today.

4 By contrast, this next slide -- I'm not going to spend
5 much time on it -- but prime brokers in the real world, they
6 don't pass recalls on. You've got this quote from JPMorgan,
7 could confidently state we don't recall clients in the U.S., at
8 all. That's pretty compelling.

9 The one from UBS above that, 73 recalls for UBS in one
10 week with a value of over \$100 million, none were passed on to
11 hedge funds. That is the prime broker's service at work in the
12 real world. That is a service that not only can't and wasn't
13 replicate -- couldn't be and wasn't replicated on AQS. It's a
14 service that can't conceivably be replicated on any kind of
15 anonymous trading platform.

16 THE COURT: Do the prime brokers agree with their
17 clients in writing that they are going to provide that?

18 MR. PASKIN: No. No, they don't. What the prime
19 brokerage agreements speak to is they speak to -- they speak to
20 the right to recall and the right to rerate. I mean, the
21 agreements say that those are things -- and that's the way the
22 market operates, because it's what they call an overnight
23 market. Every day there is a risk that borrowers take that
24 they could get recalled and they could get rerated. And so the
25 question and where the relationship matters and the history

1 matters is -- and that's in the quotes that are sort of
2 throughout our papers, when he talks about a marriage and
3 knowing your counterparty.

4 That is what is so important about knowing your
5 counterparty, because even though they have the right, there is
6 all of this evidence that shows AQS, you know, oh, things are
7 rerated day after day after day after day. Stocks are
8 recalled, even general collateral stocks, recalled from
9 borrowers the day after they borrow it.

10 (Continued on next page)

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1 MR. PASKIN: It's inconceivable that a general
2 collateral stock should ever be recalled, period, because
3 there's more supply than demand. And so the notion that a
4 general collateral stock gets recalled on AQS, means they're
5 not even trying to provide the same service. And when it comes
6 to hard to borrow, it's obviously very different. It's not as
7 simple as they say, where, oh, you can just go -- if you get
8 recalled, you just go out and borrow the shares somewhere else.
9 You can't do that with hard to borrow.

10 The hold point to hard to borrow and the reason why
11 it's expensive to borrow, you know, hot stocks, is because
12 there's not enough supply to meet the demand. So if you get
13 recalled from your position as your hedge fund, you're most
14 likely out of luck, unless your prime broker can figure out a
15 solution for you. And AQS or any anonymous platform, they
16 can't figure out a solution for you.

17 THE COURT: I get the point about the anonymous
18 platform being your view that they're different, if you want to
19 skip ahead to another --

20 MR. PASKIN: OK.

21 THE COURT: I'm not saying I agree, I just understand
22 the point.

23 MR. PASKIN: I understand. The last point that I'm
24 going to make on that is, Dr. Asquith and Pathak, purported to
25 do an analysis of recalls. And they say, well, oh -- and the

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1 plaintiffs say in their briefs, recalls on platforms and
2 recalls from prime brokers are really the same, look at the
3 data. Well, the data they looked at is the data of lenders
4 issuing recalls to prime brokers, and those are not the same as
5 recalls getting passed along to short sellers, because the
6 short sellers don't have them passed along by prime brokers.
7 And on AQS, it's a one-to-one relationship. Everything going
8 in is coming out.

9 They also make points about potential in their papers
10 and in argument about, well, you could have term contracts to
11 solve this. Well, if you need to establish, you know, a short
12 for two weeks or two months or two years, well, you can just
13 contract for that length of time.

14 Again, we all wish that we could know with perfect
15 precision how long you need to get the short on, but that's not
16 how the world works, and that's why the mark works the way it
17 does. The stock that may go down and you may be able to cover
18 your position tomorrow, maybe next month or maybe next year,
19 but you can't sort of say in advance, I'm going to need a short
20 here for two weeks and give me a contract for a two-week short.
21 It doesn't exist because it doesn't make sense in the
22 short-selling market.

23 Now, briefly on lenders. Loan stability also benefits
24 lenders, because lenders who have reputations for stability,
25 they can command better prices or attract more borrowing.

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1 Mr. Pridmore, our industry expert talks about that.

2 Mr. Cestaro and Mr. DePetris from AQS talk about that. And
3 again just as with Mr. Savoldelli, the plaintiffs has no
4 industry expert, no expert with any stock lending expertise at
5 all.

6 A couple of other quick points on just market
7 differences. Lenders, they can also benefit cause for lenders,
8 GC utilization really matters. They've got all of this GC
9 stock sitting around. They can leverage their ability to give
10 access to prime brokers for hard to borrow to get prime brokers
11 to borrow more general collateral from them, which the lenders
12 really want.

13 On a platform, every trade is its own unit, and
14 there's no linkage or anything like that. It's just you put
15 into the platform what you want to put in, and the platform
16 will allocate it how it allocates it.

17 So Dr. McCrary did a data analysis from locate data
18 which confirms this point about short sellers. Short sellers
19 also, they get preferential access to hard to borrow. I sort
20 of covered that before in the relationship issues. Great hedge
21 fund client, they go to their prime broker and JP Morgan says,
22 sure, we'll get you access to that stock. It's really hard to
23 come by right now, but come whatever, we will figure out a way
24 to help you make your investment.

25 Their additional services that all or part of the

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1 bundled package, there's no dispute that there's a bundle
2 package. The only issue here is that the plaintiffs' expert
3 value, the other elements of the bundle as zero. Whatever the
4 value is -- and this goes for the loan stability and all of the
5 other stuff -- whatever the value is, it's not zero. It's
6 something greater than zero and it varies from class member to
7 class member, and it requires an individualized inquiry to
8 figure out how important it is whether a platform is a viable
9 alternative, all of that.

10 So there was some talk during plaintiffs' presentation
11 about confidentiality and transparency and also they referred
12 to this SEC proposed rule. So the issue is not one of an
13 anonymity on a platform. A hedge fund that goes on a platform
14 and borrows some huge quantity of stock. It's not so much that
15 they care that their name is being disclosed. Oh, Millennium
16 Partners just borrowed, took on a huge borrow so they're taking
17 on a huge short position.

18 It's the market for shorting is so illiquid, and the
19 size of the trades are so big, that just the existence of the
20 trade being reported in realtime on AQS or any platform means
21 that everyone in the market knows somebody just took out a big
22 short position on Tesla. And that gives the market
23 intelligence about the trading position of someone. Maybe it's
24 Millennium. Maybe it's a different hedge fund. Maybe it's
25 Steve Cohen. Who knows who it is, but that gives the market

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1 the ability to put on a short squeeze. It impacts the
2 profitability of shorting for the hedge funds, and hedge funds
3 don't like that. It goes to the same issue that they hire
4 Davis Polk about the complaint. They don't want anybody to see
5 their trading activity and be able to decipher their strategies
6 even after the fact. Let alone how bad that would be if it was
7 happening in realtime, the moment that they're borrowing.

8 And, in fact, the SEC, highlights this problem that
9 these dynamics, by increasing short selling transparency, it
10 decreases short selling profitability, so stock lending here is
11 the tail wagging the dog. The short sale is what matters to
12 the hedge fund. The stock borrowing is the ancillary service
13 that they need to engage in order to do it from a regulatory
14 perspective.

15 Let's turn a little bit to Dr. Zhu. Just to sum up on
16 the product difference. Dr. Zhu doesn't compare the product
17 differences. Dr. Asquith and Pathak don't. They don't value
18 them, and it's clear that these services, these differences
19 matter and are valuable, and there is no apple to apples
20 comparison. That's a fundamental flaw, and it invites all
21 sorts of individualized inquiries, class member by class member
22 who we would march through a trial explaining the value of
23 these things, how much they're worth, what they would pay, why
24 it's important to them.

25 The plaintiffs say, well, none of that matters because

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1 we have this theory that says that the price on a platform is
2 gonna have this carryover effect and reduce prices on the
3 over-the-counter market as well.

4 They say it's a world of choice. Everybody gets to
5 choose. Everybody wins. You can trade over-the-counter if you
6 want, but your prices will be lower, and all of the stuff that
7 you no longer get through over-the-counter trading because the
8 prices have come down to eliminate those additional services,
9 well, you'll just buy them separately. We're not going to
10 bother to value what they are, but you'll just buy them
11 separately and everyone will come out ahead.

12 It just doesn't work. As a basic matter of sort of
13 antitrust economics, if platform loans and over-the-counter
14 loans are either across the board or in some instances not
15 valid substitutes for one another, then they're whole sort of
16 price effect carryover theory falls apart. They have to be
17 replaceable or else it doesn't work.

18 So Dr. Zhu, slide 35 here. It actually looks kind of
19 similar to plaintiffs' slide 60. What we don't agree with them
20 that Professors Asquith and Pathak put forth a just and
21 reasonable approach to calculating damages. A lot of the
22 checkmarks are the same because Asquith and Pathak approach
23 actually does try to address the right question. It takes real
24 data, real prices in the actual world, and compares it to an
25 estimate of what prices would be in the but-for world.

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1 THE COURT: As I understood what they were saying
2 though is that's not Dr. Zhu's purpose. Here's there to prove
3 impact, not calculate damages. It makes sense that there would
4 be Xs in those boxes.

5 MR. PASKIN: Well, it comes back to a couple of
6 things. First of all as I said at the very beginning, your
7 Honor, antitrust case after antitrust case looks at the
8 question of impact by asking the question, What did you pay in
9 the real word, and what would you have paid in the but-for
10 world?

11 Because here, Asquith and Pathak's model and Zhu's
12 model disagree. We can impeach Zhu's model with the Asquith
13 and Pathak model which is better because it actually tries to
14 answer the right question. Zhu's model is -- I'm going to get
15 into it -- it's sort of a theoretical sort of mind exercise,
16 but it doesn't use the right inputs to answer a relevant
17 question. It's basically saying, well, if you assume that
18 prices are a function of search costs and search costs come
19 down, well then lo and be hold, prices are going to come down.

20 It's just a truism, but it doesn't actually apply to
21 the dynamics of this market, and there's no way to take actual
22 transactions, actual class members trades and measure them in
23 any way as to whether they've been injured or not, because the
24 damages question is just putting a finer point on the question
25 of like, Is there injury above or below zero? And if the

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1 damages model predicts that lots of the injuries are zero or
2 below, well then an injury model that says, well, everybody's
3 injured obviously is wrong.

4 The Zhu model is really -- it's like in the *Aluminum*
5 case with Judge Engelmayer. It yields -- this is a quote from
6 *Aluminum*. "It yields false positives, and it masks uninjured
7 class members by using an averaging mechanism to allocate
8 injury." That's what it does, and it's because it doesn't even
9 attempt to answer the right question.

10 There can be no dispute that in assessing injury the
11 right question is, Did you pay more in the real world or in the
12 but-for world? And if that question can't be answered based on
13 the model on a individual basis, well then they can't say,
14 well, it applies to the class as a whole.

15 THE COURT: So why don't I just ignore Dr. Zhu and
16 just look Asquith and Pathak?

17 MR. PASKIN: Go for it, your Honor. If you do that,
18 the answer is, class cert has to be denied because Asquith and
19 Pathak's model, even without the adjustments that Mr. Wick is
20 going to talk about that are based on the actual record
21 evidence in the case as opposed to their totally unrealistic
22 assumptions, Asquith and Pathak's model predicts 30 percent of
23 class members are uninjured. And if you make adjustments,
24 their numbers go through the roof.

25 So, yes, go ahead, your Honor, and rely on Asquith and

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1 Pathak and push Zhu aside because Asquith and Pathak attempt to
2 answer the right question, and the answer that we get is class
3 certification has to be denied because individual issues
4 predominant, because it identifies many, many, many uninjured
5 class members.

6 Here's one of my favorite charts. This is the real
7 world pricing data. The actual transactional data are these
8 blue bars. And as everybody concedes, in the real world of
9 over-the-counter loans, pricing of stock loans has a wide
10 dispersion. There's light of price disparity, covers this
11 whole map.

12 Zhu's model uses this little red range in the middle,
13 that's what Zhu says are his, quote, unquote, real world
14 prices. Well, they're obviously not real world prices. In
15 fact, only 3.4 percent of real world prices fall in Zhu's
16 range; 69 percent are lower, 27 percent are higher. It's not
17 even remotely real world prices.

18 And so what's the plaintiffs' response to that. They
19 say, well, it's okay that Zhu didn't use actual real world
20 prices, because he got his assumption about his real world
21 pricing range from Asquith and Pathak, and they analyze the
22 real world pricing data in order to give him that assumption.

23 Well, that's interesting because in their own model,
24 Asquith and Pathak use the actual real world prices. They use
25 all of the stuff that makes up these blue bars. But for

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1 whatever reason for Zhu, they gave an average, and Zhu used an
2 average to conduct his sort of mathematical exercise. It's
3 obviously wrong.

4 The average -- it might match -- it might give the
5 right answer for some class members, but it doesn't give the
6 right answer for all class members because they there are class
7 members whose real world prices are above, below and miles away
8 from Zhu's estimate or assumption about real world prices. So
9 at best what plaintiffs are saying is because Asquith and
10 Pathak were involved and used real world pricing data, it's a
11 good average.

12 Well, if it's a good average, that's not enough. Just
13 as in the *Aluminum* case, averaging here masks all sorts of
14 uninjured class members here because they're all sorts of
15 people who are not average, all sorts of traders who are not
16 average.

17 Just to dig into a little bit of why is it that Zhu
18 comes up with this. It goes into this and Mr.Olson was talking
19 about it earlier. Zhu makes these assumptions about whether
20 customers fast or slow, and I found the chart that he put up,
21 sort of the math that he put up, page 26 of their slides.

22 Well, it just sort of proves the point that this is
23 just a mathematical exercise. Yes, if you assume that prices
24 are a function of nothing other than search costs, and you also
25 assume that search costs decrease such that the proportion of

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1 fast to slow traders goes from 28 percent to 50 percent, well
2 of course the answer under that scenario is going to be that
3 everyone is injured. That's like saying, well, three minus two
4 is always one. Of course it is, but it doesn't actually study
5 the actual market data, and it tells you nothing about whether
6 actual class members are injured.

7 It doesn't even tell you an average on it. It tells
8 you nothing at all. It doesn't factor in any of the other
9 things that goes into pricing. It assumes that pricing is
10 nothing other than a function of search costs, and it's not.

11 The other thing about Zhu's model is to the extent
12 prime brokers do know when customers -- when clients are fast
13 or slow, Zhu's model is binary. Mr. Olson made a comment that,
14 well, Zhu uses this fast and slow, but really it's sort of a
15 continuum and, whatever. In Zhu's model, there are only two
16 answers. You can be fast or you can be slow. And if you're
17 known to be fast, by definition Zhu's model assigns injury --
18 assign damages as zero, assigns injury as zero. Because if a
19 prime broker knows that the client is able to sort of price
20 shop, if the prime broker knows that the client is checking on
21 Kayak, then the prime broker is forced to give that client a
22 competitive price. That's what Zhu's model tells us.

23 And the only reason that Zhu's model works, is because
24 Zhu makes an assumption that the prime brokers don't know, and
25 that's wrong, because the evidence -- turning to the next

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1 page -- overwhelmingly shows that is not the case. There are
2 declarations from the prime brokers themselves talking about
3 this, talking about knowing which clients are multi-primed or
4 not, which is sort of the same as saying whether they're fast
5 or slow. There's no evidence rebutting any of that.

6 They complain that, well, we've put in declarations
7 from witnesses from our clients. Well, of course we did, but
8 there's no evidence pointing the other way. There's nothing on
9 which to challenge any of that evidence. And the hedge funds
10 themselves put in evidence talking about using one prime broker
11 against another in order to price shop. So there, the prime
12 brokers obviously know that the hedge fund is multi-primed and
13 price shopping because the hedge fund is trying to leverage
14 that fact to get better prices.

15 And Dr. Asquith and Dr. Pathak, or I guess Dr. Asquith
16 in his deposition admits that this is the case, that you have
17 to deal with multiple prime brokers, and the prime brokers
18 learn about what one another are doing and so that gives this
19 pricing insight and this price transparency insight to the
20 prime brokers. So that's why the first sort of half of Zhu's
21 analysis or the first half of the required analysis, what are
22 real world prices, Zhu doesn't use them.

23 Then the question is, I have to compare real world
24 prices to but-for prices. Lo and be hold, Zhu doesn't use
25 but-for prices either. He says that his model examines an

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1 internal step and should not be interpreted as the prices
2 specific class members would pay. Professors Asquith and
3 Pathak do that.

4 And Professors Asquith and Pathak in their depositions
5 say, yes, in fact, we did do that. We model the but-for world,
6 where Professor Zhu did not model the but-for world. So both
7 sides of the comparison. Are you comparing real world prices,
8 no. Are you comparing there to a prediction of but-for world
9 prices? Again for Dr. Zhu, no.

10 A totally separate flaw with Dr. Zhu's model. He has
11 no search cost model for the lender side of the class. He says
12 in his report, he says, "Well, quantitatively it would be the
13 same for the other side of the market, where beneficial owners
14 enter into lender transactions with the dealers." As Mr. Wick
15 mentioned before, if that's what happens on the other side of
16 the market, that proves that the but-for world harms lenders
17 rather than helps them. Because as Mr. Wick explained, when
18 lenders are lending to prime brokers, the prime brokers are the
19 ones who incur the search costs. The SEC recognizes this.
20 It's on the slide. Dr. Asquith and Pathak recognizes this.

21 If the prime brokers have their search costs coming
22 down, they can borrow from lenders for less, and that means
23 lenders are getting harmed. So they don't have a model at all
24 that explains that. And to the extent you want to apply sort
25 of an extension of the search cost model that Zhu used for

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1 borrowers to lenders, it means that they lose because they
2 can't demonstrate any harm, let alone harm to every lender.

3 THE COURT: But do lenders do any searching now? I
4 thought it generally went just in the other direction, that it
5 was the borrowers who were the ones who were sort of taking the
6 first step.

7 I know you're saying the prime brokers do the
8 searching for them. It sort of switches the direction of the
9 transaction as I understood you were explaining it?

10 MR. PASKIN: It's not so much that it switches the
11 direction as that it sort of flows through. You can't say
12 flowing through from left to right, from lender to prime broker
13 to borrower reducing search costs on this part of it brings
14 costs down, but on this part of it somehow brings costs up. It
15 just doesn't work that way.

16 And to the question of, like, how much visibility do
17 lenders and borrowers -- do lenders and prime brokers have into
18 each other. The lenders are largely, not entirely, but are
19 largely represented by these other intermediaries, agent
20 lenders, huge, huge, huge custodial banks and institutions that
21 aggregate lender portfolios and negotiate with prime brokers
22 over pricing, etc. So, yes, do agent lenders such as BlackRock
23 have visibility into multiple prime brokers, you bet they do.
24 They deal with all of them.

25 THE COURT: I guess it's a slightly different

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1 question, maybe I'm just not asking it correctly. Are the
2 lenders really shopping themselves the way that the borrowers
3 who are wanting to do a short sale in a particular stock needs
4 to then find somebody who will lend it to them?

5 MR. PASKIN: Certainly with agent lenders involved
6 they are because you have huge institutions, whether it's the
7 defendant prime brokers or the agent lenders like Northern
8 Trust and BlackRock and State Street, etc. There is a lot of
9 negotiation, and they're all dealing with everybody, so I hope
10 that answered your question, your Honor.

11 THE COURT: Sort of. It's okay.

12 MR. PASKIN: Is there anything else I can help you
13 with?

14 THE COURT: No, it's okay.

15 MR. PASKIN: Just a few more seconds on the SEC
16 because they make a big issue in their sur-surreply brief and
17 also in this morning's presentation about the proposed rule
18 from the SEC. They say in their brief it fully vindicates
19 plaintiffs' impact showing. It does not.

20 So the SEC -- I'll grant them, the SEC proposed a rule
21 that would allow for post-trade disclosure of stock loans, and
22 the SEC wrote this big fat report that analyzes that issue and
23 ultimately the SEC seem to believe that that would be a good
24 development for the market. Fine.

25 The SEC says nothing to the effect that all traders in

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1 the market will benefit from this. In fact, if you read the
2 details of what the SEC analyzed, and we did, maybe they
3 thought that because it was coming in at the last minute we
4 wouldn't look at it, but we did. There's like numerous places
5 where the SEC in doing their robust analysis talks about there
6 being winners and losers from these sorts of developments.

7 If there's going to be transparency in the market
8 beyond what there is now, then some lenders are going to be
9 worse off. Some borrowers are going to be worse off. There
10 are going to be implications for short sellers because of the
11 disclosure of their trades. All of that says that there are
12 winners and losers. The SEC says that there are winners and
13 losers by these kind of developments. It's only Dr. Zhu who
14 says there are no winners and losers. The SEC says there are
15 winners and losers.

16 And once there are winners and losers from any kind of
17 change or proposed change to a market, it requires
18 individualized inquiry to figure out who the winners are and
19 who the losers are, and that's what we will put on robust
20 evidence at trial for not just the handful of examples we have
21 here for dozens, hundreds, thousands of class members about how
22 all of these factors impact them, and how it alters the
23 analysis.

24 So I just want to spend two seconds on Dr. Zhu's
25 yardstick analysis. I don't think it's worth much time because

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1 it's not actually an analysis of the stock lending market, and
2 it's really just sort of like a sanity check that he says,
3 well, look at these other markets where electronic trading
4 happened and it was pro-competitive.

5 So even if that's the case, all of the support there,
6 there is nothing in that, that asks or answers the question
7 that all traders in the yardstick markets benefited. It
8 doesn't say that at all. It all talks about generalize
9 benefits. If you bring costs down, there's going to be
10 generalized benefits to the market. It doesn't do the sort of
11 analysis that's required for class certification that is, Does
12 this apply to everybody or are there individualize inquiries
13 that would have to be done in order to figure out if a
14 particular trader -- if a particular class member benefits or
15 not?

16 And the yardsticks are not remotely comparable. I
17 mean, the things that he talked about, the U.S. stock market,
18 corporate bonds, whatever. The fundamental characteristics of
19 stock lending are these things. It's a long term. It's the
20 marriage. It's not fungible. These are bespoke products.
21 There's incredibly small liquidity and incredibly big trade
22 sizes. Like that's not what these other markets look like at
23 all.

24 And I thought, you know, in particular the example --
25 now I forget if it was Mr. Olson or Mr. Brockett who gave the

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1 example of renting -- he compared the stock market. He says,
2 well, it's stocks. Whether you buy them or you borrow them,
3 what's the difference? It's like renting or buying a house.

4 It's not like that at all. It's not like that at all.
5 When you borrow a stock, you're not betting that it's going
6 to -- that the price is going to go up. You're not borrowing
7 it for the same purpose that you buy a stock. You buy a stock
8 because you think the price is going to increase, and you own
9 it to have the risks and benefits that go with it increasing.

10 You borrow stock because you're shorting the stock.
11 You think the price is going to decrease. You have the
12 complete opposite risk and benefits. And from the lenders
13 perspective, there's no transfer of risk at all because the
14 lender doesn't give away the sort of profit or loss that it
15 will ultimately get on the stock. It's just lending it out for
16 a few basis points.

17 So the analogy is completely misplaced, and I thought
18 it was kind of a funny one. But with that, I don't think
19 there's anything else that needs to be said about the yardstick
20 analysis, unless your Honor has any questions.

21 THE COURT: No. Go ahead.

22 MR. PASKIN: Thank you, your Honor.

23 MR. WICK: Your Honor, are you able to continue or
24 would you like a brief break?

25 THE COURT: No, I can keep going.

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1 MR. WICK: Good afternoon.

2 Mr. Paskin explained why the plaintiffs' so-called
3 common proof of classwide injury is, even standing by itself,
4 incapable of proving injury to all class members, each one of
5 the thousands of class members. There's an additional reason
6 why individualized inquiries into injury will predominant at
7 trial, and that is that the defendants will present class
8 member by class member evidence to disprove the generalized
9 broadbrush claims that everybody was injured in individual
10 cases.

11 Let me start with two quick background legal
12 principles. The first is that the defendants' individual class
13 member by class member alone can defeat predominance.

14 Mr. Brockett suggested that if they have some common proof,
15 then a reasonable juror might be capable of believing their
16 common proof. That's enough. They win. It's not like that,
17 your Honor.

18 If it is equally true that a reasonable juror might
19 accept the defendants' individualized class member by class
20 member showing at least in some cases as disproving the
21 generalized showing of common injury, well then as long as a
22 reasonable juror could believe the defendants' individualized
23 evidence, the defendants has an absolute right to present that
24 evidence at trial. Defendants have the right to present
25 exactly the same evidence at a class action trial that they

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1 would if there were individual actions brought. If one class
2 member at a time, they had come and sued and we would have a
3 right to put on individualized evidence that they were
4 unharmed, under the Rules Enabling Act and Due Process and the
5 Seventh Amendment, we have exactly the same right to present
6 that individualized evidence at a class action trial.

7 And as the Courts on this slide have all recognized,
8 if the defendants are entitled to make large numbers of class
9 member by class member showings that there was no injury, those
10 defendants showing will predominant and will defeat class
11 certification.

12 A second background legal principle is that the
13 plaintiffs bear the burden of showing that they can identify
14 and remove all unharmed class members at or before trial. Why
15 is that? Because as the DC Circuit explained in *Rail Freight,*
16 *III*, uninjured class members cannot prevail on the merits, so
17 there claims must be whittled away as part of the liability
18 determination.

19 Under the Rules Enabling Act it cannot be that class
20 certification will result in even one unharmed class member
21 prevailing at trial. They all have to be eliminated, there's
22 no option. And so the plaintiffs say, well in their papers,
23 well, if it's only a small number of class members that are
24 unharmed, that doesn't necessarily defeat class certification.
25 Well, that depends.

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1 If there are a small number of unharmed class members
2 and it's very easy to identify them. You can identify and
3 exclude them without a lot of individualized inquiry, then it's
4 true, a small number of unharmed class members won't
5 necessarily defeat predominance. But even if there are very
6 few class members that you suspect will ultimately turn out to
7 be unharmed, if you have to go through the process of searching
8 for them one by one, if the defendants would be entitled to put
9 on proof one by one that each of them wasn't harmed, then even
10 if you predict that at the end of the day very few will turn
11 out to be unharmed, the mere act of searching for them, the
12 mere act of looking for them, the process you have to go
13 through to make sure you've identified all of them, that will
14 defeat predominance, and that's what Judge Schofield explained
15 in *In Re Forex* in the quote at the bottom of the page.

16 THE COURT: What are you looking for in terms of who
17 you want to exclude from the class? Is just the calculation of
18 their damages or is it some other characteristics?

19 MR. WICK: The first thing, your Honor, that we're
20 looking for is non-users of platforms who would not benefit
21 from the existence of a platform. So we would put on class
22 member by class member evidence at trial to show that many,
23 many class members would not use anonymous platforms even if
24 they existed. And furthermore, that many, many class members
25 are not credible users of platforms. They are not viable users

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1 of platforms. And as a result, they wouldn't benefit at all
2 from the existence of a platform. They could not leverage the
3 threat of moving to a platform if platform trading obviously is
4 not viable or credible for them.

5 We know that a large number of such class members are
6 likely to exist. We know that a large number of non-users are
7 likely to exist. Professor Savoldelli explained that in his
8 industry expert report. It's undisputed or it's un-rebutted.
9 Mr. Pridmore said the same thing about the beneficial owner
10 subclass. He said many of them would not use a platform, and
11 the plaintiffs have never attempted to controvert either
12 Mr. Savoldelli or Mr. Pridmore's opinions in that regard.

13 In fact, Dr. Zhu, the plaintiffs' expert agreed that
14 even in the but-for world most trading would occur off
15 platform. He said in his reply report, platforms do not
16 capture a majority share of the stock lending market in the
17 but-for world. AQS concurred. AQS did not see anonymous
18 platform trading taking over the market. They said, we see
19 ourselves capturing 10 to 15 percent of the market. The
20 plaintiffs --

21 THE COURT: Doesn't that mean though that they just
22 thought there were going to be other competitor platforms to
23 them?

24 MR. WICK: There weren't any.

25 THE COURT: I know there weren't, but there could be.

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1 MR. WICK: Nobody other than AQS attempted to launch
2 one in the United States. I don't see any indication in the
3 evidence that that's what they were thinking when Mr. Conley
4 said that.

5 THE COURT: I think the plaintiffs would say that that
6 was the defendants' fault.

7 MR. WICK: So they've accused us of boycotting AQS.
8 There was nothing else in the United States to boycott. Nobody
9 even attempted to launch anything to boycott. SL-x --

10 THE COURT: That's why we're here. That's why when
11 your colleague gets up and says that, liability is irrelevant
12 to the class certification decision, it's hard for me to take
13 that. It's not credible to say that.

14 MR. WICK: With respect to whether liability is
15 relevant to the predominance analysis, in every one of the
16 antitrust cases in which class certification is denied, it is
17 always true that the evidence on the existence of liability is
18 going to be common and that is never dispositive.

19 What is generally dispositive in antitrust cases is
20 whether the evidence on injury will be common or whether class
21 member by class member evidence will be necessary on injury.

22 So as I understand it, even Dr. Zhu is agreeing that
23 platform trading is not capturing the majority share of the
24 market. So what do the plaintiffs say about this. They say
25 that even if a large percentage of the market does not use

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1 platforms, everybody is at least a potential user, and
2 everybody could credibly threaten to move their business to a
3 platform and they could use that threat to leverage better
4 prices from their prime brokers.

5 Well, defendants case at trial would be to show on a
6 class member by class member basis that that's not true for a
7 great many class members. We would put on evidence at trial to
8 show that many class members just aren't viable users of
9 platforms, and I'll give you some examples.

10 The first example consists of class members who had
11 insufficient size to justify the cost of signing up for and
12 using a platform. So if your total shorting fees are small and
13 the costs, just the fixed cost of signing up for a platform and
14 paying its annual subscription fee greatly exceeds your total
15 shorting fees, then you are not a viable platform user and your
16 prime broker knows it and you get nothing. You get nothing out
17 of the existence of platform trading. And as we'll see in a
18 minute, there are many such members of the proposed class.

19 THE COURT: Right. Even taking these categories, why
20 does this have to be on an individual basis? Why wouldn't you
21 just say, the platform that the plaintiffs are asking for is
22 not viable because the market includes people who have one or
23 more of the following five characteristics; and therefore it's
24 a common issue that these people exist, that these proposed
25 class members exist, and therefore what the plaintiffs are

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1 arguing for fails.

2 MR. WICK: Well, if the plaintiffs wanted to agree
3 with us that everybody who falls into one of these five
4 categories should be excluded from the class, they would be
5 excluding about 90 percent of their proposed class and there
6 wouldn't be much less of it. I don't think that they're
7 offering to do that.

8 The point is to identify who fits and who doesn't fit
9 into these categories. You need individualize witness
10 evidence. There's no model out there. They can't run some
11 algorithmic model that tells you exactly for who would use a
12 platform and who wouldn't. They can't run some sort of
13 algorithmic model that tells you who is a credible platform
14 user and who isn't. All that has to be done by putting on
15 witness testimony one by one about hedge funds what they are,
16 what they look like, what they do.

17 THE COURT: You're jumping ahead of what I'm talking
18 about. I think what you're saying is because these five or
19 more types of characteristics exist, that the platform model
20 that the plaintiffs are arguing for isn't viable; and
21 therefore, their whole argument about what the defendants have
22 been doing is -- it essentially defeats causation which is a
23 common issue across the class.

24 What I'm asking is -- I'm not talking about damages.
25 I'm talking about the viability of the plaintiffs' theory of

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1 the conspiracy and what the conspiracy caused, and it seems to
2 me like you could just argue these things as defeating the
3 conspiracy and causation on a classwide basis.

4 MR. WICK: That's not what I mean to be arguing, and
5 if I've given you that expression, I've expressed myself badly.

6 THE COURT: I wasn't suggesting that.

7 MR. WICK: I am assuming for the purposes of this
8 argument that there is a viable platform, that they do get to
9 15 market share or 20 percent market share or whatever, and
10 that is viability and there is an operational functioning
11 platform out there in the market. I'm saying even if that's
12 true on a class member by class member basis, we will
13 demonstrate that many class members wouldn't have used that
14 platform; and furthermore, are not credible users of that
15 platform.

16 And if they're not credible users of the platform,
17 they don't get any benefit from the existence of a platform
18 they don't use. Not only did they not use it, it's no
19 bargaining leverage for them because they're not credible
20 platform users. The threat to move their business to a
21 platform is an empty threat, and Torus is an example of that.
22 It's total trading size was far too small for it to make a
23 credible threat to move its business to a platform.

24 THE COURT: Why don't we just change the threshold in
25 the class definition?

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1 MR. WICK: Well, that would leave the plaintiffs
2 without a class representative if you kick Torus out.

3 THE COURT: But there are others or somebody else
4 could substitute in.

5 MR. WICK: I don't think they would have another
6 representative of the borrower class if they lost Torus,
7 because I think S.A.R.L is conflicted and therefore incapable
8 of representing a borrower class. It goes behind size, your
9 Honor. Maybe you could enlarge the size threshold and say it's
10 got to be a thousand trades or 10,000 trades or 100,000 trades.
11 They haven't offered to do that.

12 THE COURT: Well, I can do it. I have discretion to
13 do it. Rule 23 provides that.

14 MR. WICK: And I don't mean to be presumptuous and
15 tell you, you don't have that discretion. What I am saying is,
16 if somebody's going to drastically revise the class definition,
17 I would love to have an opportunity to know what the new class
18 definition is going to be and have an opportunity to respond to
19 it in writing once its been pinned down.

20 THE COURT: Well, you will, because I will issue
21 report recommendation and tell you what the revised definition
22 is. And as you know, you have the full opportunity to object
23 and tell Judge Failla all the reasons why you think that was
24 wrong. That's the course.

25 MR. WICK: Understood. There are four more

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1 categories, your Honor, that I don't think you can deal with
2 the way one might propose to deal with small class members by
3 just kicking them out of the class. Another category is class
4 members whose investment strategies by their nature make them
5 incompatible with platform trading. I'll give you some
6 examples: A risk arbitrage fund, a convertible securities
7 arbitrage fund, a merger arbitrage fund, a fund that tries to
8 exploit mispricing between two different instruments.

9 The record evidence shown at the bottom of the page
10 shows, those kinds of class members are incompatible with
11 platform trading. They cannot use a platform because they have
12 zero tolerance for recall risk. They can't afford the risk
13 that they will lose one-half of their investment strategy
14 before they're ready to relinquish the other half of the
15 arbitrage trait. All of the cites at the bottom of the page
16 say, those types of class members are not credible users of
17 platforms.

18 There's no model. There's no data that identifies
19 them. The only way to identify funds whose investment strategy
20 make them incompatible for platform trading is identify them
21 one by one with witness testify and with documents.

22 A third example was foreshadowed by Mr. Paskin. There
23 are class members who derive special relationship benefits from
24 over-the-counter name disclose trading or have specific trading
25 needs that cannot be met on an anonymous platform. Three

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1 examples, a hedge fund that's allergic to disclosing its
2 trading positions, even on an anonymous basis in realtime on a
3 platform.

4 A second example, a lender whose lending strategy is
5 to leverage it's reputation as a highly stable lender that
6 never recalls stock in order to extract higher lending prices.
7 You can't leverage your reputation on an anonymous trading
8 platform because you're anonymous. No one knows who you are.

9 A third example, there are lenders whose strategy is,
10 I will only lend you my hard to borrow stock, if you also take
11 my general collateral stock. You can't do that on a platform.
12 And so on a class member by class member basis, we would put on
13 individualized class member specific evidence to show that
14 these kinds of class members can't use the platform, aren't
15 credible users of the platform and therefore get no benefit
16 from the platform.

17 THE COURT: Why couldn't a lender do a hard to borrow
18 GC combo?

19 MR. WICK: On the platform?

20 THE COURT: Why couldn't you post it and just say,
21 this hard to borrow is only available if you take the general
22 collateral?

23 MR. WICK: At that point, it's not an anonymous
24 platform trade. There's no -- I have never heard anyone
25 suggest that you could write a platform algorithm that could do

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1 that. AQS never suggested that it could do that, and I don't
2 see how functionally it would be possible. I just don't
3 understand how you could do it.

4 THE COURT: I mean, we put people on the moon and
5 nobody thought we could do it. There are a lot of very
6 creative code writers in the world. I'm not going to put
7 doubts on the limits of what people can come up with in an
8 algorithm.

9 MR. WICK: I would just say in the record, I don't
10 think there's any indication that anyone has thought that an
11 anonymous platform could do that.

12 A next category, high cost of platform usage. So the
13 plaintiffs rely on some specific techniques to reduce the cost
14 of platform trading and make them manageable. In particular,
15 they rely on -- to get rid of the very high Basell III
16 regulatory capital cost that a clearing sponsor would otherwise
17 incur for sponsoring transactions through a central
18 counterparty, the plaintiffs use a technique called
19 over-collateralization.

20 They imagine that those costs would be zeroed out
21 because class members would give 130, 135 percent collateral to
22 their clearing sponsor. Well, there are many, many class
23 members out there that just can't do that. If you're a highly
24 leveraged hedge fund running 20-to-1 leverage, you don't have
25 the ability to post 130 percent collateral, and so it's obvious

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1 from the nature of who you are, you're not a credible platform
2 user. Your cost of hiring a clearing sponsor would be
3 prohibitively high as a result of Basel III.

4 A final example, your Honor, there is some stock loans
5 that are impossible to trade on platforms. So, an example,
6 non-cash collateralized stock loans. There is no central
7 counterparty licensed to do business in the United States that
8 will accept a stock loan in a non-cash collateralized
9 transaction.

10 Similarly, voluntarily corporate actions. There is no
11 central counterparty in the United States that will accept a
12 stock loan if the stock is subject to a voluntarily corporate
13 action, meaning like a tender offer, a rights offering, a
14 dividend election. You can't do those on a platform. And as
15 Mr. Kelleher explains in the declaration cited at the bottom of
16 the page here, there are class members whose very investment
17 strategy is to trade around stocks subject to voluntarily
18 corporate action. That class member gets no benefit out of the
19 existence of a platform because he cannot use a platform. It's
20 just not possible.

21 Torus, if I could turn you to slide 51. Torus
22 provides an example of a type of individualized evidence that
23 the defendants could put on at trial about many, many class
24 members. We would put on witness testimony and documents to
25 show that Torus was not a viable platform user because its

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1 total trading volume was far too small to justify platform
2 trading. We would also put on individualized evidence that
3 Torus, by the nature of its investment strategy, needed what
4 Mr. Savoldelli called a, "single point of execution."

5 Torus's strategy was to use short sales to hedge
6 options. It's principle investment was an option. It used a
7 short sell as a hedge. You can't take any risk of your
8 principle investment getting decoupled from your hedge. If you
9 do that, you have a risk of the whole investment going sideways
10 on you.

11 And so as Mr. Savoldelli explains, when you have that
12 kind of a paired hedging strategy, you need to use a single
13 point of execution. You need to execute both parts of the
14 package through the same broker dealer. If you execute half of
15 the package on an anonymous trading platform and you land on
16 the wheel of misfortune, your investment strategy goes sideways
17 on you. It's ruined.

18 If we can put on class member by class member
19 evidence, there are a lot of class members out there who are
20 using paired package investment strategies incompatible with
21 platform trading. Individualize evidence will also show that
22 Torus had no bargaining leverage and would have had no
23 bargaining leverage with or without the existence of a trading
24 platform.

25 For example, Goldman Sachs was dropped as a

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1 customer -- I'm sorry. Torus was dropped by a customer by
2 Goldman Sachs. The deposition testimony there is from Torus
3 trader Mr. Simeone, and he says Goldman Sachs basically kicked
4 us out.

5 What are the implications of that? Goldman Sachs was
6 willing to lose the business rather than offer improved terms
7 of doing business to Torus. Had there been a platform in
8 existence and had Torus said, you better give me improved terms
9 of doing business or I will move my business to a platform.
10 Goldman Sachs would have said, well, we'll very sorry you feel
11 that way, but we've already given you our bottom line. We're
12 willing to lose the business rather than improving our price
13 terms. You can't use a model. You can't use common proof to
14 identify class members where the prime broker is essentially
15 willing to take the risk of losing the business. And if that's
16 the case, they get nothing out of the existence of a platform.
17 You can only identify those kinds of class members with
18 individualized evidence.

19 The plaintiffs' answer to this is essentially to say,
20 the standard is absolute perfect certainty, perfect knowledge
21 about what a class member will do. Unless a prime broker has
22 absolute perfect certainty that it's class member will never
23 use a platform, then the platform -- then the threat to move
24 business to a platform is always credible and is always
25 effective in leveraging better prices.

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1 Well, perfect knowledge is not the right standard. We
2 would show on a class member by class member basis, that prime
3 brokers often have sufficient knowledge. They often know
4 enough to know that platform trading isn't viable for their
5 customers. They know that because it's easily observable
6 characteristics, like the ones we just went through three
7 slides ago, that show which class members are and are not
8 viable platform users.

9 THE COURT: This may be a good point to just give us a
10 five-minute break. And what I think by my count, the
11 defendants are at about two hours total, so just I would say be
12 mindful the time you have left.

13 MR. WICK: Understood, your Honor. Happy to take a
14 break.

15 THE COURT: Take a break, five minutes. Be back.

16 (Recess)

17
18
19
20
21
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24
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1 THE COURT: Go ahead.

2 MR. WICK: Thank you, your Honor.

3 So the second set of class member-by-class member
4 evidence that the defendants will present at trial relates to
5 class members who received worse prices in the but-for world
6 than those they received in the actual world. There are two
7 components to that showing. The first is what was the price
8 you got in the actual world. The second --

9 Did the slides disappear?

10 THE COURT: No.

11 MR. WICK: Mine did, but they are back.

12 The second component is what would be your costs of
13 using a platform, and that second component is highly
14 individualized. The amount it would cost to use a platform
15 varies greatly from class member to class member.

16 Looking at the first component of that actual-world
17 prices, the plaintiffs' own model of but-for prices estimates
18 that many, many transactions occurred in the actual world at
19 prices better than they would have received in the but-for
20 world.

21 So we're looking at what the plaintiffs' model
22 predicts as to better or worse prices in the actual world or
23 but-for world under three different sets of assumptions about
24 the cost of using a platform. If you use the plaintiffs'
25 assumptions, which are ultra low, if you use their experts'

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1 assumptions, than the model estimates that over 30 percent of
2 lender transactions and over 30 percent of short seller
3 transactions were unharmed. Their actual-world prices were
4 better than the plaintiffs' best estimate of the but-for world
5 polices. If you use higher sets of cost assumptions about the
6 cost of using a platform, the percentages go up sharply.

7 Now, what do the plaintiffs say about this? Well,
8 Mr. Brockett suggested these numbers are skewed by the UBS
9 data. There is no UBS data in these numbers. In the
10 plaintiffs' opening report, they didn't even process the UBS
11 data. So Professor McCrary was forced to guess at how he
12 thought the plaintiffs' experts would process it. When they
13 clarified, they didn't like this data in his reply, he put in a
14 revised set of numbers. And all of the numbers in this deck
15 and all of the numbers in our reply brief purge all of the
16 contested UBS data from the figures. So this exists regardless
17 of that UBS tempest in a teapot.

18 What do the plaintiffs say about these numbers? When
19 they look at these numbers, what do they say? They say we only
20 want to use the Asquith-Pathak model at the damages stage. We
21 don't want to use it at the injury stage. Defendants are
22 entitled to point out at the injury stage that their but-for
23 prices model contradicts this you search cost model and
24 disproves injury.

25 But the model at issue -- they say they want to use it

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1 just for damages. But the model at issue, according to the
2 plaintiffs, is the best available means of estimating but-for
3 prices. If those estimates are accurate and reliable for
4 estimating the quantum of injury, they are also accurate and
5 reliable for estimating the existence or absence of injury.

6 What happens to all of those favorable prices in the
7 but-for world? The 30 to 90 percent of prices that were better
8 in the actual world than they would be in the but-for world,
9 they disappear. The plaintiffs' experts acknowledge that once
10 you give the prime brokers the additional option of trading on
11 a platform. The prime broker is now, in effect -- I've lost my
12 spot -- the prime broker is now, in effect, faster. In the
13 actual world, the prime broker can't necessarily see that some
14 other prime broker's customer will give it a better price than
15 its own customer will give it. Once a platform comes along,
16 now the prime broker gets faster. It can see that it has more
17 choices to trade in the market.

18 So, in effect, now the class member has to outbid the
19 platform in order to trade with its prime broker. So those
20 30 to 90 percent of instances in which actual-world prices were
21 better than but-for world prices, those all disappear in the
22 but-for world, because now the class member has to pay more
23 than the platform price. And it's not me saying that, it's the
24 plaintiffs' own expert saying that. That means that class
25 members can very often get the worst of both worlds.

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1 If you're a nonuser of a platform and you're not a
2 credible user of a platform, then you can't leverage the
3 existence of a platform in the better prices. But you can
4 still lose all the favorable prices you got in the actual world
5 because now you have to compete with the platform. You have to
6 give your prime broker a better price than the prime broker
7 could get on the platform. So you can be harmed even though
8 you don't benefit from the existence of a platform.

9 THE COURT: So if a hedge fund short seller borrower
10 is not good enough to get on a platform, they are probably not
11 going to have a prime broker giving them business either,
12 right?

13 I mean, is a prime broker -- if somebody is sort of
14 low sophistication and has all those characteristics some of
15 the characteristics you were talking about earlier that are
16 individualized, chances are there is no chance a prime broker
17 would give them any business either?

18 MR. WICK: Well, I would disagree with that, your
19 Honor. There are plenty of merger arbitrage funds. There are
20 plenty of convertible security arbitrage funds, highly
21 leveraged hedge funds large enough to have a prime broker.
22 They are not compatible with platform trading because of the
23 nature of their investment strategy, the high costs they would
24 incur to use a platform, or etc.

25 It's not true that you don't get a prime broker unless

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1 you're good enough to get on a platform. You can be big enough
2 to have a prime broker and still be incompatible with platform
3 trading because of your specific investment strategy or your
4 specific trading needs.

5 So let's look at the other half of the equation, which
6 is the plaintiffs' assumptions about the costs of platform
7 trading. There are three relevant costs to platform trading I
8 would like to walk through starting with the first class member
9 internal costs. When the plaintiffs do their modeling, they
10 assume that a class member has zero internal costs of using a
11 platform. They assume that there is no technology costs for
12 integrating with the platform, there is no systems costs, there
13 is no operations cost, there is no legal and compliance costs.
14 Nothing.

15 But the evidence is, the record is clear for
16 Mr. Savoldelli, among others, that the cost of doing -- of
17 integrating with the platform are actually very high and they
18 vary from class member to class member. We would put on
19 evidence at trial to show that for many, many class members,
20 their internal cost of using a platform would be high and those
21 costs have to be accounted for to know whether or not a class
22 member was harmed or unharmed by the alleged conspiracy.

23 The second category of costs is fixed platform fees.
24 So the plaintiffs make no allowance for these in their expert
25 work, even though Dr. Pathak admitted at his deposition fixed

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1 platform fees are real. AQS charged significant fixed platform
2 fees. And he testified, and I quote, they would not go away in
3 the but-for world.

4 So they make no allowance for this in their work. The
5 defendants' evidence at trial would include showing on a class
6 member-by-class member basis that fixed platform fees, the cost
7 of subscribing to and getting access to a platform, were
8 substantial. They vary from class member to class member.

9 A third category of costs consists of total clearing
10 sponsor fees. What do you have to pay a clearing sponsor to
11 get you access to the platform and access to the central
12 counterparty? And I'm directing your attention here, your
13 Honor, towards the bottom, the blue line at the bottom, total
14 clearing sponsor fees. The plaintiffs' experts estimate that
15 clearing -- I've lost my screen again, but it's back.

16 The plaintiffs' experts estimate that beneficial
17 owners could hire and pay a clearing sponsor for a fee of no
18 more than three basis points for each beneficial owner in the
19 class. How do they come up with three basis points? If you
20 look higher up on the table, the plaintiffs' experts recognize
21 and both sides experts agree that every time a clearing sponsor
22 sponsors a transaction, it has to pay three basis points of
23 transaction volume into the default fund.

24 Now, I mean, Dr. Zhu estimates it is actually about
25 2.8 basis points but both sides' experts round off to three

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1 basis points. So the plaintiffs' experts say that a beneficial
2 owner could pay a clearing sponsor three basis points and
3 nothing more in order to get access to a platform. The
4 plaintiffs allow zero for operational and overhead costs for
5 the clearing sponsor. They allow zero for profit. They allow
6 zero for capital costs and balancing costs, balance sheet
7 costs, and they allow zero for the costs of the beneficial
8 owner providing collateral margin to the central counterparty.
9 Collateral margin is the collateral you give the central
10 counterparty to protect it from the risk that somebody will
11 default on the transaction.

12 Defendants' case at trial will be to show beneficial
13 owner by beneficial owner that actually these costs are much
14 higher than assumed by the plaintiffs' experts. For short
15 sellers, the plaintiffs make a similar assumption that total
16 clearing sponsor fees are eight basis points per short seller.
17 They get to eight basis points by summing up a three basis
18 point default fund contribution and a five basis point cost
19 that they assume to be the cost of the short seller giving
20 collateral margin to the central counterparty.

21 Again, even for short sellers, zero allowance for the
22 clearing sponsor's operational and overhead costs, zero
23 allowance for profit, zero allowance for capital costs and
24 balance sheet costs. And our case at trial will be to show,
25 class member by class member, that actually these costs are

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1 very substantial and they vary from class member to class
2 member.

3 With respect to fixed platform fees, your Honor, we
4 have a clear record that on AQS, the annual fixed fee of using
5 the platform was about 37,500 a year, if you wanted automated
6 API access. If you were content with manual web access, you
7 could join AQS and pay annual subscription fees and access fees
8 of 10,500 a year. If you take into account just those costs
9 alone and nothing else and run the results through the
10 plaintiffs' model of but-for prices, this is what you get.

11 You get between -- at the levels of fees that AQS was
12 charging, 10,500 a year or 37,500 a year, you get 56 percent to
13 72 percent of short seller accounts not harmed at all, not
14 harmed on a single transaction. Now, there is no reason to
15 assume that those fees would have gone down a lot in the
16 but-for world. But even if you assume that they shrink
17 from 37,500 to \$1,000 a year, you still end up with quite a
18 significant percentage of class members for whom the model
19 estimates no harm at all, no harm on any transaction. Their
20 total estimated price saving of using the platform are less
21 than \$1,000 a year.

22 Dr. Pathak admitted at his deposition these fees would
23 not have gone away. He said, No, no. They would not have gone
24 away in the but-for world. He continued that we can assume
25 that they would stay as they were.

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1 I'm heeding your admonition to move it along.
2 Mr. Brockett made the point that there are some short sellers
3 that may have had more than one account in the data and nobody
4 knows who they are. Well, he's right. The data doesn't tell
5 us who is who. There are some short sellers in the data that
6 have only one account. There are some who have multiple
7 accounts. We don't know which one is which. We can't identify
8 them because the data is all anonymized.

9 But what we do know is that that does not explain away
10 this platform fee difficulty that they have, because even if
11 you assume that fixed platform fees are going to be anonymized
12 across three accounts, five accounts per short seller, they are
13 still high enough that they zero out all alleged harm for a
14 large percentage of class members. It would still be over
15 30 percent of class members that have no alleged harm, even if
16 you reduced those fixed platform fee assumptions by 90 percent,
17 reflecting an assumption that you could split them across ten
18 different accounts per short seller.

19 Now, there is not nearly enough accounts in the data
20 for there to be multiple accounts for every short sellers by
21 the law of numbers. Many of them can have only one. We know,
22 for example, that named Plaintiff Scera has only one in the
23 data. There is not enough on average for very many of them,
24 for a large number of them to have more than one account. Even
25 if they did have more than one account, that wouldn't cancel

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1 out six platform fees because you can divide that 37,500 a year
2 by five and still come up with a lot of unharmed class members.

3 THE COURT: If I represent to you that I understand
4 what you're making about costs, would you move on to another
5 issue?

6 Do you have another category class that you want to
7 cover ?

8 MR. WICK: Sure.

9 Let me just mention with respect to clearing response
10 costs, Ms. Levens showed some statistics indicating that there
11 are some -- she showed some figures indicating that they have
12 allowed platform costs of up to 40 basis points. That is
13 combining the platform transaction fee with clearing sponsor
14 fees to make an apples-to-apples comparison. On clearing
15 sponsor fees, they are only allowing what I showed you -- three
16 basis points or eight basis points -- which allows nothing for
17 any capital profit or recovery of overhead.

18 She showed you that there was a platform, I think it
19 was in Malaysia, where the fees were four basis points of
20 transaction volume. That is just what you pay the platform.
21 That's not an apples-to-apples comparison because she is
22 leaving out the clearing sponsor fee, the internal cost, the
23 fixed platform cost. She is leaving out most of the cost when
24 she makes that reference.

25 So how does it tally up? On slide 70, if you look at

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1 the combined effects of fixed platform fees and response fees,
2 you end up with a large number of possible permutations where
3 class members could end up. We would need to do class
4 member-by-class member inquiry to see in which particular
5 bucket or which particular permutation any particular class
6 member fits. Depending on what you assume about fixed platform
7 fees and sponsor fees, you could end up anywhere between
8 27 percent and 87 percent of short seller accounts that model
9 estimates were unharmed on a singled transaction. And if you
10 look at the question of net harm instead of harmed on a single
11 transaction, the numbers go even higher.

12 Now, Mr. Brockett suggested that maybe this is because
13 there is just some timing error in his model. Maybe it's just
14 that the model doesn't know that the price fluctuates over the
15 course of a day.

16 Well, with respect to short sellers, your Honor, that
17 is just not true. The uncontroverted evidence in the record
18 shows that prices don't fluctuate over the course of a day.
19 Prime brokers use one price for the entire day on the short
20 seller side of the market, so that cannot explain away these
21 large percentages of unharmed class members.

22 Beyond that, your Honor, you can't burn the candle
23 from both ends. If they want to say that their model is a
24 little imprecise, it's underestimating damages to short
25 sellers. That means it's overestimating harm to beneficial

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1 owners. They can't shrink the percentage of unharmed short
2 sellers and the percentage of unharmed beneficial owners at the
3 same time. They have to choose one or the other.

4 The only theoretical way to improve the results for
5 both beneficial owners and short sellers at the same time would
6 be to go back and retroactively reduce their estimate of the
7 cost of platform trading. They can't do that because they have
8 already assumed that most of the costs of platform trading are
9 zero. They can't go negative. There is nowhere down for them
10 to go.

11 One last point, your Honor, then I'll move off the
12 cost question, which is that Mr. Brockett said the standard for
13 testing injury is you should look for whether there was even
14 one harmed transaction on the part of a class member. If the
15 model tells you there was even one harmed transaction, you
16 should count them as injured. That is not a workable standard
17 and it's not a standard that the plaintiffs meet.

18 It's not a workable standard because when they measure
19 harm to a transaction, they don't really measure harm to a
20 transaction. A transaction is a lump. A loan can last two
21 years. There can be 700 days as the duration of a loan. What
22 the plaintiffs do when they calculate these numbers about one
23 harmed transaction is they say we artificially pretend the
24 single loan that might last 100 days is really 100 different
25 one-day transactions. That is not what it is. It is one

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1 transaction. It's one continuous loan.

2 So they artificially assume that if their model tells
3 them on day 47 you could have gotten slightly better price on
4 this loan on a platform, even on the other 99 days, you've got
5 a better price in the actual world. They would count that as a
6 harmed transaction. Their harmed transaction standard is
7 unworkable. They don't know how to run it defining a
8 transaction as a loan as opposed to a single day of a loan.

9 Beyond that, there are large numbers of class members
10 for whom there is no harm on a single transaction. Those that
11 were not credible platform users, they are not harmed on a
12 single transaction, those for whom fixed platform fees or
13 internal costs exceed any alleged savings. They are not harmed
14 on a single transaction.

15 Finally, on the beneficial owner side, they can't see
16 or identify -- no one can see or identify individual beneficial
17 owners in the data. All we can see in the data is agent lender
18 accounts that may aggregate out hundreds of different
19 beneficial owners. So if they see on an aggravated agent
20 lender account that maybe one of 100 beneficial owners
21 aggravated up into that agent lender account had harm on one
22 day, they are still treating the other 99 beneficial owners as
23 harmed, and that is what is driving the statistics that
24 Mr. Brockett showed you earlier. It's a false accounting
25 convention.

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1 So the third and final piece of class member-by-class
2 member evidence that we would present at trial would be
3 relating to class members who lose valuable options in the
4 but-for world. When you move some of the liquidity in the
5 market off of the -- out of the over-the-counter market and
6 into the platform market, that means that those who are left
7 behind and stuck behind in the shrunken over-the-counter market
8 have fewer counterparties with which to trade. They have fewer
9 opportunities to lend and fewer opportunities to borrow.

10 On the balance of this defendants' argument, your
11 Honor, in the interest of time, we will rely on our papers.

12 THE COURT: OK.

13 MR. WICK: Quick point on the FTAIA. Your Honor asked
14 Ms. Levens, is there a case like this one that I can read.

15 There is a case exactly like this one. It's In re
16 Forex. Let me start on the first bullet on the page with what
17 the FTAIA bars application of the U.S. antitrust laws to.
18 There are two situations in which you cannot apply U.S.
19 antitrust law. First, when both the defendant and the class
20 member were operating abroad, the FTAIA says you cannot apply
21 U.S. antitrust law to that, absent some exceptions that are
22 inapplicable here.

23 Second, when the defendant is operating domestically
24 and the class member operating abroad, that is an export
25 transaction. The FTAIA does not allow application of U.S. law

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1 to that transaction.

2 In In re Forex, we had almost an identical situation
3 to this case. In In re Forex, two things were two. Number
4 one, the parties that entered into FX trades did so operating
5 both domestically and operating abroad. Number two, the
6 transaction data did not identify where any given party was
7 operating at the time of their trades.

8 So Judge Scofield says, Our only alternative is to do
9 a very large number of trade-by-trade inquiry to see where any
10 given party was operating at the time of a given trade. This
11 case is exactly the same, your Honor. The defendants and class
12 members entered into stock loans both domestically and abroad.
13 The U.S. domiciled defendants operated from desks in London,
14 they operated from desks in Hong Kong, in Tokyo, in Sydney.

15 And all of that is intermingled in the data. There
16 is nothing in the data that tells you where a defendant was
17 operating or where its counterparty class member was operating
18 at the time of any given trade.

19 Incidentally, although it doesn't matter where the
20 defendant or the class member is domiciled, it doesn't matter
21 where they their citizenship is, as Judge Schofield explained
22 in In re Forex. What matters is where they were operating at
23 the time of the transaction. But just as a point of interest,
24 your Honor, the record evidence indicates large numbers of the
25 short sellers whose trades were reflected in the data were

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1 foreign domiciled. So there is certainly every reason to
2 believe they may often have been operating from foreign trading
3 desks. That's the Salvoldelli cite at the bottom of the page.

4 THE COURT: Is that fixable, though, in the definition
5 of the class? In other words, it says all persons and
6 entities, if you can make them U.S. domiciled and then entered
7 into whatever number of transactions, but that they had to
8 order that transaction from a U.S. desk or something. I just
9 don't see why that isn't fixable.

10 MR. WICK: Judge Schofield didn't think it was
11 fixable, your Honor. In Forex, it was the case, you could have
12 limited -- you can identify who is U.S. domiciled or not. She
13 says it doesn't matter where you're domiciled. What matters is
14 your operating location at the time of a specific trade.

15 THE COURT: That's what I'm saying. The trade was
16 issued from a U.S. desk or something, something like that.

17 MR. WICK: The only way to know whether a trade
18 happened from a London desk or a New York desk or a Sydney desk
19 or a Tokyo desk, the only way to know that is through
20 individualized inquiry. There is no way you can snap your
21 fingers with the common evidence and shift the wheat from the
22 chaff. That's why Judge Schofield denied -- that's one of the
23 three main reasons why Judge Schofield denied class
24 certification in In re Forex.

25 THE COURT: Well, could the data just be coded,

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1 though? I mean, there is all kinds of coding with the data
2 that you have. Couldn't there just be a code, a column for
3 trades that were issued from a U.S. desk?

4 MR. WICK: But there isn't. Some human being would
5 have to go out and go interview a class member and go interview
6 a defendant and go look at individualized records and go back
7 to individual humans to find out that answer and put that into
8 the data. Those records don't exist. Somebody would have to
9 go out and do individualized inquiry to create them. Same
10 situation as In re Forex.

11 THE COURT: OK. I'm not saying, just...

12 MR. WICK: I understand. Your Honor, with that,
13 unless you have further questions, I will yield to Ms. Yablon.

14 THE COURT: OK.

15 MR. BROCKETT: We do have some.

16 THE COURT: I know. She has about ten minutes by my
17 count.

18 Ms. Yablon, ten minutes

19 MS. YABLON: No problem. You will be under ten.

20 THE COURT: OK.

21 MS. YABLON: In fact, defendants are going to rest on
22 our papers, and the slides that you have received with respect
23 to superiority.

24 THE COURT: I was going to suggest that.

25 MS. YABLON: We'll move on straight to post 2017

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1 damages.

2 THE COURT: OK.

3 MS. YABLON: For all of the reasons we have already
4 addressed this afternoon, plaintiffs request for class
5 certification should be denied. But that being said, should
6 your Honor recommend that certification of a class or subclass
7 is appropriate, it must be limited to the original class
8 period.

9 In their class certification motion, plaintiffs
10 propose for the very first time a significant extension to
11 their original class period. They ask the court to certify a
12 class for a period which extends to either February 22, 2021,
13 or through trial.

14 Plaintiffs' original and amended complaints which were
15 filed in late 2017 define the end date of the class is through
16 the present. As courts in this district have recognized, and
17 as your Honor mentioned this morning by name, a statement
18 referring to the present generally does not refer to any moment
19 in time beyond when the statement was made. And that's the
20 Hnot case, for lack of better pronunciation.

21 First, in this case, by agreement of the parties,
22 there has been absolutely no discovery taken for the period of
23 time after December 31, 2017. Plaintiffs therefore cannot
24 establish that they have met their burden for post 2017 time
25 period. What we do know already about the record makes very

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1 clear that stock lending is incredibly complex and is
2 constantly changing.

3 Plaintiffs have not and cannot explain away the shifts
4 in class membership, market conditions, and prime brokerage
5 relationships that we already know occurred during the period
6 of time for which we have discovery. For example, between 2016
7 and 2017, at the end of the time during which we have
8 discovery, almost 30 percent of hedge funds changed their prime
9 brokerage relationships, some adding to and some subtracting.
10 Plaintiffs' suggestion that the market would not have changed
11 or that defendants need to prove that it would have is
12 completely backwards.

13 More importantly, the record that we already have
14 makes clear that those changes did, in fact, happen. Another
15 issue with plaintiffs' request for an extended class period is
16 they have proposed two alternatives that seek only to quantify
17 damages in the post 2017 time period. The first suggesting
18 that we collect additional data, and the second is Mr. Brockett
19 described it as scaling up or extrapolation of data.

20 As the record in this case makes very clear, and
21 having lived through it firsthand, the collection, processing,
22 and production of data is extremely burdensome, time consuming,
23 and expensive. Plaintiffs' scaling up method for that matter
24 is simply an easy way to increase damages by using the already
25 produced data to augment and get to a larger number. This

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1 method also assumes that the market and the class remained
2 consistent, which is certainly not true.

3 Most fundamentally, your Honor, plaintiffs'
4 eleventh-hour request for this proposed extension is extremely
5 prejudicial to defendants. As I mentioned earlier, the factors
6 have consistently operated with the understanding that the
7 class period concluded in 2017, and now it is far too late to
8 suggest the reopening of fact discovery. The parties, which
9 includes plaintiffs, represented to this court that all fact
10 discovery would conclude in 2020. This gave the parties almost
11 two years to conduct discovery. Judge Failla endorsed an
12 extension of fact discovery through October 16, 2020, with the
13 stipulation that this deadline would not be pushed absent a
14 showing of good cause. Plaintiffs have not even attempted to
15 establish a showing of good cause. The reason is quite simple.
16 There is none.

17 The first time defendants and this court learned of
18 plaintiffs' desire to extend the class period was with the
19 filing of their class certification motion, which was filed
20 well after the close of fact discovery. If the court were to
21 decide to extend the class period, it is inevitable that
22 extensive document discovery, fact depositions, and expert
23 discovery would follow. To give some context, the parties
24 already took 99 fact depositions related to the pre 2018 time
25 period, and now plaintiffs seek to add another three and a half

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1 years to their class. This would clearly turn the current case
2 schedule on its head, disrupting defendants' and the court's
3 reasonable understanding that discovery ended three and a
4 half -- excuse me -- one and a half years ago.

5 The implications for the expanded class period are
6 significant. Plaintiffs seek to increase their potential
7 damages by billions of dollars, while providing absolutely no
8 record evidence whatsoever to support such a request.
9 Therefore, plaintiffs' request to extend the class period
10 should be denied. And if the court were to recommend that a
11 class or subclass be certified, the end date must be set at
12 December 31, 2017.

13 THE COURT: Thank you, Ms. Yablon.

14 On the plaintiffs' side, rebuttal, reply?

15 MR. BROCKETT: We will have some rebuttal. I have a
16 few points to make and turn it over to Mr. Olson.

17 THE COURT: That's good. Go right ahead.

18 MR. BROCKETT: Could I?

19 THE COURT: I can still see the defendants' slides.

20 MR. BROCKETT: Thank you.

21 Just a couple points on the conflict issue.

22 THE COURT: Yes.

23 MR. BROCKETT: Your Honor, the law is clear that there
24 are conflicts, and then there are conflicts that are
25 fundamental. A conflict that only deals with a question of

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1 allocation is not a fundamental conflict that requires separate
2 counsel. It's not a conflict that goes to the heart of the
3 case. The fact is that both the lender's side and the
4 borrower's side here have a unified interest in proving
5 liability and winning the largest possible damage award.
6 Defendants are the ones that are trying to tear them apart.
7 What the defendants want is for each subclass to be fighting
8 with each other in front of the jury, right. That doesn't
9 serve the interest of either of the subclasses. The only one
10 that would benefit from that is the defendants.

11 Now, as we see this again, let me go to the slide
12 three on defendants' deck. So this concept of W, it's an input
13 into the damages model. It's something that we have to do to
14 determine where between the spread, prime broker spread,
15 between the lend price and the borrow price, where supply and
16 demand would meet in the but-for world. So we have to choose a
17 W in order to have a but-for price. We have to choose a W in
18 order to determine aggregate classwide damages. But that
19 doesn't mean by choosing these Ws that we are litigating the
20 question of allocation in the trial. The jury is not going to
21 be asked to make a determination of what the correct W is.

22 Now, if the defendants want to litigate the Ws that
23 our experts have chosen based on objective evidence, they can
24 do that, and we'll have to respond. But what we intend to do
25 is, again, what I told the court in the beginning is that we

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1 intend to submit to the jury the question of what is the
2 aggregate classwide damages, then we're going to go to an
3 allocation phase.

4 Now, if at this allocation phase after the trial we
5 agree, if the court wants to appoint a special master at that
6 point, an independent allocation party to come in and bless any
7 allocation that is made for purposes of distributing the award,
8 we're fully supportive of that, your Honor. You could even at
9 that point appoint one of our firms for the lender side and one
10 of our firms for the borrower side.

11 But to do that now so they can fight with each other
12 in front of the jury only benefits the defendant. It doesn't
13 benefit either side of the subclasses. So the defendants here
14 are the wolf in sheep's clothing. They purport to be
15 championing the rights of the subclass, but what they really
16 want to do is to pit the subclasses against each other because
17 they know that helps them either reduce the overall damage
18 award or defeat class certification.

19 THE COURT: Do you have an example of that in an
20 antitrust case, a special master being appointed for the
21 damages allocation phase?

22 MR. BROCKETT: Yes, there are in several cases when,
23 you know, you have one counsel and you have a number and you
24 have a settlement fund and you have, you know, counsel that has
25 to make a plan of allocation. Yes, there are numerous

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1 instances. I can submit them in a letter. I can't give them
2 to you. Maybe Mr. Olson has better.

3 MR. OLSON: I'll just add one. In the Restasis case
4 that was contemplated.

5 MR. BROCKETT: Yes. It's fairly common to have a
6 special master or settlement, neutral settlement allocation
7 minister come in and bless the allocation in those types of
8 circumstances.

9 So, now, they made a point -- I want to talk about the
10 LIBOR and the FX cases. They point to the LIBOR and FX cases
11 in support for the notion that there is a fundamental conflict
12 here. Now, in Forex, the problem was that the named plaintiffs
13 and the class members had conflicting incentives to establish
14 whether spread manipulation had occurred on a particular day
15 and what the direction of that manipulation was. So different
16 groups of class members had disputes over what days did the
17 manipulation occur and in what direction it was.

18 Well, those are conflicts that go directly to the
19 question of liability. That's what was wrong in Forex. There
20 were conflicts over the question of liability. Same thing in
21 LIBOR. In LIBOR, there were directional differences between
22 different groups that created conflicting incentives as to
23 whether there had been a manipulation on at particular day and
24 what the direction of that manipulation was.

25 Again, just as in Forex, there were conflicts over

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1 whether there was liability in the case and who was liable to
2 whom. In this case, we do not have a question of conflicts
3 over liability. Clearly the defendants concede. Both the
4 subclasses have a common interest in establishing the liability
5 of the defendants for violating the antitrust laws.

6 Now, so, yes, I made the point about the special
7 master. The other thing I think I said the court could do is
8 appoint Quinn Emanuel and Cohen Milstein to represent the
9 subclasses. I don't think that is in the interest of either.
10 I want to point to one case. It's the National Football League
11 Players Concussion litigation case. It's 821 F.3d 410, Third
12 Circuit case. This is a case where there was a settlement and
13 an objector objected as to whether the settlement counsel had
14 conflicts.

15 And the court said, OK, I'm going to appoint separate
16 counsel for the subclasses. Again, this was at the settlement
17 stage. And the objector said, well, you have to choose
18 somebody from outside the existing lawyers working on the case,
19 and the court says no, we do not have to do that. The counsel
20 representing the subclasses in the settlement negotiations came
21 directly from the lawyers already working on the case. The
22 court saw no issue with this and noted there was no precedent
23 whatsoever for saying that conflicts counsel must come from
24 outside the group of lawyers always working on the case.

25 And obviously that makes a lot of sense. I mean, our

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1 firms have extensive expertise in these cases from the work
2 we've been doing on these for many, many years now. And it
3 would not be in the class' interest to tax the class with a
4 whole new set of lawyers who would have to get up to speed in
5 order to properly represent their clients.

6 And as to Mr. Wick's point that now you can't do this
7 because you have already taken a position here. Your Honor,
8 we're lawyers. If the court tells us that we have to represent
9 this interest, we would do so zealously consistent with our
10 ethical obligations. I don't think there is any question that
11 either of the lawyers on our side, if we were asked by the
12 court to represent one side of this, that we could do so
13 zealously, despite any positions we have taken in this case
14 previous to that.

15 Now, just a very couple --

16 THE COURT: Do you want to respond?

17 I don't know if it's on your list of things.

18 MR. BROCKETT: Yes.

19 THE COURT: The points -- I apologize. I can't
20 remember now if it was Mr. Wick or Mr. Paskin that made the
21 point about Torus.

22 Do you want to address that?

23 MR. BROCKETT: I'm going to leave that for Mr. Olson,
24 if that's OK.

25 THE COURT: That's fine. Yes.

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1 Just as a preview, I was hoping to hear from
2 Ms. Levens about the FTIA points that defendants made.

3 MR. BROCKETT: Yes, Ms. Levens will address that.

4 THE COURT: OK.

5 MR. BROCKETT: Looking for slide 13 in the defendants'
6 deck, your Honor.

7 I just want to make one point here. So yes, when the
8 way this came about was we asked the banks to produce to us all
9 the trading data of the bank's clients, the hedge funds here.
10 The bank's clients and our clients of this case, the bank's
11 clients in the ordinary course of business, and there were.
12 There were 22 hedge funds that approached us about the concerns
13 about the security of their data.

14 First of all, that's not a lot. There are thousands
15 of hedge funds and thousands of short sellers and others in
16 this case. So the fact that 22 of them approached us, that's
17 not a huge number. In any event, we worked it out so that only
18 seven opted out and the other 15 who initially had concerns
19 agreed to stay in the case.

20 Now, I think a question came up in one of the
21 defendants' arguments -- I can't remember which -- about how
22 are we going to try this case. Well, we've always accepted
23 that we really can't try this case with anonymized data. So
24 what we intend to do, if there is a certification of the class,
25 we have to send out notice. In this notice, we're going to

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1 tell class members of the rigorous security measures that we're
2 going to propose for the data, but we're going to give everyone
3 a right to opt out of the class, to the extent they are not
4 satisfied that our security measures are satisfactory to them.

5 OK. This will be language that we would draft with
6 the court's approval, with the court's input. So yes, we are
7 going to have de-anonymized data for purposes of the trial.
8 And there were several of the defendants' slides that said,
9 well, you won't have this data for trial. No, we will have it
10 for trial, and that goes to this question of other damages
11 calculations. But we will have the fully anonymized data
12 available for all parties to make whatever argument they think
13 is appropriate based on that.

14 I think that's all. One second here.

15 THE COURT: If you think of something else, you can
16 come back up after Mr. Olson is done.

17 MR. BROCKETT: I don't want to waste the time.

18 Let me leave it at that, your Honor, and turn it over
19 to Mr. Olson.

20 THE COURT: OK. Pass to him.

21 MR. OLSON: Thank you, your Honor.

22 THE COURT: Yes. Do you have a copy of this one?

23 MR. OLSON: We do not have a copy of this one that is
24 pristine, but we would love to submit one to you tomorrow
25 morning, end of the day today, if that's OK.

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1 THE COURT: Yes.

2 MR. OLSON: We tried to predict what defendants would
3 argue. Frankly, we predicted we have sponsors to all of it.
4 My challenge will be doing so efficiently and trying to focus
5 with the court is more interested. I just thought there was
6 one point made by defendants today that cuts through virtually
7 everything and crystalized virtually everything. That is when
8 defendants stood up and said what we don't understand is that
9 prime brokers are the luxury option. They are that
10 old-fashioned luxury travel agent that you call on the phone.
11 They are the high-end, they provide the full suite of services.

12 Now, even crediting that -- and we question whether
13 they've really proven the economic value of these services, of
14 course, and we saw them only rely on the type of anecdotal
15 evidence we predict -- what they are describing is a world and
16 a market in which the only options for Americans to travel are
17 by calling the luxury high-end travel agents on the phone.
18 Those are the only options that exist.

19 Let's imagine that and imagine how much it might cost
20 to fly in that world. Where the only way you can comparison
21 shop would be to call your luxury high-end travel agents who
22 may or may not pick up the phone. That's the world of the
23 stock loan market.

24 Now, let's imagine those travel agents got together
25 and blocked any and all electronic platforms from coming into

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1 the market. They block Kayak and Expedia. They block Google
2 Flights. By the way, it is completely false for the defendants
3 to suggest that we have only identified AQS as the only
4 platform. We have identified multiple platforms that tried to
5 enter the U.S. market. Those include SLX, blocked from the
6 U.S. market as well.

7 Now, the question for the court, the question for the
8 jury ultimately will be what would be the effect of that. The
9 luxury high-end travel agents got together, they blocked any
10 and all electronic platforms from coming. They block maybe the
11 budget ones. they block maybe the ones that provided a few
12 extra services.

13 The question for the jury in this case will be, was it
14 only a limited number of people who were harmed by that? Would
15 the prices, if those platforms entered, only have gotten better
16 for some people? Would the options have only improved for a
17 few people? Do we have to go American by American and try to
18 model exactly how they would have used the platforms versus how
19 they would have used the luxury high-end travel agents or does
20 the economics prove that when platforms enter a market and make
21 the market much more transparent and competitive and provide
22 better options, everyone benefits? And that's our case.

23 Now, how do we prove that? We prove that with
24 Dr. Zhu. I'll get to everything in a moment. But the point I
25 want your Honor to understand is, Dr. Zhu's work that won the

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1 first prize in a leading federal economics journal is the best
2 way to test that question. It is the leading model in
3 financial economics of how to answer that question. That's why
4 we picked Dr. Zhu as an expert and presented it to the court.

5 This is not some trivial right conclusory throw-away.
6 That's not why it got published and peer review and won the
7 first prize in the leading financial economics journal.
8 Defendants are really playing a trick here. They are saying,
9 your Honor, we are baffled. We don't understand why the
10 plaintiffs here didn't do the same thing people do on your
11 regular price fixing case, like the Rail Freight case.

12 Why didn't they run a regression model and compare
13 but-for prices to actual-world prices, where they use the
14 transactional data and strip out the effects of the conspiracy?
15 We're just so confused why they don't do that. They know the
16 answer. The answer is because that was not possible.

17 In this world, what is only the luxury high-end travel
18 agents, there have never been the platforms, you can't use the
19 transactional data, and you can't build a regression model that
20 strips out the effect of the conspiracy because there was no
21 clean period. You can't do it. They know that, and that is
22 why we didn't do it here. That is why we turned to the best
23 options that we had available, and those come from Dr. Zhu, one
24 of the leading experts in the world.

25 Now, your Honor asked about Torus. Torus is plainly

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1 an adequate class representative. I'll just take issue, first
2 of all, with the blatant falsehood said by my friend from the
3 defense who said, Ah, we got this one guy Simeone who said he
4 didn't know much about what a hedge fund is and he's a trader
5 at Torus. So that shows Torus is very unsophisticated. It's
6 false.

7 They deposed multiple people from Torus. They picked
8 Mr. Simeone knowing he was not a trader at Torus. He wasn't.
9 Knowing that he was actually a back-room administrative person
10 at the firm, who I can't recall if he finished high school, but
11 he didn't go to college. He's not the most sophisticated
12 person. He didn't want to spar with defense counsel who knew
13 more about hedge funds.

14 Defense counsel also know that they did actually
15 depose traders from Torus, multiple of them, and they gave very
16 eloquent, sophisticated, and informed testimony about this
17 market, about why Torus would benefit from platforms, about why
18 Torus suffers from the lack of transparency. Dr. Zhu in his
19 reply report cited this testimony on pages 117, 118. Defense
20 counsel failed to mention it.

21 They say Torus is not adequate because it is a
22 proprietary hedge fund. It's a proprietary trading firm, not a
23 hedge fund. This is Goldman Sachs own internal presentation
24 talking about who are end users, who are representative end
25 users. Torus is one of them.

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1 We were sort of surprised to hear that Torus didn't
2 actually have prime broker accounts. It's not true. Torus had
3 two of them. One of them was with Goldman Sachs Execution and
4 Clearing. That's a named defendant in the case. It's a named
5 defendant in the case because it provides execution and
6 clearing services which are prime brokerage services.

7 If my friends from defense counsel really thought that
8 Torus actually didn't use a prime broker, we would have heard
9 about it before today. Torus then switched to another prime
10 broker at Bank of America. Again, using an entity that is a
11 named defendant in the case. Torus would have been able to
12 trade on the platform in the but-for world. I'll again refer
13 the court to those passages from Dr. Zhu's reply report I
14 mentioned and I'll come back to this.

15 The other point is -- and this is our case, we might
16 lose it, but it's our case -- that everyone benefits when the
17 platforms come, that everyone benefits when it's no longer the
18 world of the luxury high-end travel agents that you have to try
19 to get on the phone. Maybe you're on hold for an hour.
20 Everyone benefits when the platforms come, including Torus.
21 This is essentially the point here.

22 Scera. Now, this goes a bit to the conflict point. I
23 want to pick up on Mr. Brockett's point that these are all wolf
24 in sheep's clothing arguments. I'll focus on the Payment Card
25 and Literary Works cases, which counsel I think misrepresented.

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1 I, in fact, represented the lead appellant in the Payment Card
2 case and know it very well. It's the Home Depot. I was at
3 counsel table next to Tom Goldstein when he argued to the
4 Second Circuit and won.

5 Counsel seemed to suggest that those are settlement
6 cases, of course. But it's all the worst in the litigation
7 context. That's completely the opposite. The Second Circuit
8 made that very clear. The Payment Card case was a settlement
9 only class certification where they proposed two classes. To
10 make it worse, they proposed to give nothing, zero, to one of
11 the classes. To make it worse, no one could opt out of that
12 class.

13 The Second Circuit very clearly said, we're especially
14 concerned about this and the settlement only context. Because
15 the incentives for that type of tradeoff are heightened. We're
16 also especially concerned with it because of the lack of the
17 opt-out rate. You'll see the cases they cite are the LIBOR and
18 Forex, where you have class members actually clashing with each
19 other on trades. And they are episodic manipulation cases so
20 they have completely divergent interest about who -- whether
21 the trade went up or down. And then they cite the settlement
22 only cases. AmEx you heard them mention, payment Card,
23 Literary Works.

24 The litigation only context which we have here, courts
25 understand to presume, we are making our decision on the

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1 merits. We are not trying to rig anything. We are not trying
2 to trade off one value of a class so we can get higher
3 settlement fees. We are picking the damages figures we think
4 are the best to present to the jury, and that is why these
5 settlement cases don't inform the court's decision here.

6 By the way, for my other friend from the defense
7 counsel, I'll note in the Payment Card case, where discovery
8 also closed and the trial has not been set. Summary judgment
9 is fully briefed. All of the parties are actively discussing,
10 updating the discovery for trial, including the damages
11 calculations, because that is what happens in antitrust case.
12 If you have a conspiracy that harmed people in a market, those
13 people aren't just out of luck because fact discovery closed a
14 couple years before trial. It is completely routine to update
15 damages calculations in antitrust cases before trial, and that
16 is going to happen in this case. We made these points.

17 Now, defendants, it's a very brief argument. They
18 said, look, our class also has broker dealers in it like Citi.
19 I'm just going to spend a moment on this. They could try to
20 pick off Citi if they want. They can try to pick off people.
21 The reality is, they forgot to mention Citi invested in AQS
22 because these luxury high-end prime brokers that we're talking
23 about here, they had wrapped up most of the supply of the
24 market. People had to come to them, including Citi. Some of
25 Citi's clients sometimes wanted to borrow Tesla. Citi didn't

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1 have it. They had to go to the prime brokers and pay the
2 inflated spreads to the prime broker defendants because they
3 had wrapped up the market, and that is why even second-tier
4 dealers like Citi paid inflated spreads. They are in our
5 class, and they supported platforms too.

6 The individualized defenses point, they rely on
7 Asacol. It is completely different. In Asacol, it was a brand
8 drug case, brand generic. The plaintiffs' very theory conceded
9 that determining impact, determined on figuring out on who
10 would switch from brand to generic. You had to know the splits
11 from brand to generic. Footnote three makes clear, they didn't
12 claim the brand price would go down too. The problem is they
13 had no method for identifying who would switch, yet knew
14 thousands wouldn't.

15 So the plaintiffs' impact theory required
16 individualized inquiries. It doesn't apply here. This whole
17 defense doesn't apply when the plaintiffs have a common
18 methodology for proving classwide impact. They also had no
19 win-to-win methodology. This case is very different.

20 We have a viable methodology for proving classwide
21 impact. We have a way to prove everyone benefits when the
22 platforms come. We don't have to determine. We will prove
23 that the option to trade on a platform benefits all class
24 members. We are capable of proving classwide impact. But
25 defendants are still going to have a fair opportunity at trial

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1 if the class is certified.

2 First, as the Olean decision explains and your Honor
3 alluded to this, they can try to defeat our case and they can
4 try to prove our classwide proof doesn't work. They can try to
5 prove to the jury that Dr. Zhu was a hack who came up with a
6 model that doesn't mean anything. Maybe they win. That will
7 raise a common dispute. It supports class certification.

8 Second, they could try to pick off class members
9 through individualized rebuttal. Nothing will stop them from
10 doing that. They say today they have some master undisclosed
11 plan for doing that with thousands of people. That's just not
12 credible. Who are these people? They haven't identified them.
13 They weren't in their initial disclosures.

14 Who are they planning to call at trial? They barely
15 took the depositions of any class members. They don't know
16 what these people will say. They never established they have
17 any reliable evidence to present showing that any particular
18 class member was not injured. They mainly talk about Torus,
19 because Torus is a class representative, and that is the idea,
20 but this is all just very vague.

21 Reality is, though, just to finish this, defendants
22 will never have to put up 1,000 inquiries. If defendants
23 actually at trial could start to show here's 20 people, here is
24 30 people who somehow wouldn't have benefited from platforms
25 entering the market. But on that threshold, they are going to

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1 disprove our case.

2 (Continued on next page)

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2 MR. OLSON: They're going to disprove our case and
3 win, and we'll all go home and they'll have won. There will
4 never be a circumstance they have to put a thousand people on
5 the stand, and there's all ways to handle this exact same
6 argument. Defendants cite no case in which the plaintiffs had
7 a viable method for proving class-wide impact but class
8 certification was denied because of this threat to prevent to
9 call thousands of people at trial.

10 By the way, *Asacol*, their lead case, was rejected by
11 Judge Gershon in *Restasis*.

12 *Aluminum Warehousing*, I'll just point this out. They
13 rely on it. This line, I think, says it all: This case is
14 decidedly is idiosyncratic. There, the plaintiffs had no model
15 that held up at all. Their expert had just made very, very
16 basic errors. This is a point I've already made.

17 Thank you, your Honor.

18 Their expert, by the way, we asked:

19 Now, have you actually done any empirical work that
20 identifies people who would somehow be worse off without the
21 conspiracy?

22 His answer:

23 No. No, I didn't. You know, I'd have to do these
24 inquiries. I'd have to think about it.

25 But he didn't even have an example. Courts reject

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1 these types of speculative contentions. *Olean* also rejects
2 this idea that individual damages estimates somehow disprove
3 impact. We've covered this; I'll go very quickly. There, too,
4 defendants tried to say the same thing, by the way. They tried
5 to say, Oh, look, we've run the model that shows some people
6 didn't have positive overcharge charges, that blows up your
7 impact theory. *Olean* rejected that. It said those people --
8 it was mainly because of a lack of the data, as it is here;
9 those people can rely on other evidence, such as about the
10 structure of the market for impact.

11 This, I think, is a key point. It's not the case that
12 the only way to prove impact in cases like this is through
13 regression model of individual damages. Dr. Zhu's model is
14 very similar to many other court-approved models. That
15 includes the market structure analysis accepted in *Air Cargo*.
16 It includes the market structure and pricing pattern analyses
17 in *Blood Reagents* from the Third Circuit; the price variation
18 model in *Dial Corp.*

19 This one is the most, probably the most on point, the
20 *High-Tech Employees* case. I'll pause on it for one moment.
21 It's very similar. In fact, economic search theory was born in
22 labor markets, and this was about high-tech companies agreeing
23 not to poach each other's employee, and the defendant said, You
24 know what -- they agreed not to solicit, call people on the
25 phone and offer them jobs. Defendants said, You know what?

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1 Only the people who would have gotten that phone call were
2 harmed. And the plaintiff's expert said: No, it wasn't just
3 the people who'd gotten the phone call, but that agreement
4 suppressed information across the market, made it hard for
5 employees to search for jobs, and because of very similar, a
6 very similar model about search theory showed that all class
7 members were harmed, not just the one who had gotten the phone
8 call. It's very similar to our case and, again, the yardstick
9 model in *Restasis*.

10 THE COURT: What does it do to the class if instead of
11 it being 100 U.S. doc loan transactions, as you define it,
12 being the daily position, that it was just 100 U.S. doc loans
13 using sort of the defendants' concept of a loan that might last
14 100 days or 50 days or something else?

15 MR. OLSON: I'm not sure it would have a tremendous
16 difference. It would eliminate some of the more very fringe
17 players. But for example, Torus had more than 100 trades.

18 THE COURT: Okay.

19 MR. OLSON: And so that wouldn't be an issue.

20 THE COURT: And is the transactions definition that
21 you use in footnote 10 of your opening brief being the daily
22 position --

23 MR. OLSON: Yes.

24 THE COURT: -- what drives that? Where does that come
25 from? Is that expert-driven? Is that market-driven? Does

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1 that come from another case? What's sort of the source of
2 that?

3 MR. OLSON: We consulted with our experts. Again, the
4 goal there was to really eliminate completely special-purpose
5 traders who popped in the market for an isolated trade and
6 popped out and never returned.

7 THE COURT: Okay.

8 MR. OLSON: So it was meant to be a very low
9 threshold.

10 THE COURT: Okay.

11 MR. OLSON: Because, again, it's like the luxury
12 high-end travel agent issue. Our belief, very strongly, is we
13 can prove when platforms come to the market, even people who
14 are relatively small are going to get better prices too.

15 Defendants have said today that Dr. Zhu didn't
16 actually use actual world data. I went over that with your
17 Honor this morning, and they did. Dr. Zhu's model, the inputs
18 are there on the left-hand column of the chart I went into.
19 That comes straight out of the quantitative data in this case.
20 It's the spread, it's the L2 price and the L1 price for cold,
21 warm and hard-to-borrow stocks. That is actual data that was
22 crunched at some elaborate length and fed right into the model.

23 Now, defendants' point here is that Dr. Zhu didn't
24 actually predict all of the price dispersion that happens in
25 the real world. That point is just off base. He wasn't trying

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1 to do that. His model is not -- we know the price dispersion
2 that occurred in the real world. He was trying to ask a
3 different question, which is what would happen to prices when
4 one thing changed, when some search costs go down?

5 By the way, the suggestion that this is some rigged
6 effect of the model and the only thing that turns prices,
7 search costs so that they go down, of course, prices are lower,
8 is completely untrue. The model has very sophisticated
9 economics to arrive at its conclusions about prices.

10 What Dr. Zhu was doing was holding, stripping out the
11 observable factors to isolate the cause and effect relationship
12 at issue that is the lower search costs. So counsel put up
13 this slide that they said was their favorite and has all this
14 price dispersion. I can't recall which one it is right now.

15 THE COURT: I remember.

16 MR. OLSON: Okay.

17 The thing is we all know that a lot of that price
18 dispersion is driven by observable factors. It's driven -- for
19 example, the larger hedge funds typically get a little bit
20 better prices than the smaller hedge funds. So we know that.
21 The question is, within each category, what effect does the
22 unobservable feature, which is whether that person is using a
23 platform, have on price? That is what his model has tested
24 very effectively. He explained this giving an analogy, which
25 he's good at.

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1 Let's say we were wondering about mortgage rates, and
2 the question is do people who go and get multiple quotes from
3 different banks for mortgages do better than people who don't?
4 You wouldn't be able to answer that question if you just lumped
5 all of the data together because there are observable factors
6 that will put that data into different buckets. For example,
7 people with better credit scores are going to get better
8 mortgage rates. So what you do is you control for the
9 observable factors. So you take brackets of people who have
10 good credit scores. And then you test within that to determine
11 what was the effect of the unobservable thing -- them going out
12 and getting multiple quotes -- within that category.

13 That's effectively what Dr. Zhu has done here. Within
14 every way you could categorize the class he has shown that the
15 unobservable factor leads to lower prices.

16 Sorry. I'm not going to have him say this.

17 THE COURT: You're almost at the end.

18 MR. OLSON: Thank you.

19 This issue about does the search model apply to
20 lenders, of course it does. His original work made very clear
21 that the search cost issue applies on both sides of the
22 asset -- to the buyers and the sellers. And it's not hard to
23 do that. Their experts know how to flip the model. He
24 explained that.

25 The issue here, they say, you know, it's actually

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1 prime brokers who have to do searches because sometimes they
2 have to call the lenders. That's missing what the search costs
3 are. Lenders have stock they want to make money from.
4 Lenders -- let's say a pension fund, they have Tesla; it's
5 worth something. They want to lend it out for money. In the
6 world, the OTC world we live in, they have to go through a lot
7 of effort to see who's going to buy it and for what price. The
8 search costs are the cost of getting price quotes. And it
9 don't matter if the lender called Goldman Sachs, picked up the
10 phone and called or if Goldman Sachs picked up the phone to
11 call. What matters is that it is complicated. It takes work
12 to get those price quotes.

13 The SEC has fully adopted this, so since I'm almost
14 out of time, I will just make one point about the SEC, which is
15 the SEC went at great length about all the benefits that
16 beneficial owners will gain from a reduction in search costs.
17 And there was one place where the SEC, as part of completeness,
18 said, you know, but there could be some costs too; we're going
19 to consider both sides of the coin. What's notable here is
20 defendants quoted all of this but cut off in slide 42 the last
21 sentence. And the reason why that's notable is because they
22 misled the court by suggesting that it stopped with this
23 question there might be winner and losers when they cut off the
24 conclusion that says, in general, the commission believes that
25 reductions in transaction costs ultimately benefit investors.

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1 Yes, we could imagine there might be some plus or
2 minuses. Their ultimate conclusion was ultimate benefit to all
3 investors.

4 So your Honor, are there any more questions you'd like
5 me to focus on?

6 THE COURT: No. I think I want to hear from
7 Ms. Levens about the foreign-domestic issues.

8 MR. OLSON: Thank you, your Honor.

9 THE COURT: Thank you.

10 I'll give the defendants an extra five minutes since
11 I'm giving the plaintiffs an extra five minutes. If you could
12 keep it to five minutes

13 MS. LEVENS: We're going to keep it really short.

14 THE COURT: My worry is there's some part of the
15 definition that needs to change to make sure that we don't have
16 any foreigners creeping be in there or running afoul of the
17 FTAIA.

18 MS. LEVENS: No.

19 Let's start with FTAIA, since that's what the judge
20 would like to talk about. You'll see the section -- okay.
21 This is wrong.

22 THE COURT: You can give me your slides on costs. I
23 don't think I can process any more about costs today.

24 MS. LEVENS: I completely understand.

25 *Empagran* makes it clear, as do the House reports, that

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1 it is fully acceptable for foreign purchasers to recover under
2 the antitrust laws. It is about the effects on domestic
3 commerce. *Forex* and all of the cases defendants are talking
4 about are cases where there was a global conspiracy that had
5 effects on domestic and global prices. That is not this case.

6 We have limited the case to just the domestic effects
7 by ensuring that it's limited to only U.S.-listed securities
8 and only U.S. domestic subsidiaries.

9 Now, let's actually go -- here are the slides. I
10 completely understand, but this kind of makes it clear.

11 This is defendants' key hypothetical that is their
12 concern under the FTAIA, and it is that prime brokers in Hong
13 Kong could be trading a security or borrowing or lending
14 securities to beneficial owners and users in China. Now, what
15 is clear is that this trade is explicitly not in our class.
16 Our class is limited to trades with domestic prime brokers, and
17 we can tell which trades are with domestic prime brokers
18 because defendants' data lets us know.

19 It is not about where any individual trader might have
20 pushed a button. It is about the corporate entity that that
21 trader was working for. We have made sure that it is only the
22 Morgan Stanley subsidiary that is included in this class, so
23 that we make sure that it is only domestic trades.

24 Now, if you want to see one more thing, in the *Vitamin*
25 *C* litigation, it made it clear that payment for a product in

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1 the United States is sufficient to create a domestic effect for
2 FTAIA and antitrust standing purposes. And the *Vitamin C*
3 litigation case that's cited there also lists several other
4 provisions that have had the exact same conclusion.

5 Does your Honor have any questions about that?

6 THE COURT: No. I understand what you're saying.

7 MS. LEVENS: Of course.

8 THE COURT: Okay.

9 MS. LEVENS: I don't really think there are any
10 questions about cost either, unless --

11 THE COURT: No.

12 MS. LEVENS: Thank you, your Honor.

13 THE COURT: Five minutes from the defendants on any
14 final points.

15 MR. PASKIN: Thank you, your Honor.

16 Just a couple of brief points, and Mr. Wick may have
17 as well.

18 With respect to what Mr. Brockett said, he made one
19 point that I wanted to respond to. He talked about this sort
20 of potential allocation process after trial, etc. It's not
21 just about manageability of that, and it's not just about
22 whether or not counsel is conflicted from engaging in that
23 process. The problem here is it does go to an element of
24 liability. The element of liability is injury in fact. It's
25 not -- the injury element isn't just did the alleged conspiracy

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1 cause harm? The question is did each class member suffer
2 injury in fact? Did they suffer a financial detriment as a
3 result of the conduct? And whether or not they suffered a
4 financial detriment rises or falls, for many class members, as
5 Mr. Wick pointed out, on where you set those numbers.

6 When you move that W around, it either kicks out or
7 adds in hundreds of borrows or lenders out of the class, and
8 that is a liability element because it determines whether there
9 are zero, or negative, damages for certain alleged class
10 members. And that's an issue that can be sorted out after
11 trial. That has to be sorted out now. It has to be sorted out
12 either on a common basis, which it can't be, or there can't be
13 class certification. So it's not just an issue of conflicts.
14 It's an issue of predominance and what that issue means in
15 terms of the ability on common evidence to identify uninjured
16 class members and who the uninjured class members are.

17 With respect to Dr. Zhu, Dr. Zhu's academic work may
18 be pristine. It may be the best way to identify market-wide
19 general average benefits. I don't know. But Dr. Zhu's
20 academic work does not say there are no losers and only
21 winners. What Dr. Zhu's study says, and his numbers all do it.
22 He says if you look at these averages, they're average. On
23 average he thinks everybody's better off. He knows there's
24 dispersion, and he attempts -- and Mr. Olson said, Well, the
25 dispersion all doesn't matter because he bucketed people on

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1 observable characteristics. The most important characteristic,
2 though, is do prime brokers have insight into whether or not
3 these clients have price transparency? That, to Dr. Zhu, is an
4 unobservable characteristic because he assumes that there is no
5 price visibility that prime brokers have.

6 We showed you the evidence, your Honor. From hedge
7 funds, from prime brokers, it's widely known in the business
8 who else your prime broker -- who else your hedge fund clients
9 are dealing with, and the hedge funds use that to their
10 advantage. So the key assumption, the key characteristic that,
11 in the real world, is observable Dr. Zhu assumes is not
12 observable. And that is fatal to his analysis because that's
13 the one variable, as Mr. Olson said, that's the basis on which
14 his analysis determines impact.

15 And the references to the SEC are really the same
16 thing. Mr. Olson highlighted the last sentence there that
17 said, and he slipped in an extra word. The SEC said, in
18 general, investors benefit. Mr. Olson said, in general, all
19 investors benefits. That's not what the SEC said.

20 THE COURT: I can read.

21 MR. PASKIN: But the SEC recognizes winners and loser,
22 and there's nothing that he said can undermine that. That's
23 what the document says.

24 One other point just about sort of the mechanics of
25 trial and proof. Yes, one thing that we will do is we're going

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1 to march in hedge fund witness. We're going to march in all
2 sorts of witness. We're going to march in people who can talk
3 about all of these issues in a contextual way.

4 The other thing that we're going to do and that
5 Mr. Wick showed through some of the data is we are going to use
6 the Asquith and Pathak damages model to show, to prove at trial
7 that there are class members, when you take specific class
8 members out of the data rather than aggregating them the way
9 Dr. Zhu does, when you take specific class members out of the
10 data and you plug it into the model, the model spits out a
11 negative number, even without any adjustment. So that means
12 that at trial, we will prove, using their evidence -- not even
13 our own evidence -- using their own evidence that they're
14 putting in for a different purpose, we're going to show at
15 trial that there are class members for whom there is no injury
16 in fact.

17 And, again, injury in fact is an element of liability.
18 It is a necessary element of liability that they have to prove
19 on a class-wide basis, and because the Asquith and Pathak model
20 undermines their class-wide evidence, that's what we're going
21 to present at trial, and that's what they cannot overcome and
22 why the class cannot be certified.

23 Thank you your Honor.

24 THE COURT: Thank you.

25 All right. Let's talk a couple of logistics

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1 MR. WICK: Your Honor, may I have two minutes?

2 THE COURT: Okay.

3 MR. WICK: Thank you for your patience, and I'll keep
4 this very brief.

5 Mr. Olson said this case isn't like in *Asacol*, because
6 in *Asacol* you didn't know who would have switched from using
7 the brand name drug to using the generic drug and if they
8 wouldn't have switched to using the generic drug, then they
9 weren't harmed.

10 This case is just like that, your Honor. We don't
11 know which class members would have switched to using the
12 platform and which wouldn't. The only way to determine which
13 class members would have switched to using the product and
14 therefore potentially could have been harmed, the only way to
15 determine that is through class-member-by-class-member
16 examination of whether they would or would not have switched
17 and whether they would or would not be able to make a
18 credible threat that they would switch.

19 Now, Mr. Olson says, Well, it doesn't matter if the
20 defendants could show on an individualized user-by-user basis
21 that they wouldn't have used the platform and wouldn't have
22 switched because we can just rely on the Zhu model and the Zhu
23 model might be persuasive to a jury. The trouble with that,
24 your Honor, is that a jury might well be persuaded by our
25 class-member-by-class-member evidence that in some cases the

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1 Zhu model is wrong. The jury is not required to decide all or
2 nothing, the Zhu model is always right and the defendants'
3 individualized evidence is always wrong. In individual cases,
4 we may be able to show that the premise of the Zhu model is
5 inapplicable and through class-member-by-class-member evidence
6 they wouldn't have switched to the platform and therefore were
7 not harmed.

8 With respect to the FTAIA, Ms. Levens said that all
9 that matters is that the class member traded with a
10 U.S.-domiciled entity even if the trade operationally took
11 place in Hong Kong. Judge Schofield says she's dead wrong
12 about that. What Judge Schofield said is the defendant's
13 domicile doesn't matter; what matters is where they are
14 operating at the time of the transaction. If the trade was
15 done out of a Hong Kong desk and booked to the U.S.-domiciled
16 entity, the FTAIA says you cannot apply U.S. antitrust law to
17 that transaction, and the only way to figure out that is to go
18 through millions of transactions one at a time and figure out
19 where the parties were operating at the time of a specific
20 transaction.

21 Finally, with respect to the adequacy issue,
22 Mr. Brockett suggested that we are a wolf in sheep's clothing;
23 we just want the class members to fight with each other. If he
24 is right that the class members would not adopt the same common
25 compromise position that he has, that's a concession that he's

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1 an adequate counsel. If he's conceding that independently
2 represented borrowers and independently represented lenders
3 would take different positions than these guys have taken,
4 trying to play referee between the two subclasses, that's an
5 admission he's not an adequate class representative.

6 Independent counsel can make a judgment as to whether they want
7 to be in conflict with the other subclass at trial or whether
8 they want to be in harmony with the other subclass at trial.
9 But you need independent counsel to make that decision. You
10 can't have unitary counsel make it.

11 Our reasons for raising this issue are because if a
12 subsequent court determines that somebody was inadequately
13 represented, because they didn't have their own, independent
14 counsel for their own subclass, the judgment can be
15 collaterally attacked. So at the end of trial, if there are
16 class members who don't like what they were allocated, then
17 they're free to collaterally attack the class action judgment.
18 If the defendants want to get this right so that whatever
19 judgment is entered in this case has collateral estoppel
20 effect, so that it's not collaterally attacked later.

21 He says a neutral mediator could fix this problem at
22 an allocation phase. In the first place, you cannot partition
23 the trial between the injury phase and the damages phase,
24 because, as Mr. Paskin explained, we're going to rely on the
25 same evidence on both issues. The same evidence is relevant to

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1 both issues, and it will already be too late by the time of
2 this hypothetical allocation phase because by the time they put
3 on their damages model to try to prove aggregate proof, we will
4 have turned it around and showed that for many individual class
5 members it disproves any injury at all. And that's how their
6 model works.

7 Their model doesn't just say I estimate from a
8 top-down level collective damages are a thousand bucks. The
9 way their model works is it operates class member by class
10 member. What he says are the total adequate class recovery is
11 nothing but the sum of a number of individual estimates for
12 individual class members. So by the time of an allocation
13 phase, it will be too late. We will already have pointed out
14 that there but-for prices model contradicts the Zhu search cost
15 model and disproves the claim of injury for many class members.

16 Finally, your Honor, with respect to the *National*
17 *Football League* case, I guess I should also say that in several
18 of the cases that we cite, there were neutrals there. There
19 were mediators who blessed the allocation between the parties,
20 but in *Literary Works*, the Second Circuit still said that
21 didn't cure the conflict. The only thing that could cure it
22 was independent counsel for each subclass.

23 Finally, in the *NFL* case that he mentions, where
24 subclass counsel was drawn from preexisting counsel, the court
25 there is careful to note that that only worked because separate

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1 counsel for each subclass was appointed early in the process,
2 before any allocation had been proposed. Here, they have
3 already committed themselves to an allocation proposal. And if
4 they try to, if they try to turn around and at some allocation
5 phase contradict the showing they made at trial, they'll be in
6 a weak position to do that. They're not in an adequate
7 position to do that.

8 Thank you, your Honor.

9 THE COURT: Thank you.

10 Okay. In terms of logistics, I will need a transcript
11 of today's argument. I think largely in terms of confidential
12 information we didn't really have anything come out, but if you
13 think you'll need to redact anything, we can do it under seal
14 in the first instance and then do a redacted copy.

15 Do the parties have a view?

16 MR. PASKIN: I think we can take a look at that, your
17 Honor.

18 THE COURT: Okay.

19 MR. PASKIN: But I also agree you're probably right
20 that I don't think there's much that's problematic.

21 THE COURT: I think I quoted some things that might be
22 in yellow. It's up to you to order the transcript. If you
23 want to have be provisionally under seal until you've had a
24 chance to look at it and then let me know if there's any
25 redactions and then we can do a public version. Okay?

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1 I would like to get a copy of the plaintiff's rebuttal
2 slides.

3 MR. PASKIN: As would we, your Honor.

4 THE COURT: I'm sure you would.

5 MR. OLSON: We'll get that to you as soon as we can.

6 THE COURT: Tomorrow is fine, please.

7 And I think that's it. I really don't want any more
8 briefing. Obviously, I can't preclude you from it. If there's
9 a case that comes out that you want me to know about, but what
10 I would tell you is just cite the case and tell me which
11 section of your brief or which argument, because all you're
12 doing is inviting a three-page letter from the other side,
13 which is just going to slow my process down, and I know you'd
14 like me to be done sooner rather than later.

15 As I noted, I will be issuing a report and
16 recommendation. You'll have a full opportunity to object to
17 Judge Failla in due course.

18 Anything else that anybody wants to cover today then?

19 Okay. Good. Thank you for the very helpful
20 presentations.

21 We'll be adjourned.

22 (Adjourned)

EXHIBIT “A”

From: Nourafshan, Alexander@DBO [mailto:alexander.nourafshan@dbo.ca.gov]
Sent: Monday, August 20, 2018 2:15 PM
To: Washburn, Charles
Subject: RE: Confidential Treatment Re: BlockFi

Hi Charles,

I will call in a few minutes.

Best,

Alex

Alexander M. Nourafshan
Counsel, Legal Division
Department of Business Oversight
t (415) 263-8503 | e alexander.nourafshan@dbo.ca.gov

From: Washburn, Charles <cwashburn@manatt.com>
Sent: Monday, August 20, 2018 2:12 PM
To: Nourafshan, Alexander@DBO <alexander.nourafshan@dbo.ca.gov>
Subject: RE: Confidential Treatment Re: BlockFi

Thank you, Alex, and I am available any time this afternoon until 6:30 p.m., including now.

Charles Washburn

Partner

Manatt, Phelps & Phillips, LLP

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107

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From: Nourafshan, Alexander@DBO [mailto:alexander.nourafshan@dbo.ca.gov]
Sent: Monday, August 20, 2018 1:20 PM
To: Washburn, Charles
Subject: RE: Confidential Treatment Re: BlockFi

Hi Charles,

Sincere apologies for my delayed reply. Are you available this afternoon or anytime tomorrow to chat for a few minutes? Please let me know your availability for a brief phone call. Thanks!

Best,

Alex

Alexander M. Nourafshan

Counsel, Legal Division

Department of Business Oversight

t (415) 263-8503 | e alexander.nourafshan@dbo.ca.gov

From: Washburn, Charles <cwashburn@manatt.com>
Sent: Thursday, August 16, 2018 2:24 PM
To: Nourafshan, Alexander@DBO <alexander.nourafshan@dbo.ca.gov>
Subject: RE: Confidential Treatment Re: BlockFi

Alex,

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I thought I would check in on the status of management review of the opinion request, and also my question regarding whether you could share your view on the issue. Thank you.

Charles Washburn

Partner

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From: Washburn, Charles
Sent: Thursday, July 26, 2018 5:05 PM
To: 'Nourafshan, Alexander@DBO'
Subject: RE: Confidential Treatment Re: BlockFi

I appreciate your prompt review of the request, and I also appreciate your conveying to management the urgency here. Would you be able to share your view with me, which I would of course recognize is subject to management review and so is not binding on the Department?

Charles Washburn

Partner

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cwashburn@manatt.com

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From: Nourafshan, Alexander@DBO [mailto:alexander.nourafshan@dbo.ca.gov]
Sent: Thursday, July 26, 2018 4:35 PM
To: Washburn, Charles
Subject: Re: Confidential Treatment Re: BlockFi

Hi Charles,

I have completed my review and sent my analysis to management for approval. I am not sure when management review will be completed, but I will send a note along requesting expedited review. Hopefully that will help speed the process along, though I cannot provide any more specific timeline.

Best,

Alex

Alexander M. Nourafshan
Counsel, Financial Institutions Division
Department of Business Oversight

From: Washburn, Charles <cwashburn@manatt.com>
Sent: Thursday, July 26, 2018 4:07:35 PM
To: Nourafshan, Alexander@DBO
Subject: RE: Confidential Treatment Re: BlockFi

I appreciate the quick response, Alex. Again, due to the urgency of the request from the client's perspective, can you give me a feel for when the review will be completed, and whether there is anything that can be done to expedite the review?

Charles Washburn

Partner

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From: Nourafshan, Alexander@DBO [mailto:alexander.nourafshan@dbo.ca.gov]
Sent: Thursday, July 26, 2018 4:07 PM
To: Washburn, Charles
Subject: Re: Confidential Treatment Re: BlockFi

Dear Charles,

Thank you for your email. We are still reviewing your request. I will let you know if we have any questions or can provide a more detailed update. Thank you for your patience.

Best,

Alex

Alexander M. Nourafshan
Counsel, Financial Institutions Division
Department of Business Oversight

From: Washburn, Charles <cwashburn@manatt.com>
Sent: Thursday, July 26, 2018 3:42:53 PM
To: Nourafshan, Alexander@DBO
Subject: FW: Confidential Treatment Re: BlockFi

Alex,

Sorry to bother you (and I got a bounce back to my message on Tuesday), but again I want to check in on the status of this request. As noted below, the client has been placed at a severe disadvantage due to a competitor with a similar business that apparently is being allowed to operate under the CFL by the Department. If the Department sees a distinction between the two operations, please let me know as soon as possible.

Chuck

110

Charles Washburn

Partner

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From: Washburn, Charles
Sent: Tuesday, July 24, 2018 10:57 AM
To: 'Nourafshan, Alexander@DBO'
Subject: RE: Confidential Treatment Re: BlockFi
Importance: High

CONFIDENTIAL

Alex,

I hope this message finds you well.

I am following up to check on the status of our request for an interpretive opinion, a copy of which request I have attached for ease of reference. As you know, it was received by the Department on May 15.

As discussed in more detail in the opinion request, the position taken by the Department to-date that a licensee under the California Financing Law ("CFL") cannot hold collateral I respectfully believe is based on a clear misreading of vestigial language in Section 22009 of the CFL defining the term "finance lender," which hopefully you see as well.

As also discussed in the request, this incorrect Department position is causing substantial harm to our client BlockFi Lending LLC. In particular and as noted in the request for expedited treatment, I understand from the client that a competitor, Unchained Capital, Inc., was granted a CFL license by the Department (60DBO-78867) and based on the Department's web site that license is still active. The client further advises that Unchained Capital is still doing a lending business in California and is still holding crypto currency as collateral in connection

with those loans, while at the same time BlockFi Lending is unable to lend in California on similar terms with respect to holding collateral based on this Department position. 112

Thank you in advance for your assistance, and I would again be happy to discuss any questions you may have regarding the analysis.

Best regards,

Chuck

Charles Washburn

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From: Nourafshan, Alexander@DBO [mailto:alexander.nourafshan@dbo.ca.gov]

Sent: Thursday, June 28, 2018 1:44 PM

To: Washburn, Charles

Subject: RE: Confidential Treatment Re: BlockFi

Interpretive opinion requests generally take at least 60-90 days. I will do my best to provide any updates that I can.

Alexander M. Nourafshan

Counsel, Legal Division

Department of Business Oversight

t (415) 263-8503 | e alexander.nourafshan@dbo.ca.gov

From: Washburn, Charles [mailto:cwashburn@manatt.com]
Sent: Thursday, June 28, 2018 11:47 AM
To: Nourafshan, Alexander@DBO <alexander.nourafshan@dbo.ca.gov>
Subject: RE: Confidential Treatment Re: BlockFi

Thank you, Alex. Is it possible to give me an idea when the initial review may be completed?

Charles Washburn

Partner

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From: Nourafshan, Alexander@DBO [mailto:alexander.nourafshan@dbo.ca.gov]
Sent: Thursday, June 28, 2018 11:24 AM
To: Washburn, Charles
Subject: RE: Confidential Treatment Re: BlockFi

Hi Mr. Washburn,

Thank you for your email. Your request is currently under review. I will let you know if we have any further questions or need additional information.

Best,

Alex

Alexander M. Nourafshan

Counsel, Legal Division

Department of Business Oversight

t (415) 263-8503 | e alexander.nourafshan@dbo.ca.gov

From: Washburn, Charles [mailto:cwashburn@manatt.com]
Sent: Thursday, June 28, 2018 11:08 AM
To: Nourafshan, Alexander@DBO <alexander.nourafshan@dbo.ca.gov>
Subject: RE: Confidential Treatment Re: BlockFi

Alex,

I thought I would take the liberty of checking on the status of our request for an interpretive opinion, and reiterate my offer to discuss any questions you may have regarding our analysis. Please let me know, and thank you.

Best regards,

Chuck

Charles Washburn

Partner

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From: Washburn, Charles
Sent: Friday, June 15, 2018 3:25 PM
To: 'Nourafshan, Alexander@DBO'
Subject: RE: Confidential Treatment Re: BlockFi

Thank you very much, Alex. (I have yet to receive the letter sent by USPS, so I appreciate the PDF.) Also, I would be happy to discuss with you the request for an interpretive opinion, including any questions you may have regarding the legal analysis. Again, thank you, and have a good weekend.

Charles Washburn

Partner

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From: Nourafshan, Alexander@DBO [<mailto:alexander.nourafshan@dbo.ca.gov>]
Sent: Friday, June 15, 2018 3:20 PM
To: Washburn, Charles
Subject: Confidential Treatment Re: BlockFi

Dear Mr. Washburn,

A letter granting confidential treatment of your request regarding BlockFi Lending LLC was sent in the mail on Monday, June 11, 2018. Please find a copy of this letter attached. I will let you know if any additional information is needed in connection with this request.

Best regards,

Alex

Alexander M. Nourafshan

Counsel, Legal Division

Department of Business Oversight

t (415) 263-8503 | e alexander.nourafshan@dbo.ca.gov

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Orange, State of California. I am over the age of 18 and am not a party to the within action; my business address is 600 Anton Boulevard, Suite 700, Costa Mesa, California 92626.

On *March 23, 2021*, I served a true and correct copy of the document entitled: ***DECLARATION OF CHARLES E. WASHBURN, JR. RE SUPPLEMENTAL BRIEF RE MOTION TO DISMISS, OR IN THE ALTERNATIVE TO STAY, THE ACTION ON THE GROUND OF FORUM NON CONVENIENS*** on the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, as indicated below and addressed as follows:


<p>John M. Gerro, Esq. George J. Gerro, Esq. Law Offices of Gerro & Gerro 530 S. Glenoaks Boulevard, Suite 200 Burbank, CA 91502 Telephone: (818) 840-0000 E-Mail: john@gerrolaw.com george@gerrolaw.com <i>[Attorneys for Plaintiff]</i></p>	<p>Scott J. Hyman, Esq. Katherine Figueroa, Esq. Severson & Werson The Atrium, 19100 Von Karman Avenue Suite 700 Irvine, CA 92612 Telephone: (949) 442-7110 E-Mail: sjh@severson.com kf@severson.com <i>[Attorneys for Defendant Scratch Services, LLC]</i></p>
---	---

(By U.S. Mail) I am readily familiar with my employer’s business practice for collection and processing of correspondence for mailing with the United States Postal Service. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter is more than one day after date of deposit for mailing in affidavit. I caused such envelope, with postage thereon fully prepaid, to be placed in the United States Mail at Costa Mesa, California as indicated above.

(By Electronic Delivery) Pursuant to C.C.P. § 1010.6, I served true and correct copies of the foregoing document by electronic delivery to the interested parties in this action as indicated above.

(By Express Delivery) I served a true and correct copy, enclosed in sealed Fedex envelopes, for collection and for delivery marked for next day delivery in the ordinary course of business, addressed to the office of the addressees as indicated above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on *March 23, 2021*, at Costa Mesa, California.



Kelley L. Saunders

Exhibit A

Stakeholder Update Materials

Prepared for Creditor Meeting on September 11-12, 2023

In re FTX Trading LTD., et al., Case No. 22-11068 (JTD)





Disclaimer

Limitations of Report

This report and the information contained herein (the "Report") has been prepared solely for use by FTX Trading Ltd. (d.b.a. FTX.com), and approximately 101 additional affiliated companies (together, the "Company") based on instructions given by the Company to Sullivan & Cromwell ("S&C"), Alvarez & Marsal North America, LLC ("A&M") and Perella Weinberg Partners ("PWP" and together with S&C and A&M, the "Debtors' Advisors").

The limiting conditions, assumptions and disclaimers set forth herein are an integral part of this Report, must be reviewed in conjunction herewith, and may not be modified or distributed separately.

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In the event this Report contains or involves prospective financial or forward-looking information, this information was prepared by the Company's management and our work did not constitute an examination, compilation or agreed-upon procedures in accordance with standards established by the American Institute of Certified Public Accountants, and the Debtors' Advisors express no assurance of any kind on such information. Further, the work involved did not include a detailed review of any transactions, and cannot be expected to identify errors, irregularities or illegal acts, including fraud or defalcations that may exist. Accordingly, the Debtors' Advisors cannot and do not express an opinion or any other form of assurance on, and assumed no responsibility for, the accuracy or correctness of the historical information or the completeness and achievability of the projected financial data, information and assessments upon which the Report is presented.

Further, any references to estimated ranges of collateral values or cash flow recoveries included in this Report are preliminary in nature, subject to material change and not valuations of any kind. Rather, estimates have been necessary to include herein, and are based upon the limited financial information as provided or made available by the Company, available market information and various assumptions and are provided for informational purposes only. References to values of any cryptocurrencies or other digital assets are approximate and subject to material change. It is expected that there will be differences between estimated and actual results, because events and circumstances frequently do not occur as expected, and those differences may be material. Accordingly, no representation or warranty is made as to, and the Debtors' Advisors take no responsibility for, the achievability of any estimated recovery results described in this Report. Accordingly, the Debtors' Advisors are not responsible to any party, in any way, for the future financial or operational performance of any recipient of the Report or any affiliated company.

Further, this Report will be subject to further work, revisions and other factors which means that this version may be substantially different from any final report or advice issued.

The Report does not constitute a recommendation as to what action, if any, any person should take with respect to any claims and/or securities, nor does the Report constitute a recommendation regarding the accounting, tax, financial, legal or regulatory aspects of any proposed or possible outcome of the Company's restructuring.



Disclaimer (cont'd)

No Third Party Reliance

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Day 1 Agenda – Briefings

September 11, 2023



Agenda Item	Page	Schedule
Unrestricted Briefing		
A Claims Overview		
▪ Non-Customer Claims Overview	6	9:30AM – 10:30AM
▪ Claims Portal Update		
B Estate Assets Overview	9	10:30AM – 11:30AM
C Preference & Other Avoidance Overview	18	11:30AM – 12:30PM
Break for Lunch		12:30PM – 1:30PM
D Digital Assets & Venture Investments	22	1:30PM – 2:30PM
E Other Process & Timeline Updates	34	2:30PM – 3:30PM
Restricted Briefing		
Tax Update	n/a	
F DOJ Restitution Update	n/a	3:30PM – 4:30PM
Outbound Litigation Update	n/a	
G Preliminary Plan Financial Analysis & Sensitivities	n/a	4:30PM – 6:00PM
H UCC & Ad Hoc Views on Draft Plan Terms	n/a	6:00PM – 7:00PM

Day 2 Agenda – Discussions

September 12, 2023



Agenda Item

Schedule

Unrestricted Session

Stakeholder Feedback on Open Plan Issues

9:30AM – 12:00PM

Break for Lunch

12:00PM – 1:00PM

Restricted Session

Other Term Sheet Issues

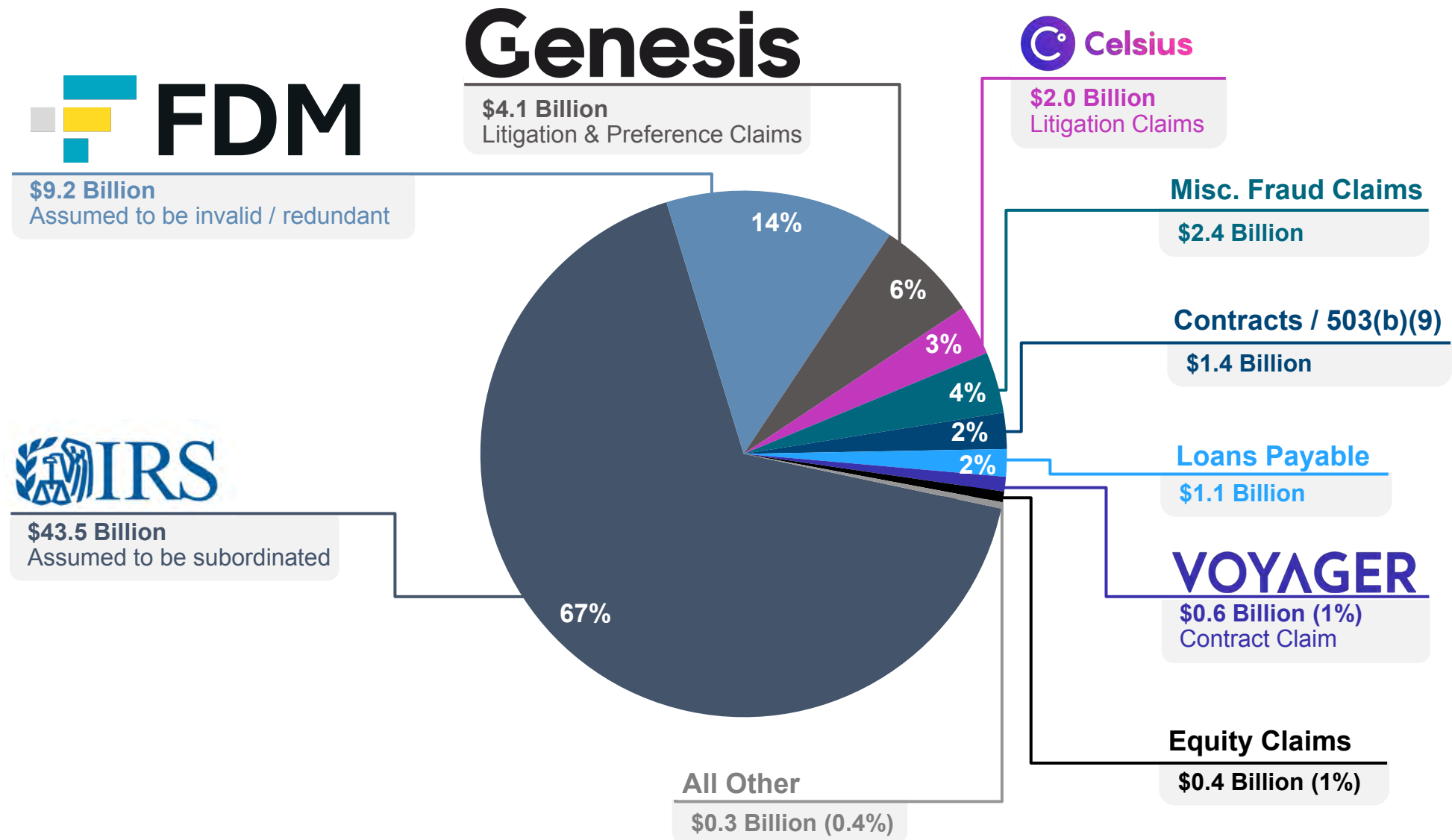
1:00PM – 4:30PM

A. Claims Overview



Non-Customer Claims Overview

Since the passage of the non-customer bar date on June 30, 2023, **over 2,300 non-customer claims have been filed for over \$379B**. Removal of **\$313B** of duplicates¹ results in **\$65B** of remaining non-customer claims, including:²



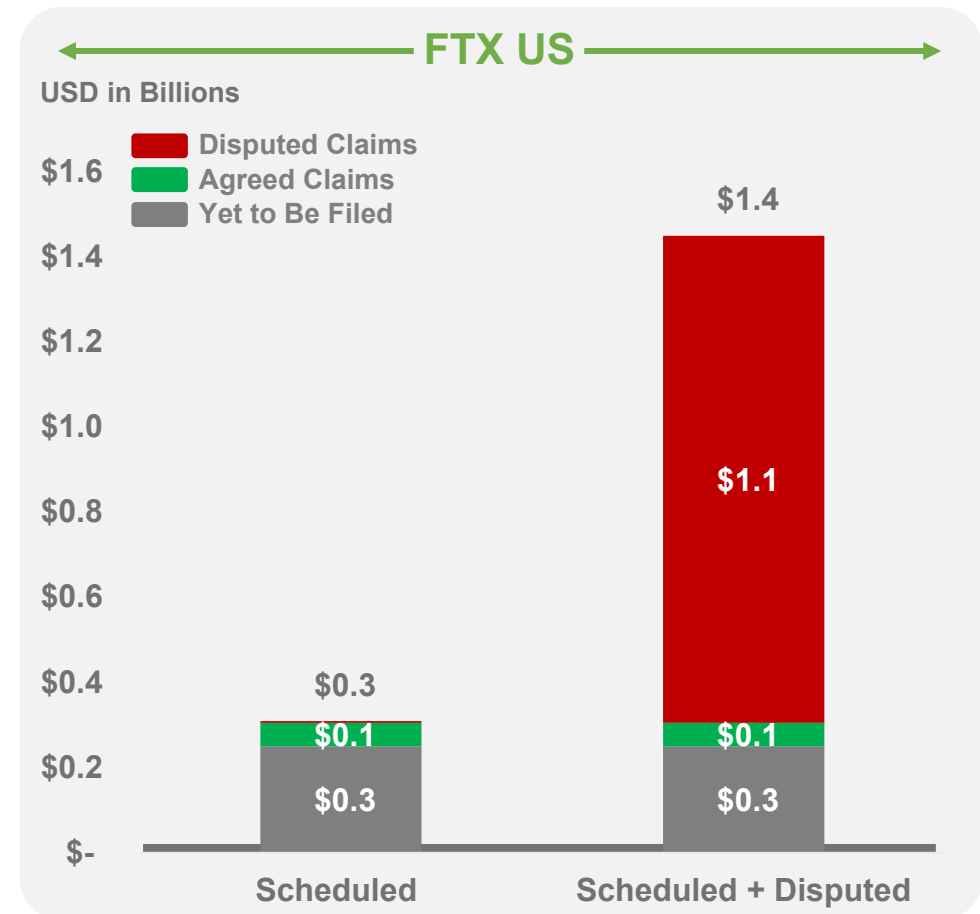
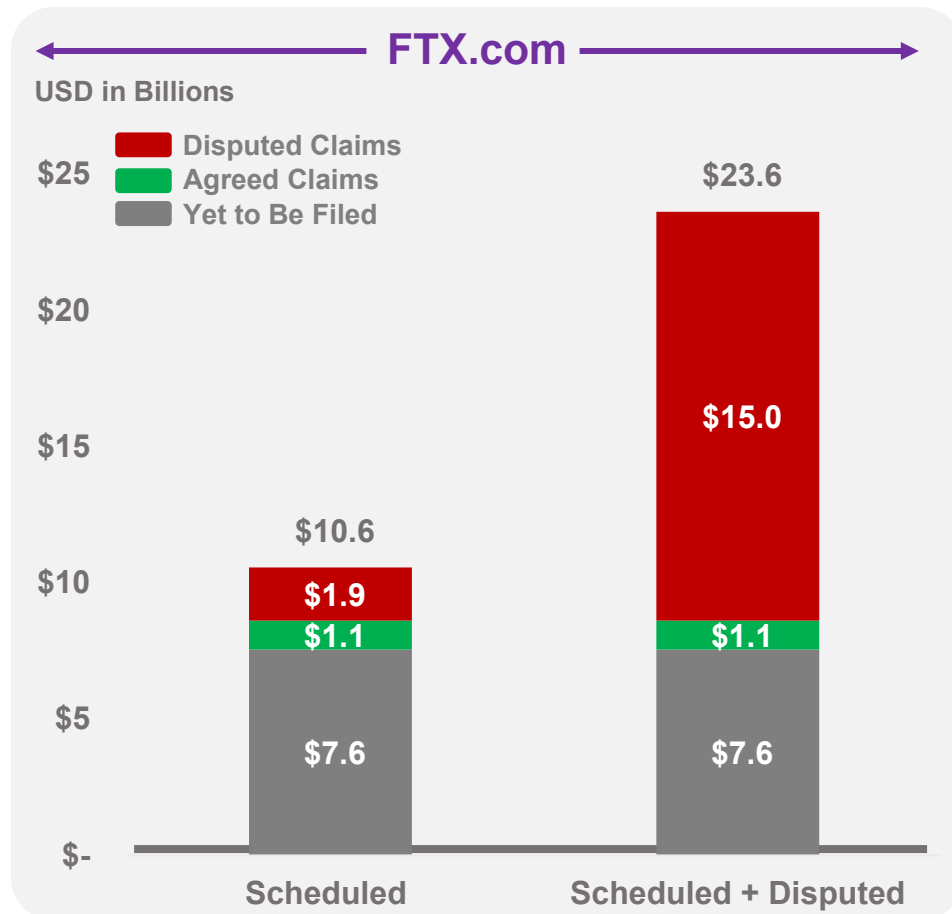
1. Current adjustments reflect a preliminary analysis to remove what appear on their face to be duplicative claims, claims that are amended and superseded by later filed claims and certain adjustments to selected unliquidated claims. This analysis is preliminary, incomplete and further efforts, including a formal claims process, are expected to lead to material adjustment.
 2. Excludes \$1.7B of claims that have been formally withdrawn by Green Healthy House



Customer Claims Filed to Date

As of August 24, approximately **36,075 customer claims** have been filed for a total of **\$16 billion**¹

- Across **FTX.com** and **FTX US**, the Debtors have scheduled **\$10.9B** of customer claims to date
- **Holders of ~\$7.9B** (72%) in claims have yet to agree with or dispute their scheduled claims
- **Holders of ~\$1.2B** (10%) in claims have agreed with their scheduled claims
- **Holders of ~\$1.9B** (18%) in claims have disputed their scheduled claim amount. Reconciliation of disputed claims is underway
- Customers have until September 29, 2023 (the Customer Claims Bar Date) to file a proof of claim if they dispute their scheduled claim



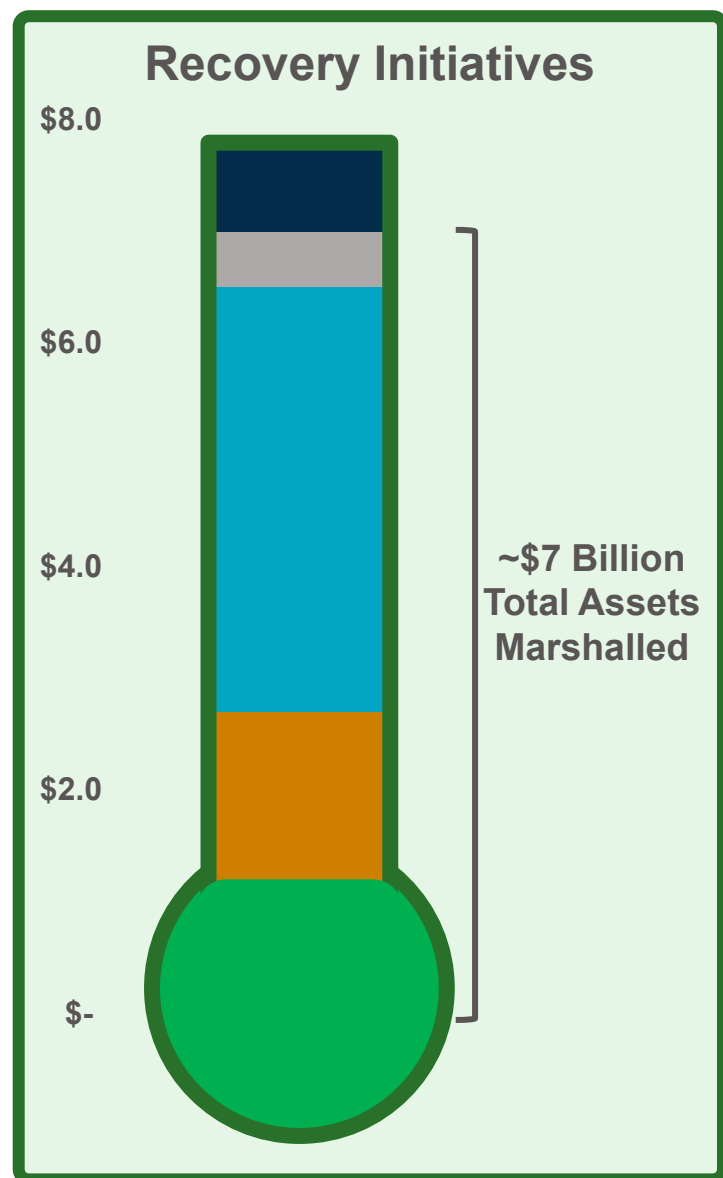
1. Excludes 193 customer claims facially frivolous or errant of ~\$9.2 quintillion

B. Estate Assets Overview



Executive Summary

The analysis herein details Debtor assets marshalled to date at latest available pricing, values per the ongoing reconciliation of the Debtors' books and records, and based on ongoing marketing efforts:



\$0.8B

Government Recovered Assets

Asset seizures by SDNY including cash and public equity investments

\$0.5B

Brokerage Assets

Venture brokerage assets secured and managed by the Debtors

\$3.4B

Crypto Assets

Category A crypto assets secured and managed by the Debtors

\$1.5B

Postpetition Cash Identified and Secured

Cash assets identified, secured and managed by the Debtors

\$1.1B

Cash at Petition Date

Cash balances identified at Petition Date, secured and managed by the Debtors

TBD

Potential Incremental Estate Value

Includes venture investments, digital assets B, tokens receivable, counterclaims recoveries, potential avoidance / preference actions, FTX 2.0, and investments in subsidiaries



Estate Assets Overview

The below summarizes current asset values by Plan pool, both Debtor and Non-Debtor assets, bifurcated by marshalled assets and potential incremental value:

USD in Millions	Pg.	US Pool	Dotcom Pool	General Pool	Total
Digital Assets A	12	\$ 538	\$ 148	\$ 2,748	\$ 3,434
Cash ¹	13	n/a	n/a	2,421	2,421
FBO Account Balances	13	32	103	n/a	135
Brokerage Investments	14	n/a	n/a	529	529
Venture Investments ²	15	n/a	n/a	TBD	TBD
Digital Assets B ³	n/a	n/a	n/a	n/a	n/a
Token Investments	17	n/a	n/a	TBD	TBD
FTX Bahamas Properties ⁴	18	n/a	199	n/a	199
Investments in Subsidiaries ⁵	n/a	n/a	n/a	21	21
FTX 2.0	n/a	TBD	TBD	TBD	TBD
Preference / Potential Avoidance	n/a	TBD	TBD	TBD	TBD
Total		TBD	TBD	TBD	TBD

1. Includes Debtor and Non-Debtor cash as of August 31, 2023 (see p. 13)

2. Venture and token investments have a total cost basis of \$4,538M (inclusive of exits to date, see p. 26, excludes Non-Debtor assets, see p. 32); should not serve as a proxy for recoverable value

3. Digital Assets B valuation to be determined following retention and analysis of a valuation expert

4. FTX Bahamas values based on appraisal provided by the FTX Digital Markets JPLs via PwC with a sale range of between \$185M and \$214M

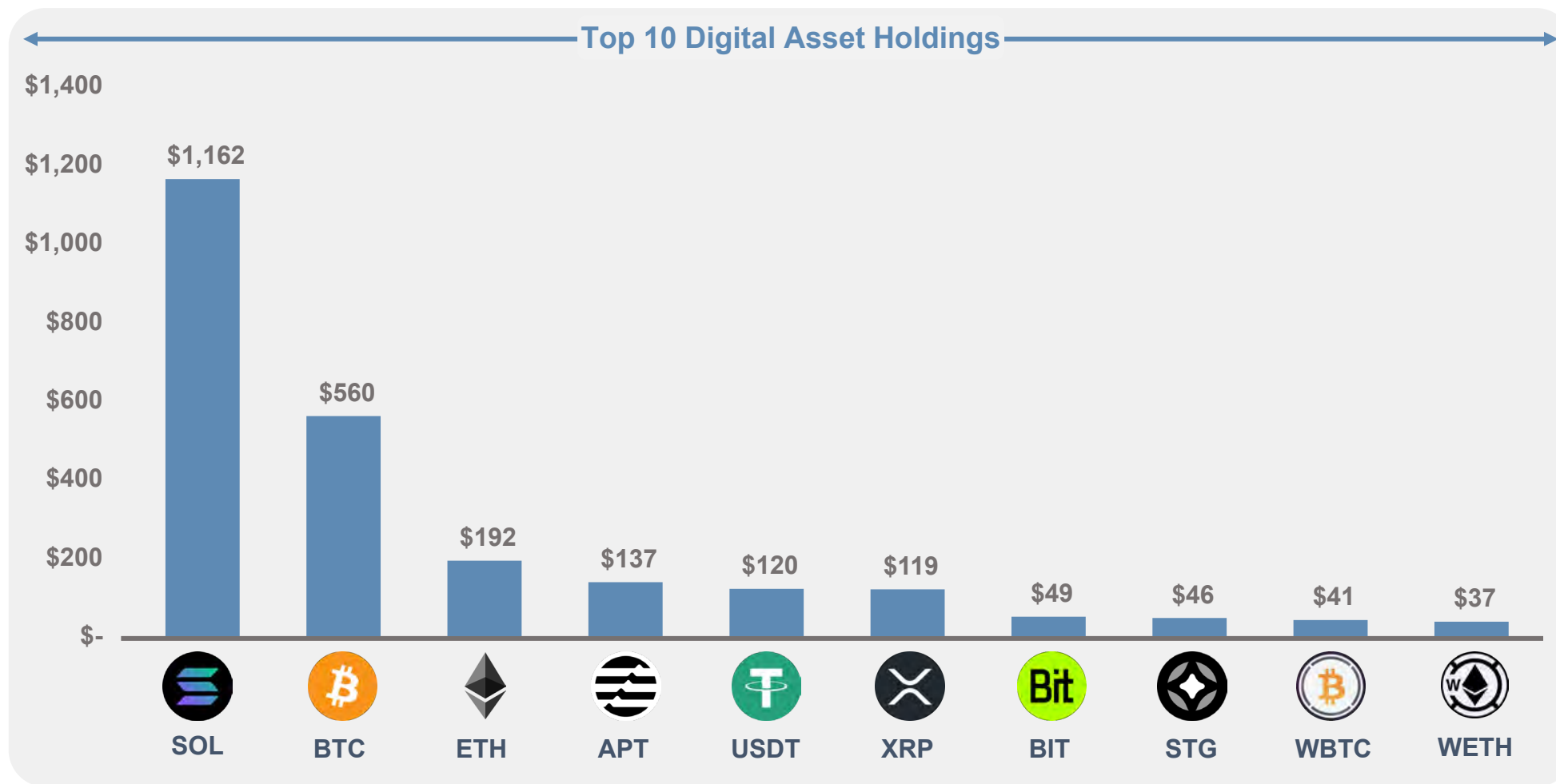
5. Reflects projected residual value from two Investments in Subsidiaries in the process of winding down and liquidating



Digital Asset A Holdings

\$3.4 billion of Digital Assets A marshalled to date at August 31 pricing

The below includes all FTX.com, FTX.US, and Alameda Digital Assets A. Top 10 holdings currently represent ~72% of Digital Asset A market value¹.



1. Remaining 28% composed of over 400 additional tokens



Estate Cash

\$2.6 billion of Debtor & Non-Debtor cash confirmed to date

The Debtors have secured cash throughout the Chapter 11 process, within a postpetition cash management system.

- The Debtors navigated the Q1 2023 financial banking turmoil and secured fiat from over 30 separate banking institutions globally
- Cash has been located and pooled within a Master account for purposes of safeguarding estate assets. Unrestricted cash has increased primarily due to venture investment monetization and stablecoin conversions

USD in Millions	US ¹	Dotcom	Alameda / Ventures	Total
Unrestricted Cash	\$475	\$333	\$1,606	\$2,413
Custodial Cash	32	103	-	135
Other Restricted Cash	0	-	-	0
Total Debtor Cash	\$507	\$436	\$1,606	\$2,549
Non-Debtor Cash	4	5	-	8
Total Cash	\$511	\$440	\$1,606	\$2,557

1. US cash includes master pooling account balances



Brokerage Investments

\$529 million in securities held in Debtor brokerage accounts



\$70 Million
Grayscale Ethereum Trust

Bitwise

\$36 Million
Bitwise 10 Crypto Index Fund



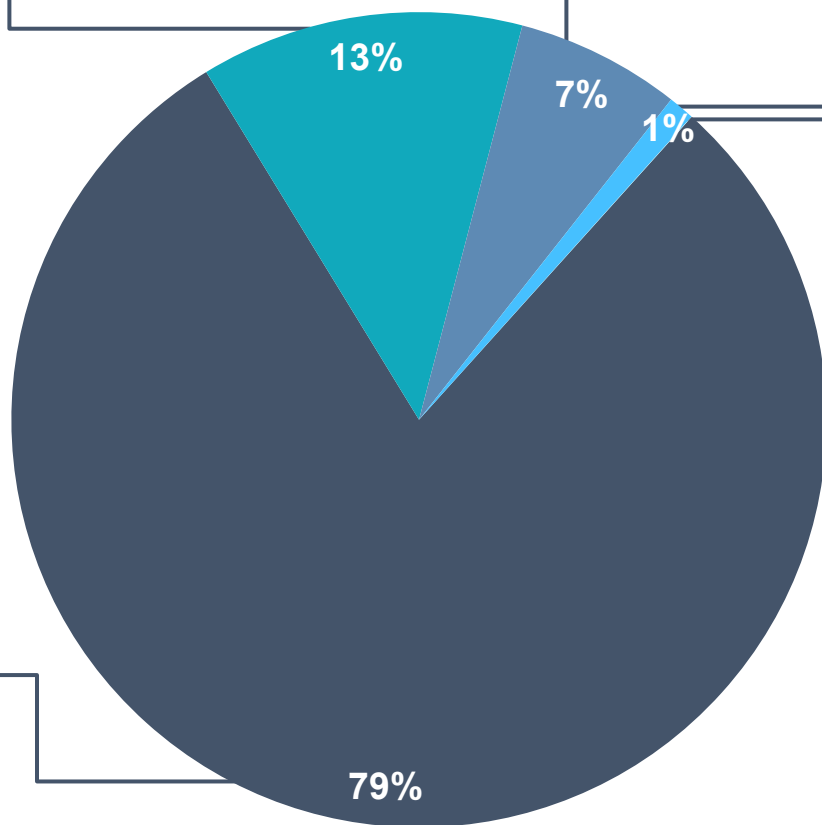
\$6 Million Across
Ethereum Classic
Litecoin Trust
Digital Large Cap



\$417 Million
Grayscale Bitcoin Trust

BlackRock

<\$0.1 Million
BlackRock Equity



All values as of August 31, 2023 Pricing



Venture Portfolio Summary

As of the Petition Date, the Venture Portfolio included 438 investments, totaling approximately \$4.5B in funded assets:

Type	Key Investments	Count ¹	Funded ²	% of Total
Equity Investments	Genesis Digital Assets 80 ACRES FARMS. Stocktwits toss	213	\$2,930	65%
	ANTHROPIC tripledot			
	YUGALABS iex Chipper			
	VYBE NETWORK HiddenRoad brinc			
Limited Partnerships / Funds	SKYBRIDGE Paradigm ETHEREAL VENTURES PANGEA	40	\$732	16%
	KRAKEN VENTURES L2 VENTURES COLLIDE CAPITAL			
	CURATED Multicoin Capital Canonical Crypto			
Tokens		174	\$507	11%
Loans	Dave HelixNano CONSENSYS PLAYUP	11	\$368	8%
Total Venture Portfolio	Over \$4.5 billion in funded investments³	438	\$4,538	100%

Status as of Petition Date

1. Number of investments based on individual investment type (equity, fund, token, loan)
 2. Funded capital includes cash, crypto and other transferred assets. Investment totals exclude non-debtor investments
 3. Includes funded values for investments exited to date (see p. 26); excludes \$782M of non-debtor assets (see p. 32), including Mt. Olympus (\$400M funded), K5 Global (\$300M funded); value of funded investment not indicative of potential recoverable value



Token Investments

\$506 million in funded amounts in remaining token investments

The Debtors are contractual counterparties in agreements in which tokens have been or are being delivered on a vesting schedule

- Post-ICO tokens are vesting and are deemed less risky and, when received, become assets in the Debtors' Digital Asset portfolio
- Pre-ICO tokens are early-stage tokens that are deemed riskier as they have not been minted and therefore their value is uncertain





Real Estate in The Bahamas

38 properties in the Bahamas with \$222 million book value appraised at \$199 million

FTX Bahamas properties appraised by the FTX Digital Markets JPLs via PwC at a range of \$185M to \$214M

USD in Millions

A

\$151 Million¹

15 Properties



Orchid Penthouse & Units



Honeycomb – Condo Units



Tetris – Condo Units



Charles – Condo Unit



Cube – Condo Unit



Gemini – Condo Unit



Coral – Condo Unit

Albany Marina Residences

B

\$7 Million¹

7 Properties



Goldwyn

C

\$25 Million¹

6 Properties



Veridian Corporate Centre

D

\$5 Million¹

4 Properties



ONE Cable Beach

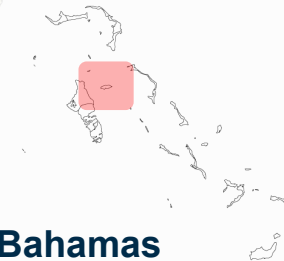
+

\$34 million¹ across 5 additional properties

Nassau



The Bahamas



1. All values listed are book value and are not indicative of potential recoveries

C. Preference & Other Avoidance Overview



Preliminary Customer Preference Analysis

The following materials summarize potential customer preference claims (excl. related parties and internal accounts) during various periods (15 days, 30 days, 60 days, and 90 days) prior to the Petition Date under the subsequent advance approach:

Preference Exposure: Computation of each customer preference exposure using the main account ID taking into consideration a new value defense using a subsequent advance methodology for two periods: (a) the Preference Period; and (b) 15 days prior to the Petition Date (which captures when CoinDesk broke the news on potential insolvency on November 2, 2022 and the Binance LOI announcement on November 8, 2022) as follows:

- Deposits (i.e., new value) and withdrawals (i.e., possible preference exposure) are **reviewed chronologically**
- Under this approach, subsequent deposits made by the customer are available to offset previous withdrawals (“**New Value Defense**”). To the extent deposits exceed the value of earlier withdrawals, the **preference balance goes to zero** (i.e., the excess is not applied against subsequent withdrawals) and the analysis begins again until the Petition Date to determine whether preference exposure remains (“**Subsequent Advance Methodology**”)
 - **Interexchange deposits/withdrawals** between the FTX.US and FTX.COM exchanges **are excluded** from the analysis
- Deposits are priced using transaction time pricing; withdrawals are priced using current pricing (8/31/2023 used for the analysis in this report)



Preference Exposure – Subsequent Advance

The table below outlines customer¹ Preference Exposure for various look-back periods considering the New Value Defense using the Subsequent Advance methodology

USD in Millions

August 31 Pricing (Withdrawals) and Transaction Time Pricing (Deposits)

15 Day Look-Back

Preference Threshold	FTX.COM		FTX.US	
	Users	USD	Users	USD
\$0 - \$1	1,941	\$ 0	228	\$ 0
\$1 - \$1,000	77,810	17	19,937	6
\$1,000 - \$50,000	60,189	567	22,311	194
\$50,000 - \$250,000	8,568	932	2,412	259
\$250,000 - \$500,000	1,756	618	419	144
\$500,000+	2,451	9,097	565	1,635
Total	152,715	\$ 11,230	45,872	\$ 2,238

30 Day Look-Back

Preference Threshold	FTX.COM		FTX.US	
	Users	USD	Users	USD
\$0 - \$1	2,518	\$ 0	261	\$ 0
\$1 - \$1,000	108,186	24	22,268	6
\$1,000 - \$50,000	74,146	676	24,139	210
\$50,000 - \$250,000	9,951	1,084	2,580	276
\$250,000 - \$500,000	2,039	717	457	156
\$500,000+	2,884	11,223	620	1,871
Total	199,724	\$ 13,725	50,325	\$ 2,519

60 Day Look-Back

Preference Threshold	FTX.COM		FTX.US	
	Users	USD	Users	USD
\$0 - \$1	2,993	\$ 0	307	\$ 0
\$1 - \$1,000	144,283	32	26,236	7
\$1,000 - \$50,000	94,575	842	27,081	234
\$50,000 - \$250,000	11,896	1,294	2,862	307
\$250,000 - \$500,000	2,362	829	500	171
\$500,000+	3,614	15,438	690	2,358
Total	259,723	\$ 18,435	57,676	\$ 3,078

90 Day Look-Back

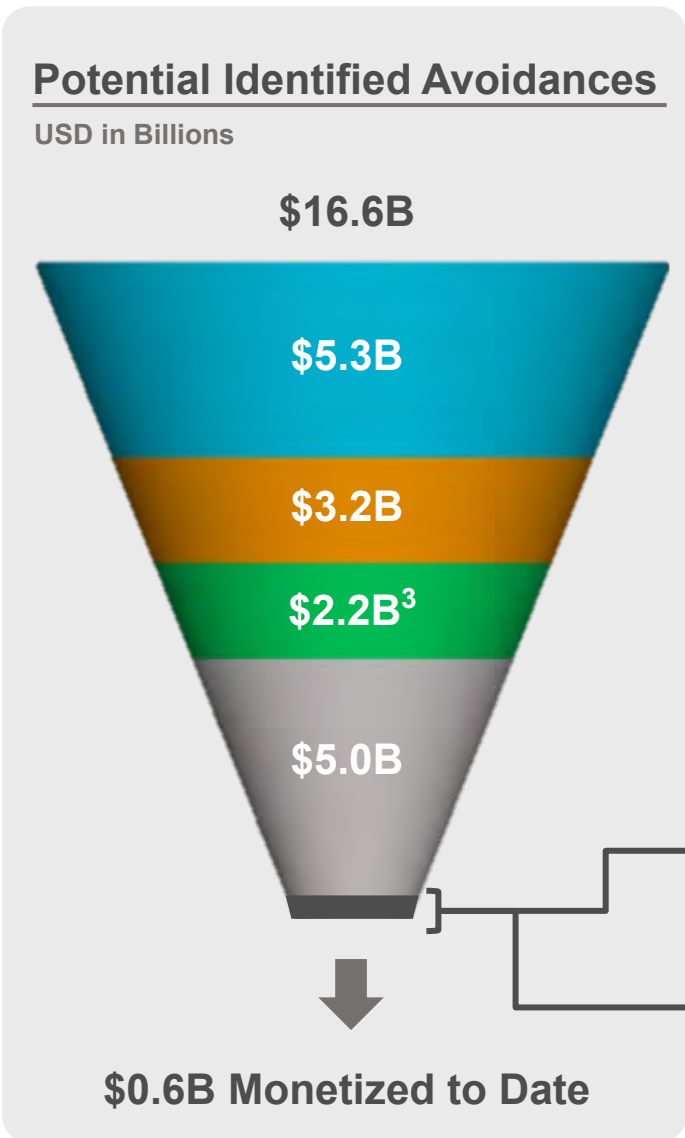
Preference Threshold	FTX.COM		FTX.US	
	Users	USD	Users	USD
\$0 - \$1	3,430	\$ 0	354	\$ 0
\$1 - \$1,000	172,050	38	30,541	8
\$1,000 - \$50,000	110,229	986	29,735	256
\$50,000 - \$250,000	13,335	1,451	3,094	332
\$250,000 - \$500,000	2,665	935	551	188
\$500,000+	4,059	17,987	746	2,830
Total	305,768	\$ 21,397	65,021	\$ 3,614

1. Excludes related parties and internal accounts



Non-Customer Avoidance Action Summary

\$588 million monetized and \$16.6 billion potential avoidance actions identified



Investments: 430+ potential actions

\$588M¹ monetized and additional investments being investigated approximating \$5.3B² (partially reflected in venture investment analysis)

Non-Debtor Affiliates: 7+ potential actions

\$3.2B was received by FTX Digital Markets Ltd and six additional Non-Debtor affiliates

Insiders: 50+ potential actions

\$2.2B³ in cash, crypto, equity and real estate value was received by Samuel Bankman-Fried, Nishad Singh, Zixiao (“Gary”) Wang, and Caroline Ellison among 46 others

Lenders: 37+ potential actions

BlockFi, Genesis, and Voyager Digital received or settled amounts of \$5.0B; the Debtors are assessing claims related to other lenders. A portion of this amount is reflected within the preference analysis on page 20

Political and Charitable Donations

\$86.6M in donations were paid to third parties (SOFA 9)

Vendors: 884+ potential actions

Vendors received a total of \$190.3M during the preference period

1. Investments representative of \$588M in cash proceeds received to date for exited investments and excludes non-cash consideration (see p. 26)
 2. Includes \$782M of non-debtor assets, including Mt. Olympus (\$400M funded), K5 Global (\$300M funded) and other investments (see p. 32)
 3. Excludes certain transfers made on behalf of Insiders reported as Investments, as well as other transfers reported on SOFA 4 for the same value, recipient, and date of transfer on Alameda Research Ltd., FTX Trading Ltd., and West Realm Shires Inc. These transfers were reported on SOFA 4 to disclose both sides of the transfer with the transfer of cash for the benefit of the Insider, and the transfer of SAFE Notes / Equity / Options

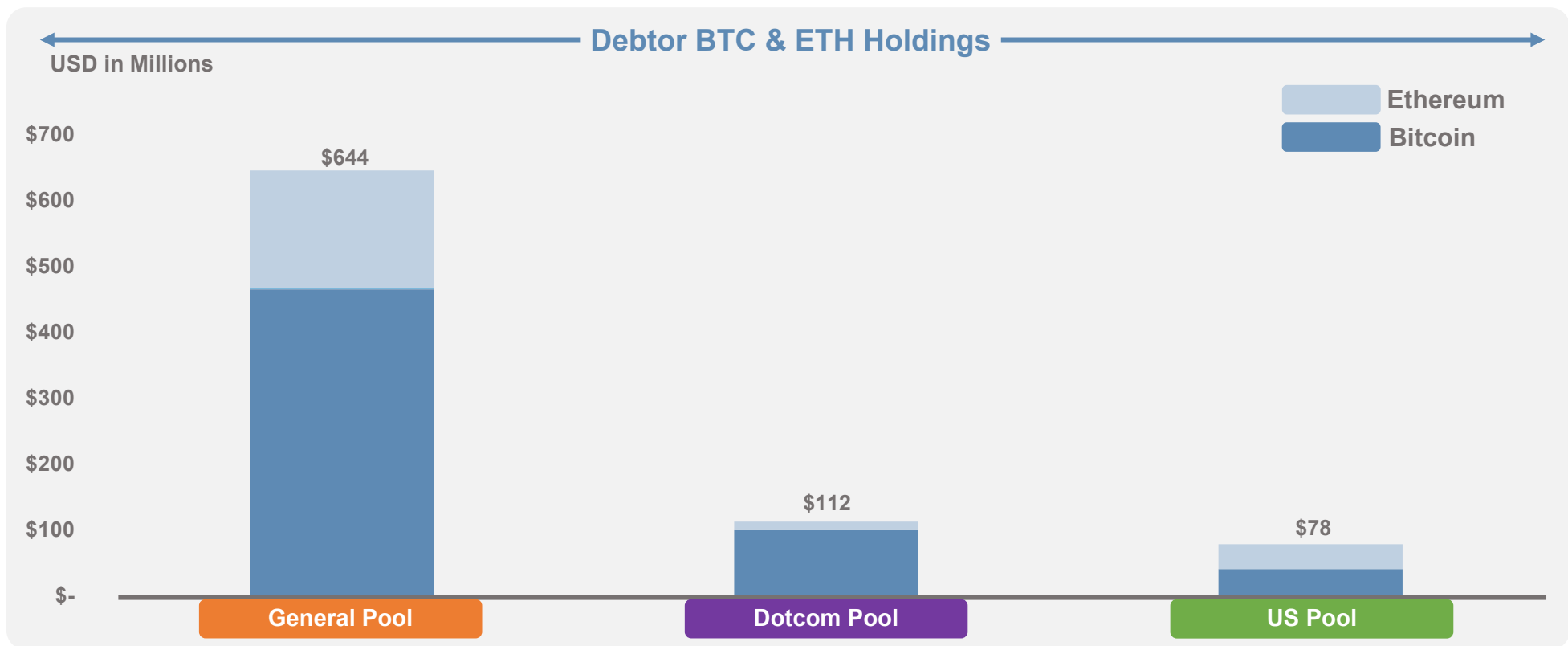
D. Digital Assets & Venture Investments



BTC + ETH

As part of the ongoing asset tracing and recovery process, the Debtors have identified ~\$833M¹ in BTC and ETH assets. The chart below includes:

- Token Values as of August 31, 2023
- Native (i.e. BTC, ETH) and wrapped^{2,3} (i.e. wBTC, wETH, etc.) versions of Bitcoin and Ethereum
- Assets shown above are subject to change based on ongoing recovery efforts



\$487 million of BTC/ETH denominated securities excluded from the above values

1. Token values based off pricing as of August 31
 2. Additional wrapped tokens may continue be identified as part of the ongoing asset recovery and reporting process
 3. Wrapped tokens will be unwrapped and converted to the underlying native token to the extent possible



Category B Tokens

The Debtors' crypto holdings include certain tokens that fail to meet liquidity thresholds and/or are largely controlled by the estate. These tokens are considered Category B for reporting purposes.

Top Category B Tokens

USD in Millions
August 31 Pricing

No.	Logo	Token	Quantity	Price	USD in MMs	No.	Logo	Token	Quantity	Price	USD in MMs
1		SRM	9,949,668,390	\$0.036	\$ 362	11		MPLX	72,596,740	\$0.076	\$ 5
2		MAPS	10,076,921,934	\$0.031	309	12		MNGO	269,124,069	\$0.018	5
3		OXY	9,991,127,106	\$0.016	164	13		ALEPH	60,838,437	\$0.076	5
4		MEDIA	9,986,433	\$7.160	72	14		KIN	394,005,883,223	\$0.000	4
5		FIDA	351,581,237	\$0.146	51	15		SLND	6,151,970	\$0.558	3
6		BRZ	139,019,894	\$0.200	28	16		PRT	743,088,933	\$0.005	3
7		HXRO	104,392,733	\$0.146	15	17		AGI	75,000,000	\$0.041	3
8		GT	3,165,328	\$3.871	12	18		BLUR	14,460,455	\$0.206	3
9		ALM	2,433,093,847	\$0.003	8	19		POLIS	25,875,120	\$0.109	3
10		RON	10,182,498	\$0.541	6	20		AURY	5,387,732	\$0.510	3

Over 1,300 additional Category B tokens



Venture Portfolio Summary

As of the Petition Date, the Venture Portfolio included 438 investments, totaling approximately \$4.5B in funded assets:

	Type	Highlights	Count ¹	Funded ²	% of Total
Status as of Petition Date	Equity Investments	Top 10 positions comprise \$2.3B (78% of equity investments)	213	\$2,930	65%
	Limited Partnerships / Funds	Top 10 positions comprise \$691M (94% of limited partnerships / fund investments)	40	\$732	16%
	Tokens	Top 10 positions comprise \$410M (81% of token investments)	174	\$507	11%
	Loans	Top 3 positions comprise \$229M (62% of loan investments)	11	\$368	8%
	Total Venture Portfolio	Over \$4.5 billion in funded investments	438	\$4,538⁴	100%

	Type	Highlights	Count ¹	Funded ²	% of Total
Action Events Since Petition Date	Exited Investments ³	Sale processes and settlements since Petition Date have resulted in 87% recovery to date of funded amount	22	\$673	
	Other Changes	Includes non-cash settlements and return of capital from fund positions net of post-petition capital fundings	-	\$79	
	Total Exits		22	\$752	
	Remaining Portfolio		416	\$3,787⁴	

1. Number of investments based on individual investment type (equity, fund, token, loan)

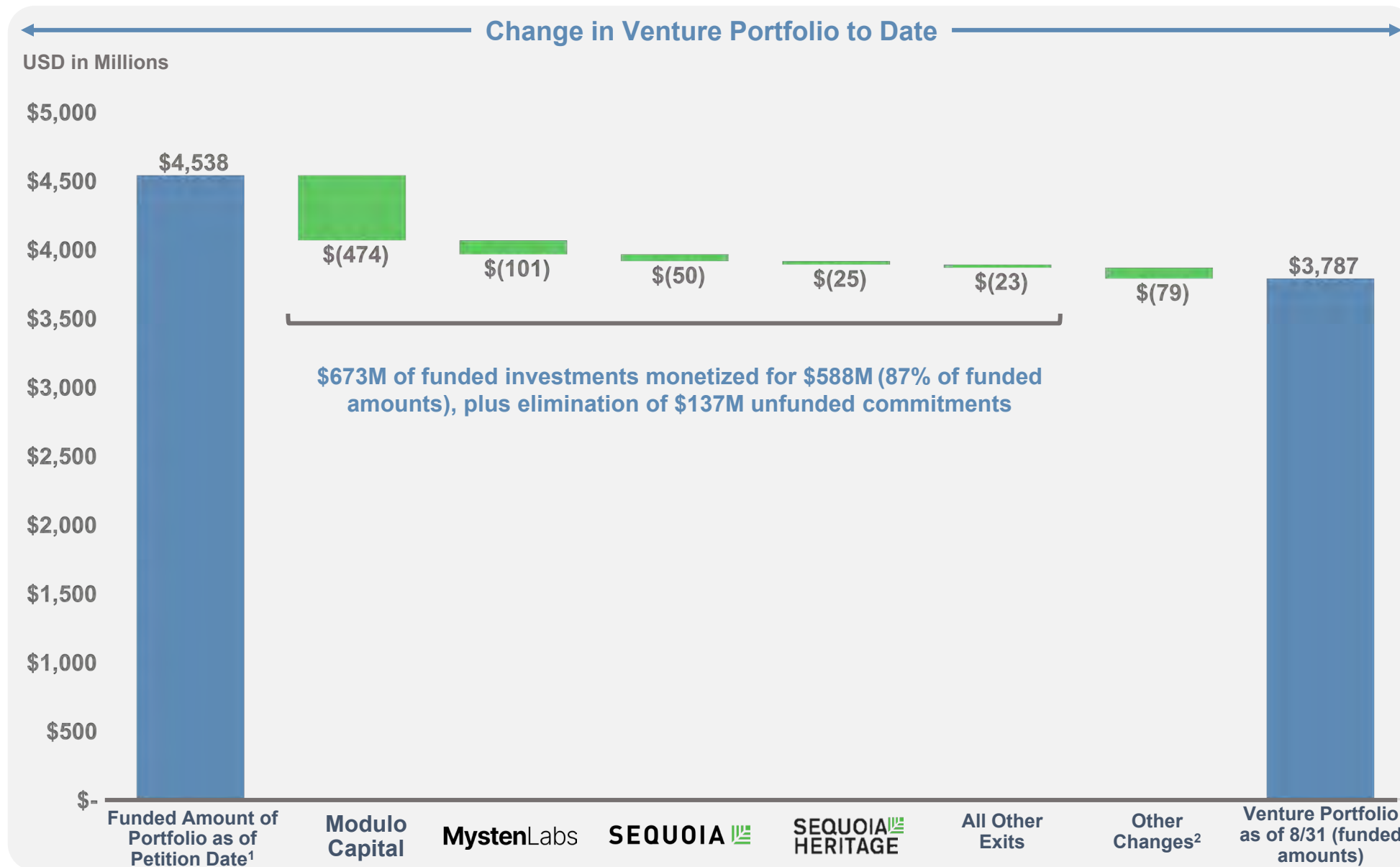
2. Funded capital includes cash, crypto and other transferred assets. Investment totals exclude non-debtor investments

3. Includes investment settlements, sales, dissolutions and mergers as of August 31, 2023

4. Excludes various non-debtor assets (see p. 32), including Mt. Olympus (\$400M funded), K5 Global (\$300M funded), and Greyscale trusts (\$246M market value as of petition date)



Venture Portfolio



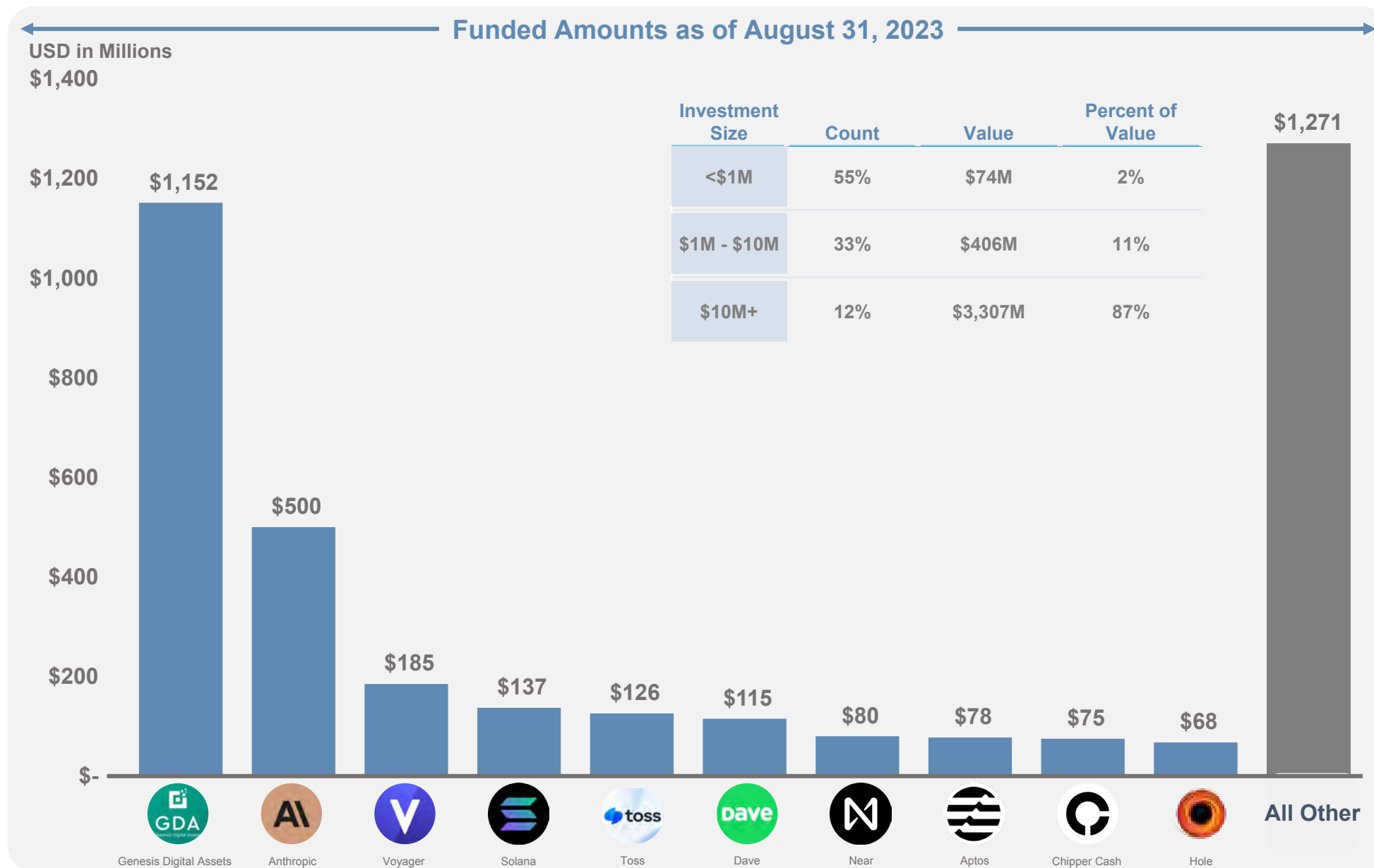
1. Number of investments based on individual investment type (equity, fund, token, loan)

2. Includes return of capital, capital call funding, and non-cash settlement with IEX representative of reduction in shares based on original cost-base funding



Debtor Venture Portfolio Remaining

Top 10 investments represent 66% of remaining funded token, equity, fund, and loan investments















Equity Investments Overview

Equity investments make up 73% of remaining funded venture investments comprising 202 investments

USD in Millions

Investment ¹	Industry	Country	Description	Funded(\$M) ²
1. Genesis Digital 	Bitcoin Mining	US	▪ GDA operates as one of the largest Bitcoin mining companies worldwide with sites in the US, Sweden and Kazakhstan	\$1,152
2. Anthropic 	Tech	US	▪ Anthropic is an AI safety and research company focused on developing interpretable and steerable AI systems including Claude, an AI assistant that can perform a wide variety of conversational and text processing tasks	500
3. Voyager Digital 	Brokerage	US	▪ Voyager Digital Ltd. provides crypto-currency brokerage services. The Company offers an access to assets and commission-free trading.	110
4. Aptos 	Crypto	US	▪ Aptos is a developer of a blockchain network intended to provide universal and centralized access to decentralized assets for developers	78
5. Chipper Cash 	FinTech	US	▪ Chipper Cash offers a no-fee peer-to-peer cross-border payment service in Africa via its app	75
6. Toss 	FinTech	Korea	▪ Toss is a South Korea-based mobile financial service platform operated by fintech startup Viva Republica	71
7. Tripledot 	Gaming	UK	▪ Tripledot is a gaming studio that develops casual mobile games for android and iOS devices	50
8. Yuga Labs 	Crypto	US	▪ Yuga Labs operates as a web3 platform and developer of NFT collections	50
9. Exodus 	Crypto	US	▪ Exodus gives blockchain asset investors a platform to secure, exchange and manage wealth inside one application	50
10. Brinc Drones 	Tech	US	▪ Brinc Drones is company developing tech in the service of public safety known for the LEMUR 2 indoor tactical drone	40
All Other Equity Positions (192)				\$570 ³
Total Equity Investment (202)				\$2,746

% of Venture Portfolio 73%
Average Equity Investment Size \$14M

1. Number of investments based on individual investment type (equity, fund, token, loan)

2. Remaining funded amount as of August 31, 2023

3. Exclude Greyscale investments reflected on p. 14 under brokerage assets



LP / Fund Investments Overview

The Debtors have sold certain limited partnerships and reduced unfunded capital by \$137M. Sales in process will result in another ~\$8M of unfunded capital related liability released. Remaining LP positions, excluding sold positions, amount to \$167M or 4% of the venture portfolio

USD in Millions

Investment ¹	Industry	Country	Description	Committed (\$M)	Funded (\$M) ²
1. SkyBridge Capital 	Crypto	US	▪ SkyBridge Capital invests in the common stocks and American Depositary Receipts ("ADRs") of Crypto Industry Companies and Digital Economy Companies	\$45	\$45
2. Liquid Value Fund (Sino Global) 	Blockchain	China	▪ Liquid Value Fund invests in DeFi and NFT infrastructure projects, as well as projects within the Solana and Ethereum ecosystems	60	27
3. Paradigm One 	Crypto	US	▪ Paradigm One Fund invests in crypto companies at all stages, particularly investments aimed at transforming finance and tech	35	24
4. Toy Ventures 	FinTech	UK	▪ Toy Ventures is an operator-led early-stage venture fund that seeks investments in seed and early-stage companies	25	18
5. SkyBridge Coin Fund 	Crypto	N/A	▪ SkyBridge Coin Fund is a diversified and actively managed portfolio of liquid tokens across the digital currency platform	10	10
6. Multicoin Venture Fund 	Crypto	US	▪ Multicoin Venture Fund II targets early investments in the cryptocurrency and blockchain sectors.	5	5
7. 6529 Capital 	NFT	US	▪ 6529 Capital venture fund focused on targeting diversified set of NFTs across the PFP, generative art, 1of1 and photography categories	5	5
8. ROK Capital 	Crypto	South Korea	▪ ROK Capital is a multi-strategy hedge fund and accelerator aiming to grow the Korean crypto ecosystem	5	5
9. Kraken Ventures 	Crypto	US	▪ Kraken Ventures is an early stage investment firm focused on businesses and projects at the nexus of both FinTech and Blockchain / Crypto	5	3
10. IOSG Venture 	Crypto	Hong Kong	▪ IOSG venture is an early-stage fund for decentralized protocols and companies and early-stage algorithm-based ventures	3	3
Sales in Process				15	13
All Other Fund Positions (22)				13	9
Total Fund Investment (32)				\$225	\$167³

% of Venture Portfolio 4%

Average Fund Investment Size \$5M











1. Number of investments based on individual investment type (equity, fund, token, loan)
2. Remaining funded amount as of August 31, 2023
3. Excludes K5 partnership interests shown on p. 32 under Non-Debtor assets, subject to pending litigation



Token Investments Overview

Token investments make up 13% of remaining funded venture investments comprising 171 investments with an average investment size of \$3M

USD in Millions

Investment ^{1,2}	Industry	Country	Description	Funded(\$M) ³	
1. Solana 	Crypto	US	▪ Solana builds products, tools, and reference implementations to further expand the Solana ecosystem	\$137	
2. Near 	Crypto	Switzerland	▪ The NEAR protocol is a sharded, proof-of-stake, layer-one blockchain that is simple to use, secure and scalable	80	
3. Hole 	Crypto	Cayman Islands	▪ Wormhole allows developers to easily build decentralized applications that span the entire blockchain ecosystem	68	
4. Polygon 	Crypto	India	▪ Polygon is a blockchain platform which aims to create a multi-chain blockchain system compatible with Ethereum	50	
5. Mina 	Crypto	South Africa	▪ Mina builds the privacy and security layer for web3 with zero knowledge proofs	20	
6. Fuel 	Crypto	BVI	▪ Fuel is the fastest execution layer for the modular blockchain stack that delivers maximum security and the highest flexible throughput	15	
7. Port Finance 	Crypto	US	▪ Port Finance is a Defi protocol that aims to provide an entire suite of Defi products including borrowing & lending, swap aggregator, and Portfolio tracking	13	
8. 1Inch 	Crypto	US	▪ 1Inch analyzes thousands of quotes and fees instantly across multiple DEXes to provide users with the best rates	10	
9. Enigma 	Crypto	US	▪ Secret Network is the main net blockchain with privacy-preserving smart contracts	10	
10. OTOY Int'l 	Crypto	US	▪ OTOY is a cloud rendering company delivering real-time cinematic quality 3D graphics through the browser	7	
All Other Token Positions (161)				\$96	
Total Token Investment (171)				\$506	
				% of Venture Portfolio	13%
				Average Token Investment Size	\$3M

1. Number of investments based on individual investment type (equity, fund, token, loan)

2. Includes SAFT investments and funded amount of token warrants









3. Remaining funded amount as of August 31, 2023



Loan Investments Overview

Loan investments make up 10% of remaining funded venture investments comprising 11 investments with an average investment size of \$33M

USD in Millions

Investment ¹	Industry	Country	Description	Funded(\$M) ³
1. Dave 	FinTech	US	<ul style="list-style-type: none"> ▪ Dave operates a banking app that offers a suite of financial services and products ▪ Key offerings include debit card, spending account, cash advances and financial management tools 	\$100
2. Voyager Digital 	Brokerage	US	<ul style="list-style-type: none"> ▪ Voyager Digital Ltd. provides crypto-currency brokerage services. The Company offers an access to assets and commission-free trading. 	75
3. Toss (Pionic) ² 	FinTech	South Korea	<ul style="list-style-type: none"> ▪ Toss is a South Korea-based mobile financial service platform operated by fintech startup Viva Republica 	54
4. BTC Africa (AZA Finance) 	FinTech	UK	<ul style="list-style-type: none"> ▪ AZA Finance empowers companies from 115+ countries to accelerate their operations in frontier markets through better foreign exchange, treasury services, payments, and last-mile settlement 	46
5. PlayUp 	Gaming	Australia	<ul style="list-style-type: none"> ▪ PlayUp is an entertainment and technology group 	35
6. Red Sea Research	Media	US	<ul style="list-style-type: none"> ▪ Red Sea Research is associated with Michael J. McCaffrey, former CEO of the Block 	16
7. Lonely Road Capital	Media	US	<ul style="list-style-type: none"> ▪ Lonely Road Capital is associated with Michael J. McCaffrey, former CEO of the Block 	15
8. MJMcCaffrey Holdings	Media	US	<ul style="list-style-type: none"> ▪ MJMcCaffrey Holdings is associated with Michael J. McCaffrey, former CEO of the Block 	12
9. Helix Nanotechnology 	Healthcare	US	<ul style="list-style-type: none"> ▪ HelixNano is building an advanced mRNA platform to enable applications across human and nonhuman biology 	10
10. Genesis Block 	FinTech	US	<ul style="list-style-type: none"> ▪ Genesis Block is a developer of a Blockchain-powered online banking application to provide a full-service banking experience 	4
11. Consensys 	Crypto	US	<ul style="list-style-type: none"> ▪ Consensys is a developer of a blockchain technology-based platform designed to assist enterprises to launch more powerful financial infrastructure 	1
Total Loan Investment (11)				\$368

1. Number of investments based on individual investment type (equity, fund, token, loan)

2. Represents a loan to an affiliate of Toss

3. Remaining funded amount as of August 31, 2023









% of Venture Portfolio 10%
Average Loan Investment Size \$33M



Non-Debtor Overview

Non-Debtor investments amounts to \$782M in funding, comprising 9 investments with an average investment size of \$87M

USD in Millions

Investment ¹	Industry	Type	Description	Funded(\$M) ²
1. Mount Olympus Capital 	Consumer Goods / Services	Fund	▪ Mount Olympus fund is an early-stage venture capital fund managed by Zeus Venture Capital. The fund targets consumer products and services (B2C), business products and services (B2B) sectors	\$400
2. K5 Global Holdings 	N/A	Fund	▪ K5 Global is a venture capital firm and incubator that provides capital and guidance to startups across all sectors	300
3. Latona Biosciences	Bioscience	Loan	▪ Latona Biosciences is the debtor's former philanthropic arm, used for disputed charitable donations to bioscience related firms	68
4. Semafor 	Media	Equity	▪ Semafor is a news website founded in 2022 by Ben Smith, a former editor-in-chief of BuzzFeed News and media columnist at The New York Times, and Justin B. Smith, the former CEO of Bloomberg Media Group	10
5. Nifty Island 	Gaming	Equity	▪ Nifty Island is an open social gaming platform and virtual world being developed by Nyft Studios	2
6. Browder Capital 	N/A	Fund	▪ Browder Capital is a venture capital investment firm based in San Francisco, California. The firm prefers to invest in early-stage companies	2
7. Sifchain 	Crypto	Token	▪ Sifchain is the omni-chain decentralized exchange (DEX), unlocking liquidity in various chains to free people from egregious fees and inefficient trades	0.2
8. Cryowar 	Gaming	Token	▪ Cryowar is a real-time multiplayer PVP arena NFT game developed in Unreal Engine and on the Solana network	0.2
9. QFlow 	FinTech	Token	▪ QFlow delivers powerful workflows for finance teams to turn operational data into insights (normalized) at 1/5 the cost of the alternative	0.2
Total Non-Debtor Investment (9)				\$782
Average Non-Debtor Investment Size				\$87M

1. Number of investments based on individual investment type (equity, fund, token, loan)

2. Remaining funded amount as of August 31, 2023

Selected Top Investments for Discussion

Non-Digital Asset Equity and Debt Investments over \$10M¹



(\$ in millions, unless otherwise stated)

	Name		Investment Amount (\$M) / Type	Date of Investment	Sector	Country	Dialogue with Company	Unsolicited External Interest
1	Genesis Digital Assets		\$1,152.1 Equity	August 2021	Cryptocurrency	US		
2	Anthropic		\$500.0 Equity	September 2021	Artificial Intelligence	US		
3	Toss		\$71.3 Equity \$54.5 Founder Loan ²	October 2021	Personal Finance	Korea		
4	Dave		\$100.0 Convertible Note \$15.0 Common Equity	August 2021	Digital Banking	US		
5	IEX		\$112.6 Equity	April 2022	Exchange	US		
6	Chipper Cash		\$75.0 Equity	October 2021	Payments	US		
7	TripleDot		\$50.0 Equity	June 2022	Gaming	UK		
8	AZA Finance (BTC Africa)		\$46.0 Loan	December 2021	Payments	UK		
9	Brinc Drones		\$40.0 Equity	December 2021	Drone Manufacturing	US		
10	PlayUp		\$35.0 CLN	January 2022	Online Sports Betting	Australia		
11	80 Acres		\$35.0 Equity	March 2022	Vertical Farming	US		
12	StockTwits		\$20.0 Equity	May 2021	Finance Social Media	US		
13	Mobile Premier League		\$15.0 Equity	September 2021	Gaming	Singapore		
14	DriveWealth		\$15.0 Equity	August 2021	Brokerage Technology	US		
15	HelixNano		\$10.0 Loan	January 2022	Healthcare	US		
16	Protego Trust		\$10.0 Equity	May 2022	Banking	US		
17	Wave Mobile Money		\$10.0 Equity	March 2022	Personal Finance	US		
18	Fanatics		\$10.0 Equity	April 2022	Sports	US		

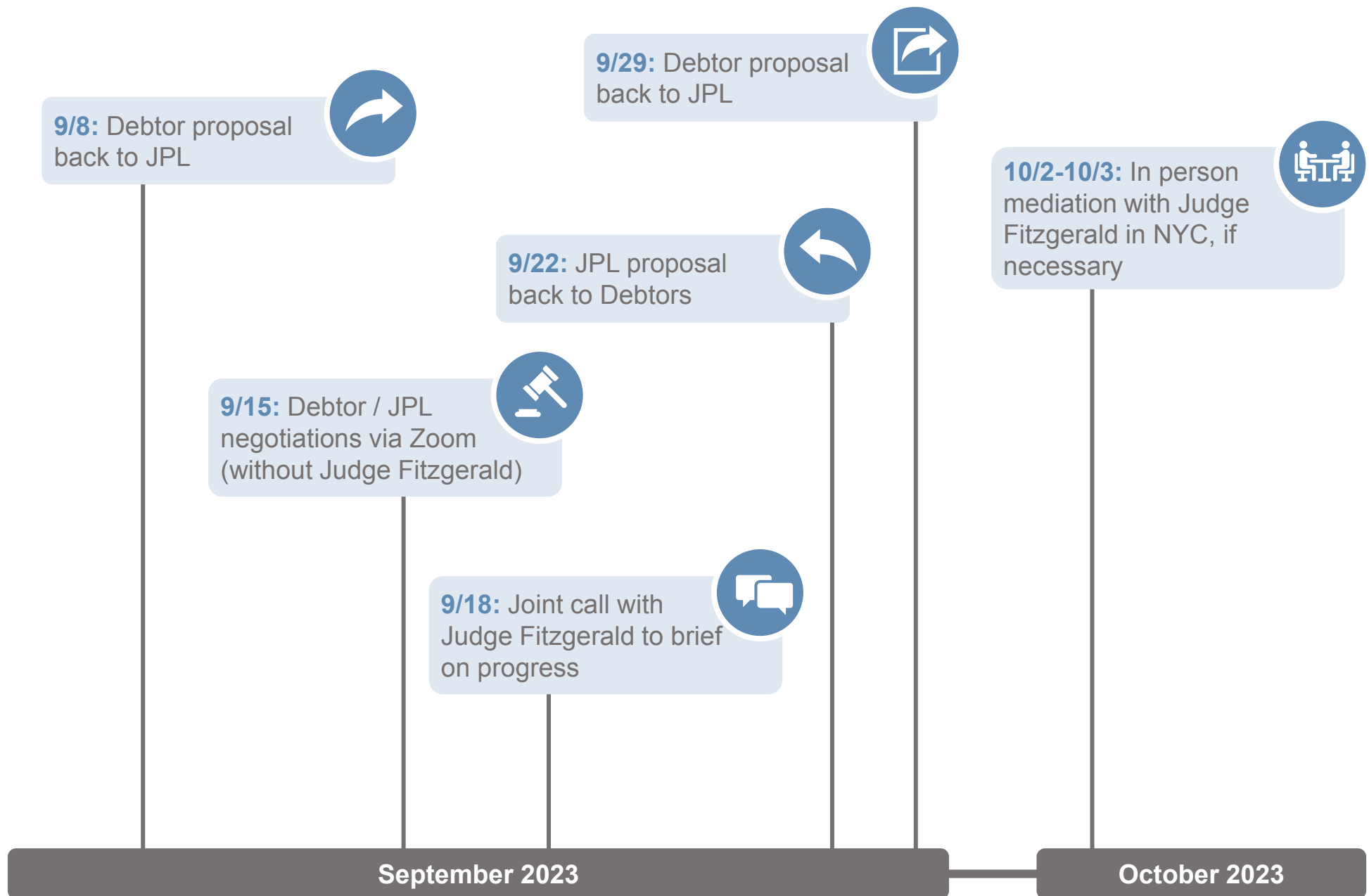
High Medium Low

1. Includes Genesis Digital Assets for discussion purposes
 2. Loan made to founder, Seung Gun Lee, and secured by shares in Toss

E. Other Process & Timeline Updates



JPL Discussions





FTX 2.0 Process Update

The Debtors began a marketing process for the FTX.com and FTX US exchanges in May 2023

- The process is designed to consider varying potential structures, including an acquisition, merger, recapitalization or other transaction to relaunch the FTX.com and/or FTX US exchanges
- The Debtors are also considering the provision of management and operating services



Outreach

75+ potential bidders contacted

Bidders include:

- Existing exchanges
- Strategic Buyers
- Financial buyers



Feedback

Several parties that submitted Round 1 bids were admitted into a **Round 2 process**

Extensive bidder diligence & bi-lateral info sharing ongoing



Next Steps

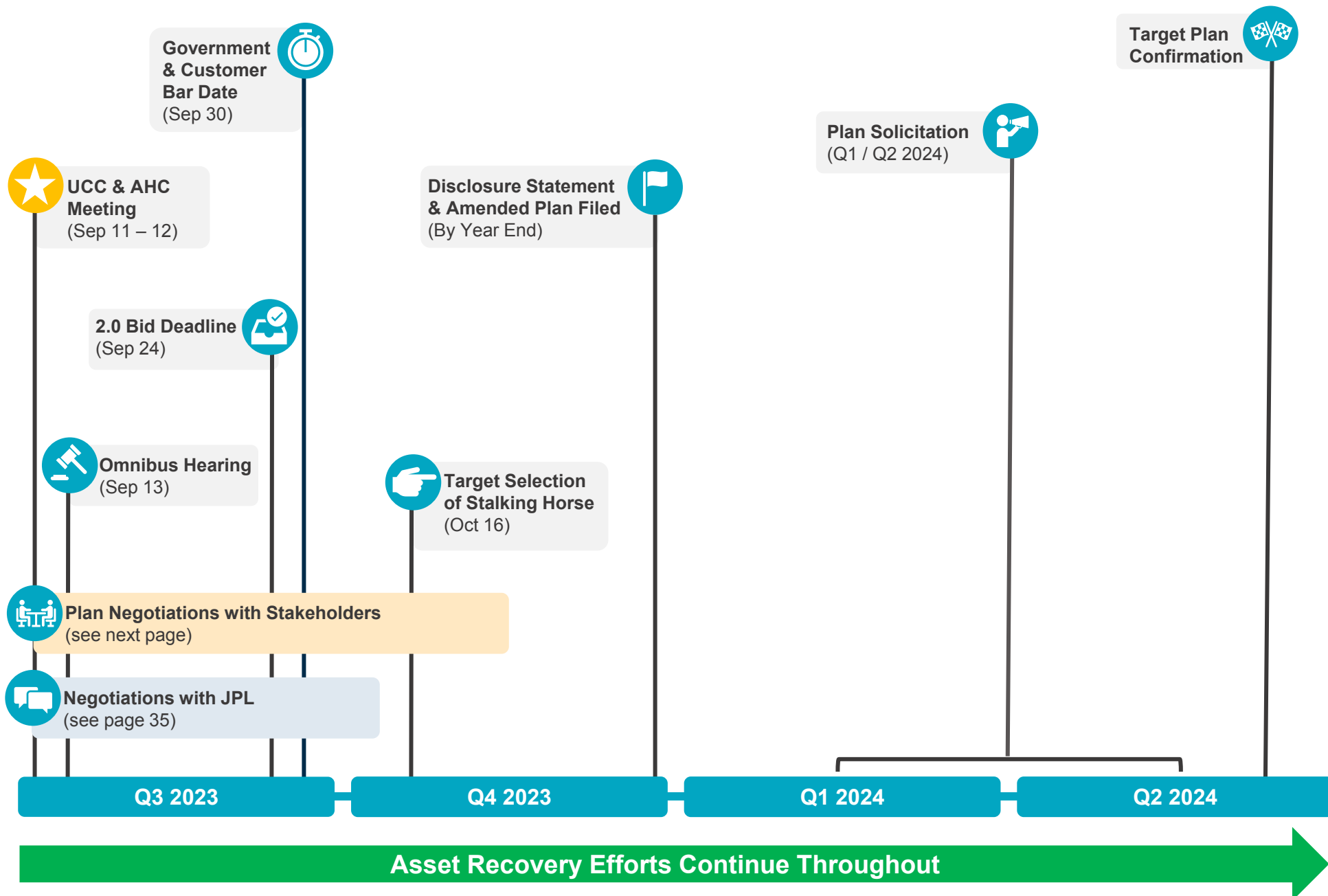
Proposals are being evaluated in consultation with the UCC & AHC

Focus areas include review of executability, bidders' expertise, and economics and consideration

Transaction timing will depend on nature of transaction, readiness of bidder and other considerations

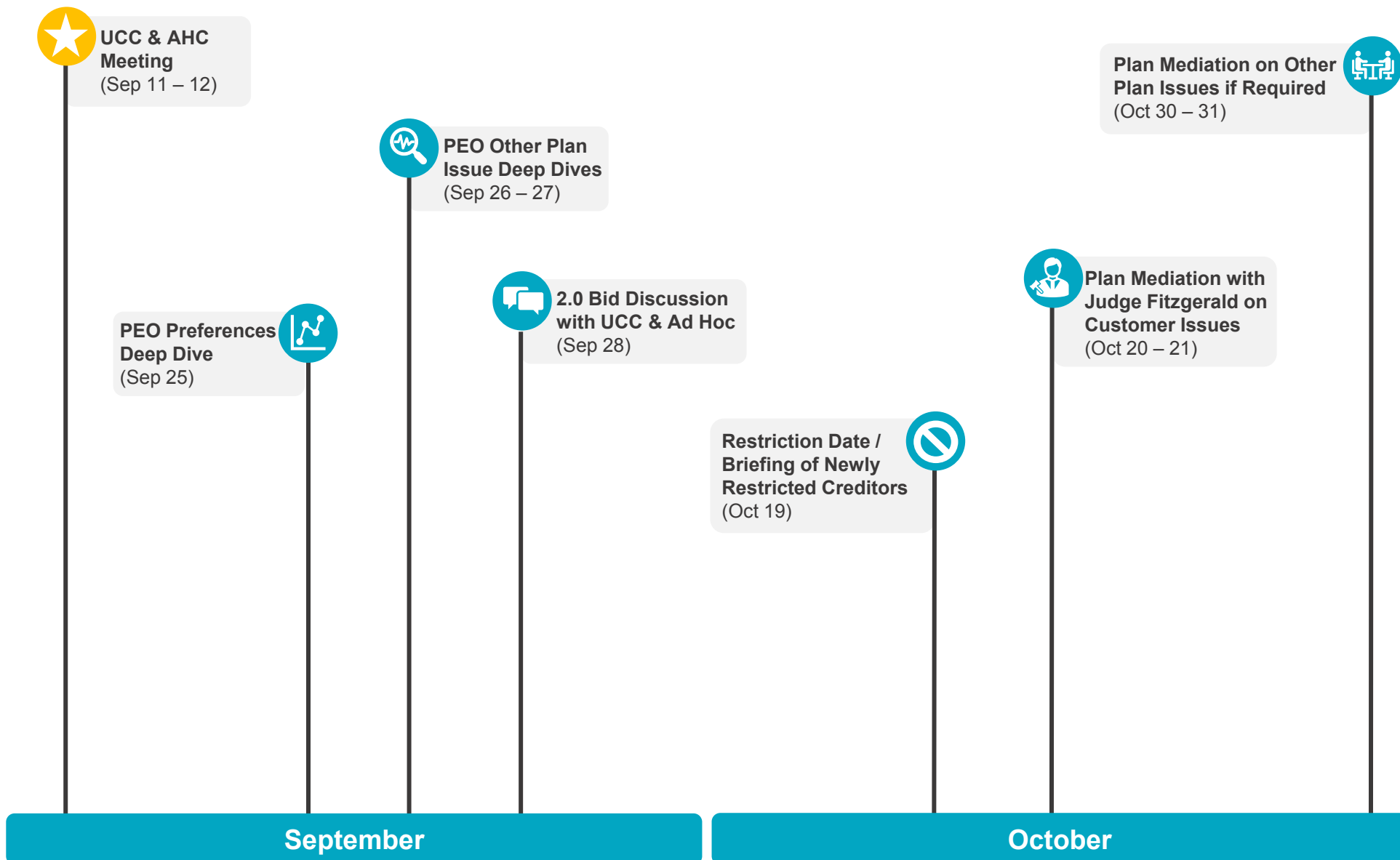


Target Plan Timeline





Plan Negotiations with Stakeholders





Stakeholder Feedback on Open Plan Issues

The draft Plan does not purport to resolve certain open questions under discussion:



Expected size of classes of claims, recovery pools & estimates of creditor recoveries



Amount of property to be given to exchange shortfall claims against general pool of assets



Decision & manner in which FTX.com exchange is sold or reorganized



Post Plan effective date claims transfer process (recovery rights token or digital assets)



Corporate governance & future stewardship of post-confirmation entities



Any amendments to the Plan required to confirm that are in the best interests of all creditors

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IOWA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM, *et al.*,

Plaintiffs,

v.

BANK OF AMERICA CORPORATION, *et al.*,

Defendants.

No. 17-cv-6221 (KPF)

**DECLARATION OF ROBERT S. DAY IN SUPPORT OF DEFENDANTS' OPPOSITION
TO SL-X'S REQUEST FOR COST SHIFTING UNDER RULE 45**

1. I, Robert S. Day, declare that I am an associate attorney with Covington & Burling LLP, and counsel to defendants J.P. Morgan Securities LLC, J.P. Morgan Prime, Inc., J.P. Morgan Strategic Securities Lending Corp., and J.P. Morgan Chase Bank, N.A. (collectively "JPMorgan") in the above-captioned case.

2. I submit this Declaration in support of Defendants' opposition to the request of SL-x IP S.á.r.l, SL-x Technology UK Limited, SL-x Trading Europe Limited, SL-x Technology USA LLC, and SL-x Trading USA LLC (collectively, "SL-x") for leave to move for cost shifting pursuant to Fed. R. Civ. P. 45(d). Dkt. 209. The following facts are within my personal knowledge based on my review of the records produced by the parties in the above captioned action.

3. On September 3, 2019, Plaintiffs produced to Defendants 1,421 electronically stored documents that, according to the metadata associated with those documents, came from the custodial files of Robert DiFazio and Peter Fenichel. According to SL-x's complaint in *SL-x*

IP S.A.R.L. v. Bank of America Corporation et al., Case No. 18-10179 (S.D.N.Y.), Mr. DiFazio is SL-x's Chairman, *id.* Dkt. 1, ¶ 154, and Mr. Fenichel is SL-x's Chief Executive Officer, *id.* ¶ 111.

4. On May 30, 2019, Plaintiffs produced to Defendants 395 electronically stored documents for which no custodian is identified in the metadata, but at least 112 of those documents appear on their face to be internal documents related to the business operations of SL-x or its current and former executives.

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

Dated: October 4, 2019

/s/ Robert Day

Robert S. Day
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street NW
Washington D.C., 20001

*Counsel for J.P. Morgan Securities
LLC, J.P. Morgan Prime, Inc., J.P.
Morgan Strategic Securities Lending
Corp., and J.P. Morgan Chase Bank,
N.A.*

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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 IOWA PUBLIC EMPLOYEES'
4 RETIREMENT SYSTEM, on behalf
of themselves and all others
5 similarly situated, et al.,

6 Plaintiffs,

New York, N.Y.

7 v.

17 Civ. 6221(KPF)

8 BANK OF AMERICA CORPORATION,
et al.,

9 Defendants.

10 -----x

11 January 10, 2018

12 10:10 a.m.

13 Before:

14 HON. KATHERINE POLK FAILLA,

15 District Judge

16
17
18
19 APPEARANCES

20 QUINN EMANUEL URQUHART & SULLIVAN, LLP
Attorneys for Plaintiffs

21 BY: DANIEL L. BROCKETT
22 MAAREN A. SHAH
SASCHA N. RAND
23 STEIG D. OLSON

24 COHEN MILSTEIN SELLERS & TOLL PLLC
Attorneys for Plaintiffs

25 BY: JULIE GOLDSMITH REISER
MICHAEL EISENKRAFT

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APPEARANCES
(continued)

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Attorneys for UBS Defendants
BY: DAVID C. BOHAN

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1 (Case called)

2 THE DEPUTY CLERK: Counsel, please state your names
3 for the record, starting with plaintiffs' counsel.

4 MR. BROCKETT: Good morning, your Honor. Dan
5 Brockett, from Quinn Emanuel, on behalf of the plaintiffs.

6 THE COURT: Good morning.

7 MS. SHAH: Good morning, your Honor. Maaren Shah, of
8 Quinn Emanuel, on behalf of plaintiffs also.

9 MR. EISENKRAFT: Michael Eisenkraft, Cohen Milstein
10 Sellers & Toll, for plaintiffs.

11 MS. REISER: Good morning, your Honor. Julie Reiser
12 on behalf of plaintiffs from Cohen Milstein.

13 MR. RAND: Good morning, your Honor. Sascha Rand,
14 Quinn Emanuel, for plaintiffs.

15 MR. OLSON: Good morning, your Honor. Steig Olson,
16 from Quinn Emanuel, for the plaintiffs.

17 THE COURT: Good morning to all of you.

18 And just for my own sanity, could you let me know who
19 will be taking the laboring oar, if one of you will be taking
20 the laboring oar?

21 MR. BROCKETT: I have been designated to fill that
22 role today.

23 THE COURT: I'm happy to have you accept what you have
24 been designated. Thank you very much.

25 MR. BROCKETT: Thank you, your Honor.

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1 THE COURT: Sir.

2 MR. SLIFKIN: Good morning, your Honor. Daniel
3 Slifkin, Cravath, Swaine & Moore, for Morgan Stanley, and I
4 will be taking the laboring oar.

5 THE COURT: I thank you for letting me know in
6 advance. Thank you. But I will hear from everyone else.

7 MS. HERNÁNDEZ: Good morning, your Honor. Damaris
8 Hernández, from Cravath, Swaine & Moore, on behalf of Morgan
9 Stanley.

10 MR. SPERLING: Good morning, your Honor. Bob
11 Sperling, Winston & Strawn, for Goldman Sachs.

12 MR. PEPPERMAN: Good morning, your Honor. Rick
13 Pepperman, from Sullivan & Cromwell, also on behalf of Goldman
14 Sachs.

15 THE COURT: There is no good way to do this.

16 MR. HAKKI: Good morning, your Honor. Adam Hakki,
17 from Shearman & Sterling, on behalf of the Bank of America
18 defendants.

19 MR. WICK: Robert Wick, Covington & Burling, for
20 J.P. Morgan.

21 MR. BOCCUZZI: Good morning, your Honor. Carmine
22 Boccuzzi, from Cleary Gottlieb, on behalf of the EquiLend
23 entities.

24 MR. GELFAND: Good morning, your Honor. David
25 Gelfand, from Cleary Gottlieb, as well, on behalf of the

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1 EquiLend entities.

2 MS. RAMESH: Good morning, your Honor. Sheila Ramesh,
3 from Cahill Gordon, for Credit Suisse.

4 MR. JANUSZEWSKI: Good morning, your Honor. David
5 Januszewski, from Cahill also, for Credit Suisse.

6 THE COURT: Okay --

7 MR. BOHAN: Good morning, your Honor. David Bohan,
8 from Katten Muchin, on behalf of UBS.

9 THE COURT: Did I -- you will excuse me. I didn't see
10 your name. Okay. Thank you very much. Anyone else? And,
11 sir, will you be speaking today.

12 MR. BOHAN: I don't expect so, your Honor.

13 THE COURT: Okay. Good to let me know, because I
14 don't want to exclude you if you are, but otherwise we will
15 just let you sit there.

16 Anyone else who wishes to announce themselves and
17 contemplates speaking today? Okay. Great. Hearing nothing,
18 let's move on.

19 I welcome all of you to not my courtroom. We picked
20 this one specifically because, for those of you who have been
21 in 618, you know that we can't accommodate all of you.

22 This is our initial pretrial conference. This is a
23 premotion conference in this case.

24 For those of you who have not appeared before me
25 previously, my purpose in having premotion conferences -- and

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1 it is something that I know some judges and some litigants
2 disagree with -- my purpose is at times to try and dissuade
3 people from actually bringing motions, talk them off the ledge
4 is the vernacular that I use, and in other instances to see if
5 the plaintiff or plaintiffs wish to amend their pleadings in
6 any way in order to forestall certain claims in a motion to
7 dismiss and thereby limit the number of issues that could be
8 the subject of a motion to dismiss.

9 I know better than to think that I can persuade the
10 folks in front of me to not bring a motion, so what I am going
11 to do instead is just to give you the opportunity to speak with
12 me about your case, Mr. Brockett, and then, Mr. Slifkin, about
13 your contemplated motion.

14 So tell me what you would like me to know. And just
15 so that the record is clear, I have read your complaint, the
16 amended complaint, excuse me. I have read the premotion
17 letters. I have read the joint letter. To the extent that I
18 can, without discovery, understand what is going on, I think I
19 do. What else would you like me to know?

20 And separately, sir, do you wish an opportunity to
21 amend your complaint further or have you already, cognizant of
22 the argument that is will be made by the defense, reflected
23 those arguments or deflected those arguments, as the case may,
24 be in the amended pleading?

25 MR. BROCKETT: With the court's permission, I would

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1 like to speak from the lectern.

2 THE COURT: Sure.

3 MR. BROCKETT: Thank you.

4 Thank you, your Honor. Let me just start with some
5 basics.

6 This is a class action antitrust case alleging
7 unlawful collusion by a group of six investment banks who were
8 the dealers in the market for stock loan transactions.

9 As the court, I'm sure, appreciates now, stock lending
10 is the temporary transfer of ownership of stock from one
11 investor to another, often to facilitate short selling in the
12 marketplace. It is a very large and very important financial
13 market. The plaintiffs are pension funds and other investors
14 who engaged in stock loan transactions directly with the
15 defendants.

16 Now, our basic contention is that the banks conspired
17 to boycott and otherwise undermine electronic trading platforms
18 and other products that were developed and put in place in the
19 2009 to 2013 time period. We allege that these platforms and
20 products tried to enter the stock loan market, but they were
21 boycotted and starved of liquidity by the defendant banks who
22 collectively controlled 75 to 80 percent of this market.

23 We further contend that each of these platforms, had
24 it not been a victim of the defendants' cartel, would have
25 greatly increased transparency and efficiency in the stock loan

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1 market and would have supplied investors -- both lenders and
2 borrowers -- with more competitive prices.

3 THE COURT: Just so I am clear, sir -- I guess I am
4 actually taking this out of order, but I'm sure Mr. Slifkin
5 won't mind -- you are not suggesting that any of the defendants
6 had an obligation to support technological developments,
7 correct?

8 MR. BROCKETT: Correct. They independently, if they
9 want to act independently and unilaterally, they had the right
10 to refuse to deal with these platforms, that's correct.

11 THE COURT: Similarly, if they had made a business
12 decision -- you would include the adverb "independently" -- to
13 wait to see whether something really was going to address what
14 they believed to be the idiosyncrasies and nuances of the stock
15 lending market, that would not have been problematic.

16 MR. BROCKETT: That's correct. I concede that they
17 have the right, under the antitrust laws, to make unilateral
18 and independent decisions in their best interest, and they
19 could have made the decision to wait and see what happens with
20 these platforms.

21 THE COURT: Right. And let's be more venal than that.
22 If they had looked at these platforms and said independently,
23 this is going to increase transparency, which might have the
24 effect of lessening or profits, no, I really see no need to
25 support that, they could do that, could they not.

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1 MR. BROCKETT: They could. Yes, indeed.

2 THE COURT: And your concern and the basis of your
3 complaint, is that they did not independently arrive at this
4 conclusion. Your concern and your allegations are that they
5 jointly, particularly with the solicitation and extra help from
6 Goldman Sachs, Morgan Stanley that they either decided to or
7 had decided for them the decision to basically kill these
8 things before they grew. Yes?

9 MR. BROCKETT: That's correct, yes.

10 THE COURT: I want to understand more carefully the
11 actual collusion. There is wonderful verbiage, "five families"
12 and lovely *Godfather* references which, as defense counsel know,
13 I am at least to some degree required to take as true at this
14 stage in the litigation, but there are some things that I don't
15 know that it is collusive activity. Purges? People being
16 purged solely because they were standing in the way or because
17 they were receptive to the possibility of these electronic
18 platforms? Are those the only reasons those individuals were
19 purged from the companies?

20 MR. BROCKETT: Well, there were, at Bank of America, I
21 think there are specific allegations that a group of executives
22 who initially supported the platform, they were then purged.
23 "Purged" meaning they were let go --

24 THE COURT: I know what "purged" means, yes.

25 MR. BROCKETT: Exactly.

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1 And then there were other executives brought in,
2 particularly a high-level executive who used to run the stock
3 lending desk at Morgan Stanley. After that individual was
4 brought in, Bank of America adopted a different stance with
5 respect to the electronic platforms.

6 THE COURT: Is your allegation that the reason why
7 these folks were purged -- your words, not mine -- was because
8 they were receptive to electronic platforms?

9 MR. BROCKETT: In part, yes. Yes, in part.

10 THE COURT: All right. Tell me what else you would
11 like to tell me about the collusive activity.

12 MR. BROCKETT: Sure, sure.

13 I will say a few words about the types of evidence
14 that are alleged in the complaint that I think would be useful
15 for the court to hear. Let me just make a few general remarks
16 about this complaint, if I could.

17 THE COURT: Yes.

18 MR. BROCKETT: We think this complaint is unusual.
19 Rarely at this stage are antitrust plaintiffs able to plead
20 collusion claims with the level of detail and specificity that
21 are alleged in this complaint. This complaint is chock-full of
22 direct evidence of an illegal agreement, parallel conduct in a
23 setting that is highly suggestive of an illegal agreement, and
24 numerous plus factors.

25 Now, the reason we are able to plead this case with

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1 such specificity is the thorough investigation that was carried
2 out by our two law firms before this case was filed. We spent
3 nearly nine months, at substantial expense, to fully
4 investigate this industry and the challenged practices. We
5 interviewed literally dozens of industry experts, the designers
6 of the platforms themselves, former traders, leading academics,
7 and even former high-level executives of the defendant banks
8 themselves. The result is a precedent-setting amended
9 complaint that explains who did it, when they did it, what they
10 did, and what they said, and how the conspiracy was
11 implemented.

12 Now, let me, if I could, just talk briefly about some
13 of the categories of evidence in the complaint.

14 First, unlike many complaints at this stage, there is
15 direct evidence in this case that the defendants entered into
16 an agreement in violation of the antitrust laws. The complaint
17 details specific conversations and meetings between Morgan
18 Stanley and Goldman Sachs in connection with what the parties
19 referred to as Project Gateway. The complaint identifies the
20 people involved in these communications, where they met and
21 when, and specifically what they said, even quoting the actual
22 words in certain instances. This evidence is explicit and
23 requires no inference to establish that an agreement was
24 reached.

25 Secondly, there is direct evidence that the parties

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1 reached an agreement to block these platforms at meetings of
2 the boards of director of EquiLend and other events sponsored
3 by EquiLend. The best evidence of this comes from the
4 defendants' own mouths. Indeed, the complaint is replete with
5 allegations of instances in which one or more of the defendants
6 made statements indicating clearly that the members of EquiLend
7 had collectively decided to boycott these platforms.

8 For example, on February 26 of 2013, a Credit Suisse
9 executive who sat on the EquiLend board told SLX that EquiLend
10 was like the Mafia run by five families. He also stated that
11 nothing would happen in the market with regard to SLX's
12 platform unless the five families agreed jointly that it should
13 happen.

14 On April 10 of 2014, a Credit Suisse managing director
15 recommended getting together all of the members of the family
16 to discuss AQS and SLX in light of regulatory developments.

17 At or about the same time, the head of securities
18 lending at Bank of America also expressed an intent to convene
19 a meeting of the five families.

20 Most importantly, on August 7 of 2013, a managing
21 director of J.P. Morgan told SLX executives that there existed
22 a general agreement, a general agreement, among the directors
23 of EquiLend that industry advances should be achieved only
24 within EquiLend.

25 A Credit Suisse --

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1 THE COURT: Sir, excuse me. EquiLend also included
2 agent lenders. Is that not correct?

3 MR. BROCKETT: They had some agent lenders on the
4 board, that's correct, but the banks controlled EquiLend.

5 THE COURT: Were those agent lenders excluded from
6 these meetings at which this collusive conduct took place
7 or --

8 MR. BROCKETT: No. We are not alleging that. But it
9 is actually not clear at this point whether the conspiracy
10 would have furthered the interest of those agent lenders or
11 whether this is something that they necessarily would have been
12 opposed to. I think that is something that we are still
13 looking at. Obviously we didn't name the agent lenders as
14 defendants in the case.

15 THE COURT: Yet.

16 MR. BROCKETT: Yet, that's correct, yet.

17 At the same time, I don't think it's -- the fact that
18 they were on the board does not weaken the inference that the
19 banks, who dominated EquiLend and who made these decisions
20 through EquiLend, that these events actually occurred.

21 But, yes, there were some agent lenders on the board.

22 THE COURT: Please continue.

23 MR. BROCKETT: Okay.

24 Now, the citations to the complaint on this point
25 could go on and on, but I think the point is made. These

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1 statements require no inference that an agreement was made.
2 They are well-pled, direct admissions by the prime brokers
3 themselves that they had formed an illegal cartel to block
4 these platforms from entering the market.

5 Now, parallel conduct: Several categories of parallel
6 conduct. I broke it into categories.

7 First, there were parallel refusals to trade on either
8 AQS or the SLX platform. The complaint alleges that both of
9 these platforms sought liquidity from the dealers for their new
10 platforms, and they were rebuffed in all instances.

11 The six dealers, except briefly Bank of America, each
12 refused to supply liquidity or trade on AQS or SLX. So you had
13 parallel refusals to trade.

14 Common excuses. They provided strikingly common
15 excuses for their refusal to support the platforms. In the
16 case of AQS, they all strikingly said the same thing, namely,
17 that they would only support these platforms if they were made
18 to be dealer only. That is, neither the borrowers nor the
19 lenders could trade directly on the platform. That was a
20 condition that was stated by all of the prime brokers in
21 response to the effort by AQS to solicit their support for the
22 platform.

23 THE COURT: But are you suggesting that the defendants
24 could not have independently arrived at the decision that
25 having it dealer only would be most beneficial to them?

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1 MR. BROCKETT: I think that the fact that they all
2 made the same statement, the same condition, is an allegation
3 that supports the inference of parallel conduct. Now, could it
4 have happened that they all independently decided that this was
5 how they independently wanted to respond to this? Yes, of
6 course that's possible. But the fact that you have them saying
7 the same thing is one tile in the evidentiary mosaic that
8 supports the inference that this very well could have been
9 parallel conduct.

10 Common excuses. Well, common excuses, yes, in the
11 case of AQS, it was a condition, a uniform condition that they
12 all stated. In the case of SLX, it was different, but it was
13 all strikingly similar. In the case of SLX, the common excuse
14 was that the dealers would only trade on this type of platform
15 if it were done through EquiLend which the dealers control.
16 That's what they all said to SLX; common statement as to why
17 they weren't going to do it.

18 So it was different excuses in the case of AQS than
19 the case of SLX, but they were all strikingly similar
20 responses. So one fact, one aspect of parallel conduct that
21 supports the inference.

22 There were similar tactics that were used. All of the
23 prime broker defendants accepted meetings, okay, with these
24 platforms, and they all, at first, made glowing statements,
25 glowing statements about how wonderful these platforms were.

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1 But then each of them used similar **bait-and-switch tactics** when
2 **they were pressed** to **move forward with the platform.** **So there**
3 **was a common tactic here,** to take the meeting, make nice
4 statements about it, but **never move forward with actual**
5 **onboarding** **on to the platform.**

6 There was **similar pressure** **applied to customers.** The
7 **dealers** **pressured existing participants** **not to trade on AQS** **or**
8 **SLX** and **made similar threats** to **entities about withholding**
9 **banking services** if **they were to use either of these platforms.**

10 For example, major hedge funds -- **Renaissance**
11 **Technologies,** **D.E. Shaw,** **Millennium,** and **SAC Capital** -- were
12 **all refused access to these platforms,** and **each were told the**
13 **same thing:** **If you don't like this decision,** **you could take**
14 **your business elsewhere.** **That is what all of the prime brokers**
15 **told the hedge funds** **when they sought access to the AQS** and SLX
16 platform.

17 **Goldman Sachs** also **threatened Bank of New York Mellon**
18 when it **learned that BNY** **intended to use AQS.** **Goldman**
19 **threatened** to **cancel all open stock lending trades** and to
20 **refuse to do business with BNY** in the **future if BNY were to**
21 **support either one of these platforms.**

22 So, again, you have **common threats** that were made to
23 **market participants** who sought **access to these platforms.**

24 And finally, in the category of parallel conduct, you
25 have common direction to EquiLend. All of the dealers caused

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1 EquiLend, which they controlled, not to support these new
2 platforms. And then, in the end, all of the banks on the
3 EquiLend board supported the acquisition of the assets of both
4 of these platforms, not for the purpose of making any
5 commercial use out of them, but for the purpose of shelving
6 them and shutting them down as independent competitive forces
7 in the marketplace.

8 Now, so that's a summary of some of the types -- I'm
9 not purporting to give a complete summary, but some of the
10 categories of parallel conduct plus factors. As the court
11 knows, it is typical to talk about plus factors in these cases.

12 Here, three plus factors that I mention:

13 One, there was a high level of interfirm
14 communications. The complaint alleges a high level of
15 interfirm communications, including communications through the
16 banks' common ownership of EquiLend, obviously their
17 participation on industry associations, and the social and
18 professional interactions among executives of the defendant
19 banks.

20 Common motive to conspire. Yes, there was a common
21 motive to conspire. I think the defendants essentially admit
22 that in their pre-motion letter in that both of these platforms
23 posed the prospect that they could impact the dealer's profits.
24 So there was a common motive to conspire.

25 And in response to the court's question about making

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1 unilateral decisions, it is clear that none of these banks
2 individually could have blocked these platforms, okay, from
3 entering the market. If only one had decided I'm not going to
4 support and the others did, they could not have achieved an
5 effective boycott. So there was a common motive to conspire, a
6 common motive to join forces to make this happen.

7 And then actions against self-interest, also a plus
8 factor that's often mentioned in the case law. Here, there is
9 evidence of several instances of actions against economic
10 self-interest. Let me just mention a few.

11 First, when EquiLend bought the assets of SLX and AQS,
12 spent millions and millions of dollars to buy these platforms
13 and then put them on the shelf, made no economic or commercial
14 use of them whatsoever, that is an action against the economic
15 self-interest of EquiLend.

16 Also, EquiLend refused to sell or license data to
17 market participants even though there was a strong market
18 demand for such data. That is against the economic interest of
19 EquiLend. Why wouldn't they want to get licensing fees from
20 licensing their trading data?

21 Another example of an action against self-interest is
22 Bank of America. Now, Bank of America, which is one of the
23 smaller, if you will, dealers in stock loan, not nearly the
24 size of Morgan Stanley or Goldman, they originally recognized
25 it was in their self-interest to join this platform, be a first

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1 mover get a first mover advantage, and that was in their
2 economic self-interest. But when they changed in around 2011,
3 when Bank of America changed and joined the conspiracy through
4 EquiLend, that was against the economic self interest of such a
5 small broker-dealer who stood to do better, stood to do better
6 if they joined this platform, stayed with it, and had gotten
7 the first mover advantage. So we would contend that Bank of
8 America's decision to join the conspiracy and to reverse course
9 from where they were before was an action against the
10 individual self-interest of Bank of America.

11 Another fact I could point to that I suggest is
12 against the economic interest of EquiLend is that Palamon,
13 which is the private equity owner of SLX, made a very
14 attractive offer to buy EquiLend, an offer that would have
15 resulted in a substantial profit to the owners of EquiLend.
16 EquiLend never even responded to the proposal, okay? Again, an
17 action clearly against their individual economic interest. Why
18 wouldn't they have wanted to see maybe they could bump the
19 price up? Maybe this was a very good opportunity for the banks
20 to exit this investment. They never explored it, never even
21 responded to the proposal.

22 Now, so that's kind of the summary I wanted to give
23 the court of the evidence.

24 I do want to mention one additional issue which I
25 think is an important issue here because the banks raise it in

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1 their papers. The question is whether EquiLend should be
2 viewed as a single entity, whether its actions should be viewed
3 as the acts of a single entity or whether they should be viewed
4 as the collective action of the owners of EquiLend, the bank
5 owners of EquiLend.

6 Our contention is that EquiLend was not an independent
7 competitive venture pursuing its own economic interest. It was
8 used as a vehicle by the prime brokers as a form for collusion
9 and for other concerted activity, and there are several facts
10 that we mentioned in the complaint to support that, some of
11 which I went over.

12 The defendants say that this issue should be governed
13 by the rule of reason, and they cite the *Dagher* case. We
14 disagree. We think that this is clearly a case of *per se*
15 liability.

16 In *Dagher*, the two joint venture partners -- Texaco
17 and Shell -- did not compete with each other in the relevant
18 market. They participated in that market only through their
19 investment in the joint venture. In those circumstances, the
20 Supreme Court said, yes, this joint venture will be governed by
21 the rule of reason.

22 Here, the owners of EquiLend are direct competitors,
23 direct horizontal competitors of each other in the relevant
24 market. This case is, therefore, like the *Sealy* case, like
25 *Topco*, where horizontal competitors have formed a single

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1 entity. They have attempted to take joint action through that
2 entity that's anticompetitive, and the Supreme Court in those
3 circumstances has said that is subject to *per se* liability.
4 The most recent case on that, of course, is *American Needle*. I
5 think this is cited in our papers.

6 So I think that's the overview of the points that I
7 wanted to address with the court. I hope I didn't speak too
8 long. I am happy to answer any further questions the court may
9 have.

10 THE COURT: Perhaps I am misremembering, but I thought
11 there were going to be discussions between the parties about
12 the possibility of dismissing certain parties from the action,
13 and thereby blunting certain personal jurisdiction or related
14 issues that were raised by the defendants.

15 MR. BROCKETT: Right.

16 THE COURT: Have those discussions concluded?

17 MR. BROCKETT: Yes. So we did enter into one
18 stipulation that dismissed certain entities. We did so based
19 on presentations by the defendants that they were not involved
20 in stock lending.

21 In addition to that stipulation, we agreed with the
22 defendants this morning that we would dismiss the holding
23 companies, the ultimate parent companies who have no actual
24 operations. There are five or six of them. I think in the
25 case of *Credit Suisse*, the dismissal of that holding company

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1 may obviate the need for Credit Suisse to make a personal
2 jurisdiction motion, but I don't want to speak --

3 THE COURT: We will let them speak.

4 MR. BROCKETT: But we have agreed this morning to a
5 stipulation on a without-prejudice basis to dismiss the
6 ultimate parent companies in the case via stipulation using the
7 same language as in the prior stipulation.

8 THE COURT: Okay. So I should anticipate receiving
9 that in the coming days.

10 MR. BROCKETT: Yes. I believe so, yes.

11 THE COURT: What I mean by that is, by agreeing this
12 morning, you didn't actually agree with a written document in
13 front of you.

14 MR. BROCKETT: We have not signed the stipulation, no.

15 THE COURT: That's what I am asking.

16 MR. BROCKETT: One will be presented shortly.

17 THE COURT: That is fine. That's it at this time.

18 Thank you very much.

19 MR. SLIFKIN: Good morning, your Honor. Dan Slifkin
20 from Cravath.

21 THE COURT: Good morning, sir.

22 The concerns I have are twofold. This is a long
23 complaint. You know, because you have read it, and it got long
24 when it was amended.

25 I have two issues that affect my resolution of any

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1 dispositive motion. One is the standard from *Iqbal* and *Twombly*
2 that's embodied in Rule 12(b)(6) and the other is the sheer
3 number of allegations that at least for now I must accept as
4 true.

5 So, with those things in mind, tell me why,
6 nonetheless, this complaint should be dismissed.

7 MR. SLIFKIN: A little later I'm going to ask you for
8 a page extension, which is an indication --

9 THE COURT: Haha. We will see.

10 MR. SLIFKIN: -- which is an indication that there is
11 a lot to say, your Honor, and I don't think I can say it all
12 today. But let me make a few sort of fundamental points.

13 THE COURT: Thank you.

14 MR. SLIFKIN: Obviously, as the court is aware, the
15 *Twombly* standard is plausibility. And fundamentally this is an
16 implausible complaint. The essence of the complaint is that
17 the six prime broker defendants conspired through the entity of
18 EquiLend to boycott changes in the market would make it an
19 exchange-based system. That fundamentally is implausible.

20 EquiLend is a joint venture that was formed in 2001,
21 eight years before the alleged conspiracy even began. And as
22 your Honor pointed out, there are -- the broker-dealers are not
23 the only shareholders in EquiLend. There are several large
24 agent lenders. And to be clear what an agent lender is, it is
25 the intermediary agent for the stock lenders that form the

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1 putative class plaintiffs here.

2 THE COURT: But, sir, I didn't understand the
3 allegation to be that EquiLend was set up for the purpose of
4 promoting this particular conspiracy. What I understood from
5 the complaint was that the constellation of technological
6 developments reached a level of critical mass that caused the
7 major participants of EquiLend to be concerned that the fees
8 that they had obtained through a lack of transparency in the
9 market would be somehow compromised if these technological
10 developments were allowed to bear fruit. Should I really
11 ascribe significance to the fact that EquiLend was formed eight
12 years before the conspiracy is alleged to have happened?

13 MR. SLIFKIN: We think you should, your Honor.

14 THE COURT: Okay.

15 MR. SLIFKIN: Because obviously it was set up, if
16 everything is accepted as true, it was set up for entirely
17 independent reasons, separate and apart from the alleged
18 conspiracy. It wasn't a sham. It was a perfectly legitimate
19 organization.

20 THE COURT: I'm not --

21 MR. SLIFKIN: And then the allegation becomes --

22 THE COURT: Excuse me, sir.

23 I'm not sure that the suggestion is that it was *ab*
24 *initio* a vehicle for fraud or misconduct, and even things that
25 were set up purely legally and for purely noble intentions

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1 could at some point be perverted.

2 MR. SLIFKIN: So the question then is, is that
3 plausible here? Is it plausible that this entity that was set
4 up and was functioning for eight years in a perfectly
5 legitimate fashion through these board meetings was somehow
6 diverted to an illegitimate purpose?

7 THE COURT: Okay.

8 MR. SLIFKIN: At those board meetings, we have the
9 agents of the plaintiff class sitting in the meeting, watching
10 the supposed subversion occur. And they are not minor
11 entities. We are talking about State Street, Northern Trust
12 and, most importantly, BlackRock, which I believe is the
13 largest money manager on the planet.

14 THE COURT: So are you suggesting, sir, that these
15 entities would not have been shrinking violets in the face of
16 anticompetitive conduct.

17 MR. SLIFKIN: They would not have been shrinking
18 violets, and it is entirely implausible that they would be
19 shrinking violets.

20 Our third point is, this structure is implausible.
21 Before one ever gets to the specifics that Mr. Brockett gave
22 you some of the highlights of. Then he turns to specifics, and
23 we can spend a lot of time going through those, but the first
24 things you have to do is get rid of group pleading, which is,
25 everybody got together and met. There have to be specific

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1 allegations about specific meetings.

2 Now, your Honor, you raised the issue of amendment
3 earlier.

4 THE COURT: Yes.

5 MR. SLIFKIN: As you are probably aware, this is not
6 the first case that alleges that Wall Street got together to
7 block exchange-based trading. We have the credit default swap
8 case in front of Judge Cote. We have currently the interest
9 rate swap case in front of Judge Engelmayer.

10 THE COURT: Yes.

11 MR. SLIFKIN: In both of those cases, the response to
12 the motion to dismiss was an amendment. In the credit default
13 swap case, it was an extensive amendment, which required
14 complete rewrite of the motion to dismiss, and we very much
15 want to avoid that here.

16 THE COURT: That's why I was asking Mr. Brockett. He
17 will tell me again what his pleasure is at some later point in
18 this proceeding, but yes.

19 MR. SLIFKIN: And so in both of those cases, the
20 amendments concern adding additional facts with respect to
21 alleged meetings and conspiratorial evidence purportedly, and
22 we want -- if there is more to be said, we very much would like
23 to hear it now before we file our motion, because what we see
24 here doesn't cut it.

25 Let me give you a couple of examples, your Honor, from

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1 the premotion letter, and since they are in the premotion
2 letter, I assume they are some of the best that Mr. Brockett
3 has.

4 First, he specifically refers to a 2009 meeting
5 convened by Bank of America amongst the five families. Okay?
6 That is very interesting that he points to that meeting
7 because, as he just pointed out, in 2009 Bank of America wasn't
8 part of the conspiracy.

9 If you read the complaint, paragraph 2000 to -- sorry,
10 200 --

11 THE COURT: Thank you.

12 MR. SLIFKIN: -- to 207, which are referred to in a
13 footnote to Mr. Brockett's letter, you will find that
14 plaintiffs specifically alleged that **Bank of America didn't**
15 **join the conspiracy**, consistent with what he said today, **until**
16 **late 2011**. So why is a meeting convened by Bank of America two
17 years before it joined the conspiracy evidence of that
18 conspiracy?

19 And, moreover, we don't even know who the five
20 families are. I know there are six defendants, **so maybe they**
21 **are five of us**. Maybe they are five different entities. An
22 allegation that says "some group," one of which is identified,
23 but pled not to be part of the conspiracy, five of which or
24 four of which maybe, I don't know, aren't identified at all,
25 that is good enough, that is specific enough to make out a

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1 conspiracy case? It is meritless.

2 The other meeting that is specifically identified in
3 the letter is a dinner between a gentleman at Morgan Stanley
4 and a gentleman at Goldman Sachs, Mr. Wipf and Mr. Conely
5 respectively, and it is alleged that they had dinner in 2016.
6 We would submit, your Honor, that two people having dinner
7 seven years after the conspiracy allegedly formed is not
8 evidence of the six broker-dealer defendants having formed this
9 conspiracy six years earlier, nor is the fact prominent in the
10 complaint that the gentleman from Morgan Stanley paid for the
11 dinner either here or there with respect to an illegal
12 antitrust conspiracy.

13 Now, you know, beyond the fact that the specific
14 meetings, whether EquiLend board meetings or these other
15 meetings which we hope to go through in our motion, your Honor,
16 are not enough.

17 The parallel conduct allegations are not enough either
18 because, and I will quote from *Twombly*, "rational and
19 competitive business strategy unilaterally prompted by common
20 perceptions of the market," right, doesn't amount to actionable
21 parallel conduct. As Judge Engelmayer pointed out in his
22 partial dismissal of the interest rate swap case, the banks
23 have good reason not to encourage "a new trading paradigm that
24 threatened some day to cannibalize their trading profits."

25 You know, if somebody came to you and said, Would you

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1 please charge me less and they say no, that's not -- that's
2 completely rational, and the fact that everybody did that means
3 that everybody is rational. It doesn't mean they are engaged
4 in improper parallel conduct, and we would like the opportunity
5 to explore that further in a motion, your Honor.

6 There is one other fundamental point I want to make,
7 and then I want to move on, if I may, to -- absent any
8 questions -- to this issue about entities.

9 In all of the allegations here, plaintiffs ignore the
10 fact that you cannot have an exchange unless there is
11 centralized clearing. Now, they concede in the complaint that
12 central clearing is a prerequisite for any exchange, but they
13 then ignore the implications of that concession. None of the
14 technologies that were proposed here were in fact an exchange,
15 an anonymous all-to-all trading platform. The closest you
16 might possibly get is AQS, but it still needed to clear on
17 exchange.

18 There is only one exchange -- sorry, one clearinghouse
19 that could possibly clear stock loan transactions, and that's
20 OCC, the Options Clearing Company. That's the only company
21 that's registered and licensed by the SEC to do that. They
22 have their own rules. They are not owned by the defendants.
23 That entity is owned by NASDAQ and the New York Stock Exchange
24 and other entities and, as I said, regulated by the SEC. And
25 their rules say the only people who may trade on the exchange

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1 are prime brokers. So the idea that you can somehow eliminate
2 the prime brokers is just not possible because there is no
3 clearinghouse on which one could effect those transactions. To
4 be sure, I think the allegations are that people would come to
5 the prime brokers and say would you please --

6 THE COURT: Sponsor.

7 MR. SLIFKIN: -- sponsor me.

8 THE COURT: Yes.

9 MR. SLIFKIN: But why would we wish to take the risk
10 of standing behind a transaction, clearly stand behind a
11 transaction that might fail without knowing anything about it
12 or without charging the appropriate fee? When people ask for
13 you to put your capital in place, you charge a fee for it.

14 Nor is there any explanation why any of the other
15 broker-dealers, of which there are dozens who are qualified to
16 clear trades on OCC, couldn't have stepped into the breach.
17 Why are these six somehow the magic number?

18 But the point is, there is no adequate pleading that,
19 absent the conduct here, an exchange would have been created,
20 and that has the consequence that we don't believe there is a
21 proper pleading with respect to standing.

22 So to summarize what we said in our letter, your
23 Honor, we believe there is a failure to plead a plausible
24 conspiracy, we believe there is a failure to plead completely
25 on reasonable restraint of trade. EquiLend is a joint venture.

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1 It is subject to the rule of reason. I think that in *American*
2 *Needle*, the Supreme Court, it is perfectly plain that those
3 entities were subject to the rule of reason, and that's not
4 pled here. We believe the antitrust claim fails for lack of
5 standing.

6 THE COURT: Before we get to lack of standing, I want
7 to stick with plausibility for the moment.

8 MR. SLIFKIN: Sure, your Honor.

9 THE COURT: The issue with plausibility is that I
10 think differing individuals, differing lawyers, and differing
11 judges can have differing views about what is plausible. But I
12 am remembering, perhaps inappropriately at this time,
13 statements made by I believe it was Justice Souter in his
14 dissent that, when speak about plausibility, he was thinking
15 about aliens coming down from the sky and that that was
16 implausible, but what short of that was implausible?

17 What you are asking me to do, and I will determine
18 whether it is appropriate for me to do so, but it sounds like
19 you are asking me to consider things individually at a rather
20 granular level and to decide that each of these constituent
21 elements to the plaintiffs' case fails and therefore all of
22 them fail or we get to some tipping point where I just can't
23 believe what -- what is remaining is not plausible.

24 But I just wonder, am I not supposed to consider the
25 complaint more holistically and am I able to push back on these

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1 factual allegations or to consider alternate reasons for these
2 factual allegations to the degree that I think you are about to
3 ask me to do in this motion.

4 MR. SLIFKIN: Well, I think the analysis of the
5 allegations of the complaint should be on a step-by-step basis.
6 First you should take a look at what allegations are actually
7 specific enough to form a proper allegation? Can they just say
8 the defendants got together or do you have to have allegations
9 about this was the meeting, these were the people, this was
10 what was said?

11 THE COURT: To be clear, I agree with you that group
12 pleading is often a problem in this setting and an inability to
13 specify who did what can be a problem. I am not saying, yet,
14 that that is what's going on here. But of the many arguments
15 that you have made to me today, all of which are certainly well
16 made, the group pleading is one that is resonating with me the
17 most.

18 MR. SLIFKIN: So.

19 THE COURT: Let's go from there.

20 MR. SLIFKIN: Okay. Good. Great. So that's step
21 number one. I think if you take those out, you look at what's
22 left, and I don't disagree with you, your Honor, that you look
23 at it holistically, right, to determine whether that is
24 plausible or not. But if you take allegations, such as, well,
25 there was a meeting in 2009. It was organized by somebody who

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1 didn't join the conspiracy until two years later and involved
2 five people and I'm not going to tell you who they are, right,
3 is that -- can you take that and combine it with, And then
4 there was a meeting at an EquiLend board meeting when Northern
5 Trust and State Street and BlackRock were watching, and they
6 all conspired together at that? Can you put those together and
7 say, yeah, that's plausible, that these people who I don't know
8 who they are and one of them I know has pled not to be a
9 conspirator, you know, had a conspiracy and, you know, linked
10 up with this other meeting where they were all present, and
11 also these other independent entities who are in fact the
12 agents of the plaintiffs were there, we are going to write this
13 up, but it is about as implausible as it gets, your Honor. And
14 it doesn't have to be space aliens. It just has to be
15 plausible for the normal experience, and we believe that is not
16 plausible for the normal experience.

17 THE COURT: Please turn to your standing arguments.

18 Thank you.

19 MR. SLIFKIN: I won't repeat more than what we said in
20 our papers. The standing arguments have been rehearsed
21 previously. But we do believe here, unlike in credit default
22 swaps or interest rate swaps --

23 THE COURT: That's my question.

24 MR. SLIFKIN: -- where there was a regulatory mandate
25 for clearing such that the fundamental premise we all agree

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1 that is necessary for an exchange was going to come into effect
2 because the regulations were making it so, that is absent here.
3 There is no -- there is a reference in the letter, I believe,
4 to support from the Fed and Mr. Geithner. We have searched
5 high and low for any support in the public record or anywhere
6 for that and we can't find it, and just saying it and asserting
7 it isn't enough. There is no regulatory mandate for central
8 clearing. Clearing could only be done through OCC. OCC
9 required the involvement of the prime brokers. So the idea
10 that the exchange would have taken place here is just a leap
11 too far. And that gives rise to a lack of antitrust standing,
12 as well as, we believe, Article III standing.

13 And the last point we wanted to make, which is in the
14 letter, is there are serious time bar issues here.

15 THE COURT: Yes. Okay. So you are not going to focus
16 on personal jurisdiction because you believe you have worked
17 that all out --

18 MR. SLIFKIN: So let me talk about that now.

19 THE COURT: Oh, okay. That's fine. I will listen to
20 them in whatever order you would like to tell me, so you --

21 MR. SLIFKIN: So what I -- so that is sort of a
22 response to your first question before Mr. Brockett stood up;
23 and, as I said, there is a lot more to be said.

24 Let's talk about which entities should remain. As
25 Mr. Brockett said, there was a stipulation, which your Honor so

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1 ordered, with regard to certain entities. We have reached
2 agreement today in principal, which we have to write up, that
3 the holdings companies or ultimate parents of the operating
4 entities whose conduct is alleged should be dismissed.

5 That leaves two categories of defendants about whom
6 we, defendant group, think should be dismissed just right off
7 the bat. They are as follows, I believe, and some of my
8 colleagues will correct me if I am wrong:

9 They are the broker-dealer entities that held shares
10 in EquiLend other than Goldman Sachs because, as I understand
11 it, Goldman Sachs -- the holder of the EquiLend shares is the
12 Goldman Sachs parent, the holding company, and there is an
13 agreement to dismiss it. So that leaves Merrill Lynch LP
14 Holdings, Inc., Credit Suisse First Boston Next Fund, Inc.,
15 J.P. Morgan Strategic Securities Lending Corp., Strategic
16 Investment I, Inc. which is a Morgan Stanley entity, and UBS
17 Americas, Inc. So those --

18 THE COURT: It is your belief that they all should be
19 dismissed.

20 MR. SLIFKIN: We believe they all should be dismissed
21 because there is no allegation that they did anything.

22 THE COURT: Other than hold shares in EquiLend.

23 MR. SLIFKIN: Other than hold shares in EquiLend,
24 which we know lots of people held shares in EquiLend, and they
25 didn't do anything either. We would refer the court to

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1 Judge Forrest's decision in the *Aluminum Warehousing Antitrust*
2 *Litigation*, where she was very clear that you have got to
3 allege that there was separate conduct by each member of the
4 corporate family. You can't lump the corporate family
5 together. So we just think this should be pared down to the
6 operating entities for whom there are allegations of actual
7 conduct, not merely passive shareholding.

8 The one other issue, your Honor, with respect to
9 entities is there is one EquiLend entity, which I believe is
10 EquiLend Europe, for which -- and I am getting a nod from over
11 there -- for which there is a personal jurisdiction argument.
12 Because the UBS parent and the Credit Suisse parent are going
13 to be dismissed as parent holding companies, that personal
14 jurisdiction issue is off the table, but it still exists for
15 the one EquiLend Europe entity. So it would have been nice to
16 work it out, but. . .

17 THE COURT: But we didn't.

18 MR. SLIFKIN: But we didn't. So that's what courts
19 are for.

20 THE COURT: I am being glib, sir, and I will try not
21 to be.

22 Is there some possibility that at some date prior to
23 the filing of your opening brief there would be that agreement?
24 No. You have had all the discussions you are going to have is
25 really what I am asking.

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1 MR. SLIFKIN: Hope springs eternal, but you have to
2 ask Mr. Brockett. Mr. Brockett has to say yes.

3 THE COURT: For now I will expect no.

4 MR. SLIFKIN: Okay. So that is what is on the table.
5 The arguments that I made and this issue about the entities,
6 and I am glad we spoke about this, because obviously that
7 wasn't in our letter.

8 We have some practical considerations, which is, how
9 many briefs do we get, how many pages do we get --

10 THE COURT: Yes. Well, I am sure you do.

11 MR. SLIFKIN: We have had conversations within our
12 group to try to streamline this as much as possible, so I
13 haven't asked.

14 THE COURT: On the issue of page limits, let me just
15 give you a number so you don't come back to me and ask for one.
16 The opening brief, 35 pages; the opposition brief, 35 pages;
17 the reply brief, 15 pages. No formatting shenanigans, by which
18 I mean, no putting everything in footnotes in smaller type --
19 Mr. Brockett, I am looking at you -- because that's what
20 happened with the premotion letters. There is a way to do
21 this. One might argue, I might argue, that if you need more
22 than 35 pages, then actually you are just not going to be
23 successful with your motion to dismiss. So recognizing the
24 many things that you want to tell me, you can tell me in that
25 page limit. I know you don't think so, but you will find a

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1 way. I know it.

2 Was there not a schedule set for the filing of the
3 motion or are we going to be doing that now?

4 MR. SLIFKIN: There is a schedule in place, your
5 Honor.

6 THE COURT: That's what I thought.

7 Is that schedule affected? I neglected to ask
8 Mr. Brockett if he wished the opportunity to amend further his
9 complaint. I am about to do that. I don't know if that would
10 wreak havoc with the parties' schedule. Perhaps if he wishes
11 to do so, the parties can repropose a schedule to me that gives
12 them an appropriate amount of time to do what they need to do,
13 "appropriate," by which I mean not a ridiculous amount of time,
14 but I will hear from him momentarily.

15 While I have you, sir, what other housekeeping issues
16 should we be addressing?

17 MR. SLIFKIN: So I'm a messenger for a group, your
18 Honor --

19 THE COURT: Yes, sir. I understand.

20 MR. SLIFKIN: -- so please don't shoot me.

21 THE COURT: I won't.

22 MR. SLIFKIN: But I feel obliged, since I am
23 representing a group, to say the request from the group for an
24 opening brief on the joint issues was 65 pages.

25 THE COURT: Oh, I know, and that was never going to

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1 happen.

2 MR. SLIFKIN: I'm the messenger.

3 THE COURT: That's what I am saying. I'm not yelling
4 at you. That's why I am simply telling you affirmatively or
5 negatively I'm not going to do it. So no.

6 MR. SLIFKIN: Again, as a messenger, I understand
7 there is a joint brief which we, we at Cravath, were closely
8 involved in coordinating, but I understand that EquiLend has a
9 separate personal jurisdiction, but it also wishes to file a
10 separate brief; bank of America I believe wishes to file a
11 separate short brief; and, as matters now stand, JPMorgan Chase
12 may wish to file a separate brief but may not.

13 THE COURT: What would be the separate briefs for Bank
14 of America and JPMorgan Chase, if you are privy to the topics?
15 I don't want to brief --

16 MR. SLIFKIN: I'm going to let them speak to that.

17 THE COURT: They will speak to me about that. Thank
18 you.

19 MR. SLIFKIN: And EquiLend is a separate entity.

20 THE COURT: Yes.

21 MR. SLIFKIN: It has its joint venture issues, and it
22 also has that one unique personal jurisdictional issue.

23 THE COURT: Yes. Okay.

24 MR. SLIFKIN: Thank you very much, your Honor.

25 THE COURT: Sir, thank you very much. And I do

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1 appreciate that you are only the messenger.

2 May I hear from someone on behalf of EquiLend? That
3 is Mr. Boccuzzi. No, it is not Mr. Boccuzzi. I lied. It is
4 Mr. Gelfand, and he is too polite to correct me.

5 MR. GELFAND: Mr. Gelfand, yes.

6 THE COURT: Yes. Excuse me for renaming you.

7 MR. GELFAND: I apologize. I have a horrible cold
8 that I am just getting over.

9 THE COURT: As long as you stay where you are, that's
10 fine.

11 MR. GELFAND: My colleagues from the plaintiffs' side
12 may want to spread out a little bit.

13 I thought I would answer any questions your Honor has
14 about EquiLend. I thought I would also just take a couple of
15 minutes and introduce you to who this company is so that you
16 understand the background.

17 A lot has been said about my client. They obviously
18 have very strong feelings about the accusations in this
19 complaint.

20 Let me begin by saying, we have no disagreement with
21 anything the other defendants are saying. We agree this
22 complaint is woefully inadequate to allege a claim against
23 anybody.

24 But we are an entity that has been around since 2001.
25 I probably shouldn't admit this, but I gave the original

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1 antitrust advice, the guidance was excellent, and they are
2 extremely compliant. They have been regulated since their
3 formation, first as a broker-dealer and then as an alternative
4 trading system.

5 They have had nothing but clean examinations by the
6 regulators until this case. They had a 17-year run of never
7 being accused of an antitrust violation, never even so much as
8 being investigated by the government to our knowledge. And
9 these are the kinds of platforms that have often been at least
10 reviewed by the antitrust division of the DOJ. This is not
11 something that we have ever encountered at EquiLend. So they
12 are quite proud of that record.

13 They operate as an operating entity. It is wrong to
14 call them some kind of alter ego or just doing the bidding for
15 anybody to create a forum.

16 I want to talk a little bit about the *Twombly* factors
17 as they apply to EquiLend. But maybe I will begin by just
18 saying what we have in terms of entities:

19 There are three EquiLend entities who are named in the
20 complaint. As far as I know, except for the definitional
21 paragraph that says who they are, there are no allegations that
22 separate out the entities. Just everything is "EquiLend" after
23 that. We have a holding company called EquiLend Holding, and
24 then we have an operating company in the U.S. called EquiLend
25 LLC, and then we have an operating company in Europe called

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1 EquiLend Europe, Ltd.

2 The personal jurisdiction motion that we have is on
3 behalf of EquiLend Europe. I had called the plaintiffs'
4 counsel a couple of weeks to go to see if we could just work
5 that out. They are simply a European company. They only deal
6 with European customers. They only have one office. It is in
7 London. They don't have any operations in the U.S. They don't
8 have employees here.

9 By the way, the company on the whole is a relatively
10 small company. We have about 100 employees total in the whole
11 organization, most of them located not far from here on Liberty
12 Street in an office. Most of these employees are tech people,
13 doing software, and sales reps trying to deal with the hundred
14 or so customers that we have. So this is not a huge, sprawling
15 organization.

16 And the European piece deals with a couple of dozen
17 European customers, as I understand it, and has no contact that
18 is meaningful for personal jurisdiction purposes with the U.S.
19 They, for certain, are not going to be any kind of deep pocket
20 for the class some day to go after.

21 So I really -- I take your Honor at the beginning your
22 remarks that you would like to see if you can help us maybe
23 figure out how to avoid some unnecessary litigation about
24 issues. I know my client would really appreciate it if they
25 didn't have to go through the motions of litigating this. I

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1 think when you have a complaint that makes no attempt to break
2 out anything that this European company does, any contacts it
3 has with the U.S., we can go through the motions of filing a
4 declaration and explaining who they are, but I really don't
5 think the plaintiffs have any basis to say that this European
6 subsidiary is subject to jurisdiction here or even really has
7 any proper place in this case.

8 So I will keep working with the plaintiffs and try to
9 get that resolved beforehand, but I wanted to at least raise
10 that with the court.

11 One thing I do want to point out, because there is a
12 suggestion in the complaint that somehow this company is
13 dominated by the prime brokers. In fact, the chairman of the
14 board of EquiLend Holdings is one of the lending banks, State
15 Street, and has been for the last couple of years.

16 During the time when some of the activities that are
17 alleged in the complaint took place, it is an absolute -- it is
18 just made up that this is somehow dominated by the prime
19 brokers. These are three very substantial lending agent
20 institutions. They are enormous companies with tremendous
21 clout. They are active participants on the board. One of them
22 is the chair of the board. So I just really think that kind of
23 is implausible in itself.

24 But if we look at the allegations that attempt to
25 bring EquiLend into this alleged violation, I kind of have it

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1 in four categories. It is an enormous complaint. I know there
2 is a lot there. But there is really not that much about
3 EquiLend other than kind of repeating the things that happen at
4 EquiLend boards. There is never any specifics about any
5 conversations at an EquiLend board, by the way. There is just
6 the suggestions that because other defendants were in EquiLend
7 board meetings, they must have been talking about something at
8 EquiLend board meetings. There is no report of statements that
9 were made at EquiLend board meetings, the suggestion that,
10 well, the owners of EquiLend will never go along with this, it
11 is not attributed to a statement that is made at an EquiLend
12 board meeting. It is just a statement that is allegedly being
13 made outside of an EquiLend board meeting and then somehow
14 grafted through inference on to a board meeting. But there is
15 no direct evidence that any boycott discussion ever occurred at
16 an EquiLend board meeting.

17 So I think there are four categories of allegations
18 that exist as to my client, and one of them is just this
19 concept that we were this forum or we were this place where
20 people were meeting, and therefore we must have some kind of
21 involvement. I don't know. There is nothing attributed to any
22 of our employees as a boycott or an agreement to boycott
23 anybody.

24 But in the interest rate swaps decision that
25 Judge Engelmayer handed down, there is a section in that about

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1 a platform there called TradeWeb, which is similarly situated
2 to EquiLend in that case. There, Judge Engelmayer said, Look,
3 just alleging, even in a long, complicated complaint with lots
4 of facts, simply alleging that the platform was a forum for
5 people to meet and talk about things, that's not enough to
6 satisfy *Twombly*, and TradeWeb was dismissed from that case at
7 the pleading stage. We will be asserting that kind of ground
8 in our motion to dismiss.

9 And then there are three other things, and before I go
10 through them, they are all consistent with what Mr. Brockett
11 talked about, but before I go through them, let me just say
12 that all three of them are just things that companies do all
13 the time. They are thinking about corporate transactions, they
14 are acquiring assets, they are taking a pass on proposed
15 acquisitions. So the overall theme that your Honor will hear
16 in our motion about these three buckets of allegations is that
17 they don't pass *Twombly* when you look at them individually or
18 all together because they are all perfectly consistent with
19 normal business behavior of a platform like EquiLend who is
20 conducting a business, making decisions, deciding where to
21 invest their limited resources, how to use their business, and
22 so that is kind of a common theme of all three of these
23 buckets.

24 One of the buckets is that we acquired a company
25 called AQS, which you have heard about, your Honor has heard

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1 about. That acquisition occurred sort of at the end of the
2 story that's told in the complaint. I think Mr. Brockett said
3 here today that we part bid or destroyed it.

4 THE COURT: Shelved it.

5 MR. GELFAND: Shelved it. It's not true. I don't
6 think it's even alleged in the complaint, and I don't think it
7 could be alleged consistent with Rule 11. My client continues
8 to operate AQS. They have an active project going on with the
9 OCC to try to integrate AQS with the OCC. They have customers.
10 You know, they didn't shelve it. It just didn't happen. And I
11 don't think the complaint either does or can in good faith
12 allege that we somehow acquired this company. By the way, the
13 company was acquired for a relatively modest price, and it is
14 in an adjacent space, and they had some good technology and we
15 were using it. So there is nothing suspicious about that.
16 This doesn't make us part of an antitrust conspiracy to boycott
17 alternative trading systems or something. It is just something
18 that companies do. They look at acquisition opportunities and
19 sometimes they act on them and sometimes they don't.

20 There is a separate episode with a company called SLX,
21 and here we are being accused of conspiracy for doing the
22 opposite. So with AQS we are being accused of conspiracy
23 because we merged with AQS. With SLX, we are accused of
24 conspiracy because we declined to merge with SLX at a certain
25 point in time. There is nothing suspicious about that. There

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1 is nothing that plausibly suggests a conspiracy to violate the
2 antitrust laws because somebody comes to you and says, hey, I
3 got a good investment opportunity. What do you think? Do you
4 want to put our companies together? I don't know. I guess the
5 complaint alleges in a sentence or two that we didn't give them
6 the time of day or something. But that's not inherently
7 suspicious. Companies are approached all the time about
8 possible deals. Sometimes you can analyze them behind the
9 scenes. Sometimes you engage. Sometimes you don't. Even by
10 the complaint's own allegations there was some competitive
11 interaction between these platforms. So it really doesn't
12 satisfy *Twombly's* requirement that in order to infer conspiracy
13 from a fact, you have to be able to say it more plausibly
14 suggests an antitrust violation than simple, ordinary business
15 conduct. That can't possibly support an allegation that my
16 client engaged in a conspiracy here.

17 Then I think Mr. Brockett said today that we bought
18 that platform. That's not true, and that's not even alleged in
19 the complaint. The platform failed. It's actually part of
20 this case that SLX failed. And not all of this is in the
21 complaint, your Honor. Maybe I can't put it all in my motion
22 to dismiss, but what really happened there was SLX failed, they
23 went into bankruptcy, receivership. It had some patents. We
24 were approached to buy those patents at a certain price, and we
25 said no. Anybody in the market could have gone and bought

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1 those patents, and the bankruptcy language for some period of
2 time, a year, and they came back and they offered us an even
3 lower price, like a really modest price, like, I don't know, a
4 few hundred thousand dollars for a portfolio of patents which
5 my client acquired. Again, there is nothing inherently
6 suspicious about acquiring patents that potentially read on
7 technology that you might or might not use. This happens all
8 the time in business. There is no obligation on our part to
9 acquire patents and then say, well, now we have got patents, we
10 are going to start licensing them out to third parties, we are
11 going to make some sort of big announcement, and we are going
12 to say now we have got new technology that uses this particular
13 patent. It is a very common business practice to acquire
14 patents, especially when they might read on some of the
15 technology you are either working on or might develop.

16 This was a trivial transaction in the overall scheme
17 of things. I think this is a company that once raised \$100
18 million in capital or something, and they were down to, really,
19 a rounding error set of assets that my client acquired after
20 being approached a couple of times and turning it down the
21 first time.

22 So that's the SLX episode. That's not all in the
23 complaint. I concede that. I'm sorry. Some of it I won't be
24 able to say in the motion to dismiss. But that's what
25 happened.

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1 And then, I have been practicing antitrust law for
2 over 25 years, and this one is baffling to me. We are being
3 accused of an antitrust violation because we developed a new
4 product that we brought to market at a lower price. The
5 plaintiffs say that we can be inferred to have been part of the
6 conspiracy because we developed a data product called DataLend
7 that we then offered to customers at a cheaper price than Data
8 Explorers, which was a competing product that was already out
9 there. I honestly don't think, except in the very rare
10 situations, almost unheard of anymore in antitrust circles of
11 what they call predatory pricing, where you price below cost.
12 I have never had a client accused of violating the antitrust
13 laws because they introduced a new product into the market.

14 By the way, I don't remember if Mr. Brockett said that
15 Data Explorers is the alternative product, what he said about
16 that, but I don't think it is in the complaint, and it is not a
17 fact that that has exited the market. They got acquired by a
18 substantial company called Markit. They still have customers.
19 They still supply data to third parties. They are still out
20 there doing contracts. So it is not like this complaint
21 alleges that we introduced a product, monopolized that space,
22 and there isn't even a monopoly claim in here, but, just, we
23 introduced a product, and there is nothing that you can infer
24 from that, under *Twombly*, to tell my client -- I am sorry. I
25 am getting a little carried away. You can do whatever you want

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1 to do. You are the judge. But there is nothing that ought to
2 be inferred from that as far as us violating the antitrust
3 laws.

4 So those are the points we are going to make in our
5 separate motion to dismiss. We would like to have an
6 opportunity to brief those separately. I think they do -- they
7 overlap considerably with the other defendants, and we are
8 certainly going to be supportive of the other defendants'
9 motion. We are not looking for an entire extra 35 pages or
10 something like that.

11 THE COURT: Good.

12 MR. GELFAND: But we would like to brief that
13 separately. And hopefully we can work out this personal
14 jurisdiction issue so that we can avoid burdening the court
15 with that basic sideshow.

16 THE COURT: Let me understand, then, right now, the
17 contemplated motion speaks to personal jurisdiction, but it
18 also speaks to whether the allegations *vis-à-vis* EquiLend are
19 insufficient under 12(b)(6)?

20 MR. GELFAND: Correct, that is correct.

21 THE COURT: And you are saying your arguments cannot
22 be folded in to the Cravath brief or the Cravath contemplated
23 motion. I am giving them all the credit for it. The joint
24 motion to dismiss that will at least involve on some level the
25 Cravath firm.

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1 MR. GELFAND: Your Honor, my view was that we were at
2 least differently enough situated from the other six defendants
3 that we had our own perspective to bring. Now, you could
4 always find a place in a brief to say, This is the EquiLend
5 piece of this. I know that in the interest rate swaps case
6 TradeWeb filed their own brief and very effectively presented
7 that argument to the court. That's been my advice to my
8 client, that I think it is in our interest to be heard
9 separately on that. Obviously I will follow the court's
10 guidance on this, but our request would be to be able to file a
11 short supplemental brief. It's not going to repeat the *Twombly*
12 standard. It's not going to repeat the factual background
13 that's laid out in the joint defense brief. But I will try to
14 make very specific points that are, from the EquiLend
15 perspective, why these *Twombly* factors make no sense to infer
16 conspiracy by EquiLend.

17 THE COURT: Okay.

18 MR. GELFAND: If he can with get rid of the personal
19 jurisdiction, I think maybe 15 pages.

20 THE COURT: That is one of those "Other than that,
21 Mrs. Lincoln, how was the play?" If you get rid of the
22 personal jurisdiction issue. I will hear sort of on a
23 tentative basis from Mr. Brockett, and then we will see what we
24 do in a scheduling order that I ultimately issue.

25 Thank you very much, sir.

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1 MR. GELFAND: Thank you, your Honor.

2 THE COURT: Did someone want to be heard from Bank of
3 America.

4 MR. HAKKI: Yes, your Honor.

5 THE COURT: Okay. Thank you.

6 MR. HAKKI: Thank you, your Honor. Adam Hakki, from
7 Shearman & Sterling, for Bank of America.

8 THE COURT: Yes.

9 MR. HAKKI: As you heard, as you know from reading the
10 complaint, your Honor, and as you heard from listening to
11 Mr. Brockett, there is a unique factual element here with
12 respect to Bank of America, which is, Quadriserv AQS is, one
13 could argue, the centerpiece of the complaint, and Bank of
14 America invested millions of dollars in Quadriserv and
15 supported AQS. The investment began in October 2007 and
16 continued until AQS was purchased in 2016 -- or, rather,
17 Quadriserv was purchased by EquiLend in 2016.

18 We think that's a very significant factor from a
19 plausibility perspective as to the allegations against Bank of
20 America. In fact, when Quadriserv launched AQS in 2009, the
21 press release, which is publicly available and would be
22 provided with our brief, includes a quote from Merrill Lynch
23 expressing its support and explaining why it is supporting it.
24 Merrill Lynch supported Quadriserv and AQS to the tune of
25 millions of dollars. They brought order flow to AQS. And the

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1 complaint admits all of that, in essence, and says that
2 everything changed in late 2011, when there was a personnel
3 change. There were personnel changes at Bank of America.

4 A few things about that:

5 First of all, if you look at what the complaint says
6 on this subject -- and it's at paragraph 205 to 207 -- the
7 complaint is not that Bank of America bailed out, sought to
8 sell its interest, disassociated itself with AQS Quadriserv.
9 What the plaintiffs' are complaining about is that, after that
10 date, Bank of America didn't put any more millions of dollars
11 into AQS Quadriserv. There is no dispute that it maintained
12 its investment as long as it could maintain its investment,
13 which was when the company was acquired in 2016.

14 The paragraphs also complain that Bank of America set
15 a limit of a billion dollars in daily notional trading volume
16 on AQS at the time of that personnel change. I would submit,
17 your Honor, that, looking at the antitrust case law, looking at
18 the cases interpreting *Twombly*, the notion that failing to
19 invest additional money in something or curtailing your
20 activity on a platform to an amount that is below a billion
21 dollars daily notional is evidence of participation in a
22 conspiracy, I don't think you will find that, your Honor. I
23 think we will be able to demonstrate that succinctly.

24 Mr. Brockett talked about rational economic
25 incentives. I think the fact that Merrill Lynch, even

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1 accepting these allegations as true in all of their factual
2 respects, right, the notion that if, as the plaintiffs allege,
3 they tried to get AQS off the ground, it didn't get traction,
4 there wasn't enough volume, there wasn't enough dealer
5 support -- and that's not me speaking, that's what they say --
6 at some point if you are Merrill Lynch and you have put
7 millions of dollars into it, you consider stopping throwing
8 good money after bad, which is a perfectly rational economic
9 motive, and you do it in a way that is smart. You don't seek
10 to liquidate your investment. If there is still up side here,
11 you are there. You don't cut off your support. But you don't
12 necessarily steer your clients to a platform that they are
13 saying, to the tune of a billion dollars plus a day, that they
14 are saying didn't have the liquidity to work well. This is
15 their allegations. Okay?

16 So that, your Honor -- and let me say one other thing,
17 your Honor. With respect to the 2009 allegation, you will find
18 that at paragraph 202, as Mr. Slifkin said, that's during the
19 period we were allegedly not in the conspiracy and supporting
20 AQS, all that's alleged there is that Bank of America convened
21 a meeting of the five families to talk about an SEC round
22 table, right, which is a public event. It doesn't say what was
23 discussed. And Bank of America didn't participate in that
24 round table, wasn't on the panel. So we don't think that
25 that's a relevant allegation; and, as Mr. Slifkin said, the

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1 fact that this alleged nonconspirator was part of that, I
2 think, belies the whole case.

3 So that really, your Honor, is what I want to file a
4 separate brief to say, with some cases, and to put it in the
5 context of the plausibility case law.

6 I am going to ask for half the number of pages I
7 walked in intending to ask. In light of your Honor's guidance
8 with respect to the joint brief, that seemed prudent. Five
9 pages would, I think, be sufficient, your Honor, double-spaced,
10 is actually way shorter than a three-page pre-motion letter.
11 And if we can do it in less than five, we will, but I would
12 humbly request the pages.

13 THE COURT: I understand. Okay. Thank you.

14 And was there someone from JPMorgan Chase who wanted
15 to be heard? Thank you.

16 MR. WICK: Good morning, your Honor. Robert Wick from
17 Covington & Burling, for J.P. Morgan.

18 THE COURT: Yes, sir.

19 MR. WICK: It is our hope that we can avoid filing a
20 separate brief. We are hoping to fold a couple of
21 J.P. Morgan-specific points into the joint brief.

22 Your Honor, I hear you loud and clear when you say
23 that you are never going to grant the defendants 65 pages, but
24 if I may ask the court's indulgence, it would be much easier
25 for us to avoid filing a separate brief if the court can see

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1 its way clear to granting us 50 pages. The defendants have a
2 draft joint brief among all of the banks floating around. It
3 is in the neighborhood of 65 to 70 pages. I think we can, with
4 some real work, I think we can cut it to 50. But to cut it in
5 half to 35 would be a very daunting job and would put me in a
6 very difficult position negotiating with my codefendants to
7 make the J.P. Morgan-specific points that I would like to make
8 within the confines of a joint brief and avoid burdening the
9 court with a separate brief.

10 I would respectfully submit, your Honor, that is a
11 reasonable number of pages to ask for, given that we have a 400
12 paragraph complaint that runs to 150 pages. There are three
13 distinct platforms that they say were boycotted -- AQS, SLX,
14 and Data Explorers -- and each one of those platforms has its
15 own story. We are talking about six prime broker defendants.

16 By way of comparison, your Honor, in the interest rate
17 swaps case, which was a complaint by Quinn Emanuel alleging a
18 quite similar boycott conspiracy theory, that the defendants
19 got together to boycott exchange trade of interest rate swaps,
20 by way of comparison, Judge Engelmayer granted the defendants a
21 collective 85 pages to move to dismiss. I recognize that --

22 THE COURT: No. He is just nicer than I am. That's
23 fine.

24 MR. WICK: -- this is your courtroom, not his.

25 THE COURT: That's not happening.

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1 MR. WICK: We are going to follow whatever directions
2 you give us.

3 In the credit default swap case, Judge Cote granted
4 the defendants a collective 50 pages to dismiss.

5 Your Honor, I would respectfully submit I would be
6 optimistic that we could avoid filing a separate brief for J.P.
7 Morgan if we could collectively get 50 pages.

8 THE COURT: Wait. That's 50 pages with EquiLend's?

9 MR. WICK: I was hoping for 50 pages for the six prime
10 brokers, your Honor.

11 THE COURT: That would include B of A's five-page
12 supplement?

13 MR. WICK: That's up to your Honor, but the request is
14 that we would like to have 50 pages for the joint brief among
15 the prime brokers. If Bank of America gets their five pages,
16 the request would be that that would be extra. I understand
17 that your Honor may not be inclined to grant that, but that's
18 the request. We have a 65- to 70-page draft brief right now.
19 There is some room for paring that back, but, your Honor --

20 THE COURT: Are there not personal jurisdiction
21 arguments that --

22 MR. WICK: No.

23 THE COURT: No? This is before you started thinking
24 about personal jurisdiction?

25 MR. WICK: The draft covers *Twombly*, it covers

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1 standing, it covers statute of limitations, and it briefly
2 covers the unjust enrichment claim in the complaint.

3 THE COURT: Let me understand what you believe would
4 be your supplemental brief if I were to disagree with you as to
5 the number of pages permitted for the consolidated brief.

6 MR. WICK: Yes, your Honor. There are two unique
7 points about J.P. Morgan. The first is that this complaint
8 essentially alleges that one part of J.P. Morgan was conspiring
9 to victimize another. Unlike the other defendants here, your
10 Honor, J.P. Morgan has both a prime brokerage and a large agent
11 lending business. And the board of directors representatives
12 on EquiLend, appointed by J.P. Morgan or nominated by
13 J.P. Morgan, was one from the prime brokerage and one from the
14 agent lending business. So, in essence, they are alleging a
15 conspiracy in which J.P. Morgan was at war with itself, was
16 victimizing its own agent lending business by reducing the
17 revenues going to the agent lender by essentially reducing the
18 amount of monies that J.P. Morgan's agent lender clients make,
19 and J.P. Morgan's revenue, as agent lender, is a percentage of
20 that.

21 The other distinctive fact about J.P. Morgan, your
22 Honor, is that there are allegations that J.P. Morgan did not
23 itself participate on either AQS or SLX. But there are no
24 allegations that it discouraged, threatened, intimidated,
25 prevented anyone else from participating on AQS or on SLX. I

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1 don't know that we are unique in that regard. I don't know
2 that there are allegations that UBS or Credit Suisse, for
3 example, or Bank of America prevented anyone else from
4 participating on this platform. But as to J.P. Morgan, what we
5 are left with, your Honor, is essentially an allegation that it
6 didn't participate itself, not that it blocked anyone else.
7 And if the allegations in the complaint are true -- and I don't
8 concede that, your Honor -- but if the allegations in the
9 complaint are true, that AQS was essentially inviting
10 J.P. Morgan to cannibalize its own profits, it is pretty
11 obvious to see why J.P. Morgan wouldn't be interested in that
12 proposition.

13 THE COURT: Okay. Other things that are specific to
14 your client, sir?

15 MR. WICK: No, your Honor.

16 THE COURT: Okay. Thank you very much.

17 Are there other defendants' counsel who wish to speak
18 and explain why they may have a particular claim or argument
19 that's not addressed adequately in the contemplated
20 consolidated submission?

21 MR. PEPPERMAN: Your Honor, this is Rick Pepperman,
22 from Goldman Sachs, and I do not have that kind of point that I
23 would like to make, but I would like to amplify a couple things
24 that Mr. Wick said.

25 THE COURT: Don't beg.

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1 MR. PEPPERMAN: I will try, although I'm only a little
2 bit above that.

3 We have been working on a joint brief since before
4 Thanksgiving. If I were submitting a brief only on behalf of
5 Goldman Sachs, 35 pages would not be a bridge too far. The
6 challenge is to draft a joint brief that covers the
7 plausibility of the alleged conspiracy encompassing the three
8 allegedly boycotted platforms; the question of whether the
9 prime brokers' conduct, as participants in the EquiLend joint
10 venture, should be governed by the rule of reason and whether a
11 claim has been stated under the rule of reason; the antitrust
12 standing argument; the statute of limitations argument, which
13 is separate for the Sherman Act claims and for unjust
14 enrichment; and then the short section on the unjust
15 enrichment. Your Honor, frankly, it really is a bridge too far
16 to be able to do that effectively on behalf of what are really
17 seven defendants in a joint brief at 35 pages.

18 We had thought coming in that 65 pages was going to be
19 a challenge. We are obviously not there. But from my
20 perspective, 50 pages versus 35 pages is the difference between
21 presenting these issues to the court in a way that is clear,
22 understandable and that the court can track together with the
23 case law support and the citations to the complaint or really
24 doing a summary job which is what 35 pages would be. So I do
25 not want to beg, but --

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1 THE COURT: You are begging right now. You are kind
2 of embarrassing yourself, so please don't.

3 MR. PEPPERMAN: Judge --

4 THE COURT: Sir. Sir. Stop. Stop.

5 MR. PEPPERMAN: Yes, your Honor.

6 THE COURT: I will look at credit default and the
7 briefing and the pleadings there. I will look at interest rate
8 swaps.

9 MR. PEPPERMAN: Thank you, your Honor.

10 THE COURT: That's all I am a going to commit to.

11 MR. PEPPERMAN: Okay, your Honor. Thank you.

12 THE COURT: No more entreaties. Anybody else from the
13 defense side who wants to speak to substantive issues specific
14 to their clients? Thank you.

15 MR. BOHAN: Your Honor, may I be heard?

16 THE COURT: You may as long as you are not going to
17 talk about page lengths.

18 MR. BOHAN: I'm not going to ask for additional pages.

19 THE COURT: Thank you.

20 MR. BOHAN: We fully hope and expect to be able to
21 fold the UBS-specific arguments into a common brief for the
22 convenience of the court. But I do rise to address the court
23 in light of something that Mr. Wick said and that he was
24 uncertain whether it was a distinguishing characteristic of
25 J.P.M. that J.P.M. had not been specifically alleged to have

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1 threatened any of these non-prime broker defendants from having
2 participated on the AQS platform. I think he has in mind, your
3 Honor, paragraphs 215 and 216 of the amended complaint, and I
4 just wanted to point out to the court that UBS has also not
5 specifically been alleged to have engaged in that conduct
6 either. The way paragraph 216 reads is as follows, and your
7 Honor will recall that Mr. Brockett specifically referred to
8 buy side market participants that were substantial, namely,
9 D.E. Shaw, Millennium, and SAC, and what paragraph 216 alleges
10 is that the same thing happened to dozens of large hedge funds,
11 namely those three, picking up on allegations that the
12 defendants, or one or more of them, had threatened also
13 Renaissance Technology. So 216 alleges the same thing happened
14 at dozen of large hedge funds, including flagship funds, like
15 D.E. Shaw, Millennium, and SAC. After inquiring about AQS,
16 each was stonewalled by the prime broker defendants.

17 So I leave it to the court to figure out whether the
18 allegation that the prime broker defendants stonewalled
19 D.E. Shaw is an allegation of fact or is stated in a conclusory
20 way and should be disregarded, but my point is simply, not only
21 is UBS not specifically alleged to have engaged in that
22 conduct, but there are five UBS defendants that remain in the
23 case, maybe four -- I'm optimistic about things that were said
24 this morning about the stipulation that we will tender to the
25 court in short order -- but it is not clear what -- which prime

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1 broker defendants are alleged to have engaged in that conduct.

2 And I will tell the court I'm going to leave this
3 morning a little disappointed not knowing whether my client,
4 UBS, one of the UBS entities, actually is it a prime broker,
5 UBS Securities, but whether it is one of the five families.
6 Because there are six prime broker defendants, there are five
7 families, and it is unclear whether we qualify as one of the
8 five. I hoped to get some insight on that this morning, but it
9 occurs to me, your Honor, that there are significant prime
10 broker defendants that are not named as -- prime brokers that
11 are not named as defendants that could qualify as one of the
12 members of the, quote, five families.

13 So I also leave it to the court, and pardon me, your
14 Honor, but I leave it to the court how realistic, how plausible
15 it is that UBS, a minor player in this market, would tell
16 D.E. Shaw to take its business elsewhere, for example, to
17 non-prime broker defendants Barclays, Citi, Deutsche Bank, and
18 any of the other competitors in this market.

19 THE COURT: To your point about the five families, I
20 understood it to be a reference to the *Godfather's* five
21 families, where there might be in your case six, there might be
22 four. But the notion was a shorthand for organized crime
23 families working together. I'm not going to worry about that,
24 although counsel in front of you, both of them should stop
25 nodding their heads because it is very distracting. So I

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1 appreciate the running commentary as to whether they agree with
2 me or not by whether they are shaking their heads, but just
3 stop.

4 MR. BOHAN: If my reading of the complaint was overly
5 literal, your Honor --

6 THE COURT: Sir, it may or may not be. The point is,
7 I will come to learn at some point. But I understand.

8 I think your larger point, the point that I think I
9 was more interested in hearing, was that you are echoing
10 counsel for J.P. Morgan's views that perhaps it is inactivity
11 that is the basis for liability and not activity, and that is
12 your concern. I understand that. Thank you.

13 MR. BOHAN: Thank you, your Honor.

14 THE COURT: Anyone else from the defense side of the
15 house? Okay. Wonderful.

16 Mr. Brockett, may I have you back at the podium, sir.

17 Mr. Brockett, you are welcome to speak in reply to any
18 of the arguments that have been made. You are also welcome to
19 rely on your papers and your pleadings in response. I will do
20 either.

21 Some things I would like you to think about are as
22 follows:

23 I am intrigued to a certain degree about EquiLend's
24 European operating company and whether you believe them or
25 whether they have adequately been really addressed in this

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1 document.

2 Second, and perhaps more important, though,
3 substantively, is whether the complaint, as well-written, as
4 long as it is, as detailed as it is, really does avoid the
5 problem of group pleading or tells me that it cannot.

6 And then that all leads into the issue of whether you
7 wish to file an amended complaint.

8 Please take nothing that I have said today as a hint
9 that you should or should not. What I am trying to avoid is
10 the situation which has happened to me a few times, and
11 shouldn't happen in a case with this stellar cast of lawyers,
12 that I get a very well thought out motion to dismiss and then
13 the answer, the opposition to that motion contains as Exhibit A
14 a proposed amended complaint. You don't want to go through
15 motion practice twice. I don't want to go through motion
16 practice twice. So if the discussions we have had today or the
17 discussions you have had with defense counsel give you further
18 insight into ways in which you can make your complaint, for
19 lack of a better term, bulletproof, then great. Let's talk
20 about it. I leave that to you, sir.

21 MR. BROCKETT: First of all, I don't need to make a
22 prolonged refutation of all of the arguments made by the
23 defendants. I do want to make one or two substantive points.

24 THE COURT: Please.

25 MR. BROCKETT: But let me address the question of the

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1 amendment first, okay? The court asked whether we would use an
2 opportunity to amend our complaint before we go through the
3 motions. I think that decision should be made after we see the
4 defendants' motion papers, and the reason is this: That's
5 because that's what Rule 15 contemplates, that's what we did in
6 the interest rate swaps case, that's what we did in the credit
7 default swaps case, that's what we did in the SSA bonds case,
8 all of which are financial market antitrust cases pending in
9 this district.

10 THE COURT: Understood, sir. But do each of those
11 judges have a premotion conference procedure the way I do?

12 MR. BROCKETT: We had premotion conferences, but it
13 clearly was not as substantive as this.

14 THE COURT: You don't think the discussions we have
15 had today are substantive, sir?

16 MR. BROCKETT: I think they are very substantive, but
17 I think it is also the case that when we see their motion there
18 very well may be things we feel need to be amended and need to
19 be bolstered that won't necessarily be apparent based on the
20 summary arguments and the letters that we have seen today.

21 THE COURT: All right. Sir, you and I are both aware
22 of the *Lorelei* case from 2015.

23 MR. BROCKETT: Yes, correct.

24 THE COURT: Mr. Calabrese and I have differing views
25 about the utility of premotion conferences and the importance

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1 of amending. I understand that, at least at the moment, he
2 outranks me. But for now, I am just saying you have had an
3 opportunity to amend. You have had this. I just don't want
4 you to feel confident that I will grant multiple opportunities
5 to amend. I have read the case with the same degree of care
6 that you have. I understand what my obligations are. But I am
7 nonetheless just noting that if these are the choices that you
8 wish to make, that's fine.

9 MR. BROCKETT: I certainly acknowledge that, under the
10 *Lorelei* case, if we exercise our option to amend after we see
11 their motion papers, that would counsel against perhaps an
12 amendment after an opinion is issued. On the other hand, if we
13 don't exercise the option we have under Rule 15 to amend after
14 we see the motion, there very well may be an opportunity to
15 amend if the court finds that certain aspects of the complaint
16 are deficient.

17 I cannot make a commitment today about whether we want
18 to amend in response to the arguments. That's something I need
19 client approval. That's something that if the court really
20 wants us to make that decision as a result of this proceeding,
21 we can do that fairly quickly. But my submission is that we
22 should have the opportunity to do this, just as we have done in
23 other cases, after we have seen the defendants' motion papers.

24 THE COURT: Understood.

25 What I am going to say is this: Number one, you have

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1 had one opportunity to amend. Number two, if you are asking
2 for it in the context of your opposition to a motion, what I
3 don't want to have and what I will find insufficient is a
4 catchall paragraph at the end that says, "But if you, Failla,
5 disagree with us, we would like an opportunity to amend." You
6 will have to be remarkably explicit as to how you can remediate
7 the issues that have been identified by the defense.

8 MR. BROCKETT: Okay. All right. Very good.

9 THE COURT: You understand, I care not whether you
10 amend now or later. I am trying to avoid the wasting of
11 resources.

12 MR. BROCKETT: Of course.

13 THE COURT: I appreciate that it is your argument that
14 it is not a waste because you may need the full number of pages
15 in excess of 25 and less than 65 to decide how best to address
16 these issues. But we understand each other. That's fine.

17 Please continue, sir.

18 MR. BROCKETT: With respect to -- a couple of just
19 housekeeping matters. With respect to the EquiLend Europe, I
20 had one conversation with Mr. Gelfand. We will continue to
21 look at that. As I pointed out to Mr. Gelfand, there were
22 directors of EquiLend Europe who made statements in the
23 complaint that we are using as evidence, and there were
24 EquiLend directors of EquiLend Europe that had meetings with
25 SLX that are at issue in the case. So it is simply not the

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1 case that EquiLend Europe was a shell company or just a holding
2 company. There is activity that they engaged in that is
3 specified in the complaint. But I will continue to have a
4 dialogue with him and we will make a decision as to whether we
5 will stipulate to EquiLend Europe at a time in the very near
6 future. Okay?

7 THE COURT: Okay. Thank you.

8 MR. BROCKETT: I just want to make one substantive
9 response, and this is really to a comment that Morgan Stanley's
10 counsel made, and that was this: There could never be, he
11 says, an all-to-all anonymous exchange in this marketplace
12 because you have to have a broker-dealer in the middle. Okay?
13 It is required that the broker-dealer be the one that clear the
14 transaction and, in this instance, it is required that the
15 broker-dealer actually be the contracting party. Okay?

16 These facts were well known and well understood by the
17 designers of AQS, and AQS and SLX were specifically designed to
18 deal with this very issue. And what they did was they simply
19 said, look, we can have a central limit order book. We can
20 have lenders and borrowers logging into our platform, seeing
21 prices being streamed in realtime, seeing what stocks are
22 available to lend. The borrowers and lenders can go on that
23 platform, they can initiate the transaction by clicking on "I
24 want to borrow this stock at this price," and then you have a
25 broker-dealer that clears the transaction and you have a

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1 broker-dealer that stands in the middle as a party to the
2 transaction. That's the same set-up as exists in the equity
3 markets today. It's the same set-up that exists in the futures
4 markets today. And so the notion that that prime broker had to
5 stand in the middle was part of the design of the system, and
6 to say that you could never have a viable platform for that
7 reason overlooks the fact that AQS had the support of Merrill
8 Lynch. The OCC -- and he says, well, by the way, we could
9 never have clearing. Well, we had a contract with the OCC that
10 allowed central clearing of stocks loans done on the AQS
11 platform. You had Eurex, OCC supporting AQS. Merrill Lynch,
12 the largest lender of securities, the largest borrower of
13 securities, the largest venture capital. Even the even
14 Deutsche Börse, the largest exchange in the world, supported
15 AQS. So they obviously wouldn't have done so if they thought
16 there was a fundamental flaw in the design of the system that
17 it could never work because a broker-dealer had to stand in the
18 middle of these transactions.

19 Now that's the only substantive response I wanted to
20 make. There are a lot of other points that I think we can deal
21 with those in our brief. But I would be happy to answer any
22 further questions the court may have.

23 THE COURT: I don't have any. Thank you. I'm going
24 to ask you for your patience a moment. Thank you.

25 (Pause)

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1 THE COURT: Mr. Brockett, if I could have you for a
2 moment. You don't have to go back to the podium.

3 Just so that I understood state of our discussions,
4 it is your preference at this time not to amend but to wait and
5 see what the motion is, is that correct?

6 MR. BROCKETT: That's correct, your Honor, yes.

7 THE COURT: You will, if I make you, but you would,
8 even then, probably, I suspect, request an opportunity to amend
9 after seeing the full exposition of their arguments, sir, is
10 that correct?

11 MR. BROCKETT: If you press me now I would have to
12 make a decision and have to consult with our client.

13 THE COURT: No. This I understand. But even if you
14 made -- even if I did and you did, I could not foreclose the
15 possibility that, upon seeing the full exposition of their
16 arguments, you will ask again to amend.

17 MR. BROCKETT: That's correct. I think we would have
18 that right, yes.

19 THE COURT: That's a different issue, but yes. Thank
20 you.

21 So the schedule is what the schedule is. Let me just,
22 I hope -- I am many things. Diplomatic is not one of them.
23 But I want to listen to everything that each of you has said
24 and recognize the merit in the arguments you are making and
25 expect that the arguments that you are making are not just made

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1 to try and score some point.

2 So what does this all mean? It is not because certain
3 of you prostrated yourself before me today, but it is because I
4 am persuaded by the collective exposition of or detail that you
5 have given me that 50 pages will be the opening and opposition
6 briefs and 25 for the reply. Do not use your reply to make the
7 arguments that you wished you had made in the opening because I
8 won't consider them. But, friends, that means J.P. Morgan and
9 B of A and UBS and Goldman Sachs are getting all of their
10 arguments in there. I will give a separate brief to EquiLend
11 of 15 pages or fewer only because I think they are
12 qualitatively different than the prime brokers who are involved
13 here.

14 So, yes, I could stick with my 35 pages just to show
15 you that I am capable of sticking to my original decisions, but
16 I also think it is better for me to listen carefully to what
17 everyone has said; and, having listened carefully and thought
18 about the many moving parts in this complaint, I do think that
19 50 is the better. So 50, 50 and 25.

20 It appears that the schedule will be the schedule that
21 was originally set by the parties because there is no
22 amendment.

23 I am sure all of you or at least some of you would
24 like the opportunity to participate in oral argument. Let me
25 just say, and save you the trouble of sending me a letter to

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1 this regard, if I need it and to the extent I need it, I will
2 absolutely let you know and bring you in. Sometimes I do need
3 it. Sometimes I have had enough insight from conferences like
4 this one and from the great writing that I know you will all
5 give me that I won't need oral argument. But I know that you
6 would be happy to argue the matter if I asked you to, so don't
7 worry about submitting letters to me saying, Just to let you
8 know, Failla, we are ready. I know.

9 All right. I am going to ask the parties dealing with
10 the personal jurisdiction issues to consider dealing with the
11 personal jurisdiction issues. I think we have addressed the
12 issue of amendment. We have addressed page limits. We have
13 addressed oral arguments.

14 Mr. Brockett, is there anything that I have not
15 addressed that you would like to raise to my attention today?

16 MR. BROCKETT: No, your Honor.

17 THE COURT: Okay. Thank you very much.

18 Mr. Slifkin, I'm going to let you speak on behalf of
19 all defense counsel, since you were the first to speak and the
20 anointed messenger. Anything else that you would like to raise
21 with me today, sir?

22 MR. SLIFKIN: I have absolutely nothing to raise, your
23 Honor. Thank you very much.

24 THE COURT: Thank you all very much for your patience
25 and for participating in a two-hour conference on this issue.

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1 On some strange level, I look forward to receiving all of the
2 briefing.

3 Thank you.

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August 13, 2019

BY EMAIL

Robert Day, Esq.
Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001

Re: Iowa Public Employees' Retirement System, et al., v. Bank of America Corporation, et al. (S.D.N.Y) No. 17-cv-6221 (KPF)

Dear Rob:

I write on behalf of SL-x IP S.á.r.l, SL-x Technology UK Limited, SL-x Trading Europe Limited SL-x Technology USA LLC, and SL-x Trading USA LLC. (collectively “SL-x”) in response to your letter of August 12, 2019.

Cost Shifting

As an initial matter, your letter did not discuss SL-x’s objections to production on burden grounds or whether Defendants will agree to cost shifting with respect to the production of documents pursuant to their subpoenas. As you are aware, Fed. R. Civ. P. 45(d)(2)(b)(ii) requires cost shifting if a subpoenaed party will incur a “significant expense” in complying. *See e.g., Legal Voice v. Stormans Inc.*, 738 F.3d 1178, 1184 (9th Cir. 2013) (“the [1991] amendment made cost shifting mandatory in all instances in which a non-party incurs significant expense from compliance with a subpoena.”). And the 37 Requests for Production and 228 search terms propounded by Defendants doubtlessly constitute a “significant expense.” Accordingly, Defendants must cover any and all costs associated with any production by SL-x in this case.

For clarity, I will address each of the issues raised by your letter in turn.

RFPs Amenable to Search Terms

We agree that RFPs 2-12, 14, 17, 18, and 20-28 are – to the extent that SL-x’s cost and burden objections are addressed – amenable to the use of search terms. With respect to your request for a list of potential customers contacted by SL-x, we are currently aware of the following entities.

ABN AMRO
Bank of America
Barclays
Blackrock

HSBC
Jefferies
JP Morgan
Morgan Stanley

Robert Day, Esq.
August 13, 2019
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BNP	Natixis
BNY Mellon	Nomura
Brown Brothers Harriman	Northern Trust Company
Citibank	Pershing
Credit Suisse	Societe Generale
Deutchebank	State Street
Goldman Sachs	UBS

This list is preliminary and subject to revision should we uncover additional information and/or complete a more fulsome review of documents. That said, we have attempted in good faith to expeditiously identify all potential customers contacted by SL-x and hope that the list will not require further supplementation.

With respect to the scope of any search terms and/or the types of ESI that SL-x has in its possession, we will inform you of the types of ESI available, whether it is possible to search them electronically, and whether we will consent to the running of search terms across them once we have completed our ESI collection and prior to the beginning of any ESI review.

RFPs Not Amenable to Search Terms

We are not currently aware of any transaction-level data reflecting amounts actually paid by SL-x clients. However, we are continuing to investigate this issue and will update you once we have had the opportunity to digest and review the ESI within SL-x's possession, custody, or control and to speak to individuals who may have knowledge concerning the existence of this data and what format, if any, it would have taken.

With respect to SL-x's assertion of the common-interest privilege, we are currently asserting the privilege over communications between counsel for SL-x and counsel for the class plaintiffs. As far as we are aware, SL-x is not in the possession of communications between its former employees and counsel for the class plaintiffs. To the extent that SL-x comes into the possession of such communications, we will update you accordingly.

Proposed Custodians and Search Terms

To the extent that SL-x's cost and burden objections are addressed, SL-x does not currently object to the list of custodians proposed by Defendants or the search terms other than those previously identified as problematic. This position is subject to the following caveats.

First, we understand that you are acting on behalf of all of the Defendants in the *Iowa* Action and that – regardless of which of the Defendants issued the initial subpoenas to SL-x – any agreement to produce documents is subject to an agreement that such production will satisfy all Defendants' document requests in this action. To the extent that this is not the case or any other Defendants wish to reserve their rights to seek additional documents, additional search terms, or additional custodians, please inform us immediately.

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Second, we have not completed collection or processing of all ESI at this juncture and reserve the right to revise our position should any of the proposed custodians or search terms materially alter the scope or burden of production once all ESI is available.

With respect to your requests for unique hit and total hit counts, we will take them under advisement and determine if we are able and willing to provide this information.

Responsiveness Criteria

Thank you for providing your list of proposed responsiveness criteria. We will review them and provide you with any objections, edits, comments, or alternative criteria, once we have the opportunity to fully consider them.

Post-2012 Electronically Stored Information

As we have previously discussed, SL-x has accessible copies of its corporate email from May 2011 – January 2013 and is attempting to determine whether copies of any additional corporate email exist – whether on backups of its company file server or anywhere else. Once we have completed that investigation, we will let you know whether any additional data is accessible. With respect to your specific questions, we can discuss them once we determine what data is and is not accessible.

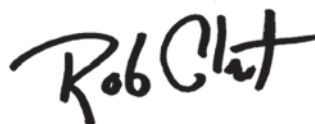
But I must take issue with any suggestion that email was “deleted” or that a “decision to delete” was reached. As you are aware, SL-x wound up its operations years before the *Iowa* case was filed and long before it was on notice of any potential litigation concerning Defendants’ conduct. We are not aware of anything to suggest that any data was purposefully deleted.

Personal Emails

As I stated in my previous letter, SL-x has neither the ability nor the obligation to search the personal email of former employees in response to a third-party subpoena. But we will provide you with the identities of any former SL-x individuals whom our firm is representing. After we have provided that list, we can discuss whether any accommodation can be reached concerning Defendants’ request.

We are happy to discuss the above, but unfortunately are not available at the two times that you proposed. We are generally available this Friday before 3:30. If Friday is not workable, please advise as to when your team can next be available.

Best regards,

A handwritten signature in black ink that reads "Rob Glunt". The signature is written in a cursive, slightly slanted style.

Robert Glunt

SEALED

From: Robert Glunt
To: [Day, Robert](#)
Cc: [Liu, Henry](#); [Zugay, Jack](#); [Evan Mandel](#)
Subject: Re: IPERS Subpoena - Payment of Costs
Date: Tuesday, October 1, 2019 3:10:16 PM
Attachments: [image001.jpg](#)

[EXTERNAL]

Robbie,

I am writing in response to the emails that you have sent regarding cost-shifting, including emails below dated 9/13, 9/23 and 9/27.

(1) JPM's claim that it is "surprised" by this issue seems rather disingenuous. SL-x raised the issue of cost sharing in its initial objections and raised it again in each of the two letters written to JPM concerning the scope of the subpoenas. In response to those letters, JPM specifically asked for a proposal. It's hard to believe that JPM is genuinely surprised to get precisely what it requested.

(2) Your emails on this subject are counter-productive. We have gone to great lengths to cooperate with you concerning the subpoenas that Defendants issued to SL-x. We have had countless meet and confers with you. We have responded to any and all of your remotely reasonable requests for information. We have not used email to posture or accuse Defendants of wrongdoing. We will all be better off if Defendants spend more time trying to resolve the dispute and less time posturing.

(3) Much of the information contained in your emails is incorrect, and we will not take the time to go line by line correcting it. To take but one example, you claim that "class plaintiffs have informed us that SL-x employees have personal awareness and familiarity" with the Class Action complaint. Defendants are perfectly aware that SL-x has not had employees for years.

(4) We will not respond to your inappropriate requests for information concerning the terms on which SL-x has engaged my firm. Please, please, please stop sending us emails that say you will assume something if we do not respond. We will not respond to such correspondence going forward. You might "assume" that my firm is being paid by King Arthur or the lost riches of El Dorado if it pleases you, but you cannot reasonably represent that we have "accepted" such facts, or any others, simply because we do not take the time to correct you.

(5) Your assertions concerning cost-shifting are incorrect. Rule 45 requires Defendants to pay the costs of complying with their subpoena. Because Defendants refuse to pay for any of the costs, Defendants are not entitled to receive any documents. Further, your partial citation to the Rule 45 1991 Advisory Committee Note is completely disingenuous. The Note states as follows: "The court is not required to fix the costs in advance of production, although this will often be the most satisfactory accommodation to protect the party seeking discovery from excessive costs." In other words, SL-x has chosen the approach that the Advisory Committee describes as the one that "will often be the most satisfactory" one. While you may argue for a different approach, the suggestion that SL-x's approach is somehow wrongful is simply incorrect.

We will continue to work with Defendants to resolve the outstanding disputes.

Rob

On Fri, Sep 27, 2019 at 10:23 AM Day, Robert <RDay@cov.com> wrote:

Rob and Evan,

Thanks for the call yesterday. I understand that SL-x intends to file a motion on cost-shifting within the next week, and that SL-x will not review or produce documents in response to JPMorgan's subpoenas until that motion is resolved. As noted in my prior email, we believe that SL-x's decision to unilaterally suspend its response to the subpoenas is contrary to Rule 45, as SL-x cannot yet claim that it has incurred any expense in responding to the subpoena.

We presume that SL-x will seek relief with Judge Failla pursuant to her individual rules and practices. Defendants will oppose SL-x's request and reserve the right to seek recovery of its fees and costs in opposing the motion pursuant to FRCP 37(a)(5)(B).

Finally, I asked you during our last discussion to confirm whether SL-x itself -- as opposed to its counsel -- is bearing the costs in responding to JPMorgan's subpoena. You indicated that you would neither confirm nor deny that fact.

Best,

Robbie

Robert Day

Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5265 | rday@cov.com
www.cov.com

From: Day, Robert

Sent: Monday, September 23, 2019 3:42 PM

To: 'Robert Glunt' <glunt@mandelbhandari.com>; Liu, Henry <hliu@cov.com>; Zugay, Jack <JZugay@cov.com>

Cc: 'Evan Mandel' <em@mandelbhandari.com>

Subject: RE: IPERS Subpoena - Payment of Costs

Rob and Evan,

Thanks for the call today and working through these issues. During the call, you indicated that SL-x continues to request cost-shifting and suggested the issue will need to be resolved by the Court. For the reasons described in my email below, cost shifting in these circumstances would be unwarranted.

You also indicated that you might consider unilaterally suspending negotiations over the subpoena until this issue is resolved. We believe that would be contrary to Rule 45. Under Rule 45, a nonparty may seek reimbursement of costs in responding to a subpoena under certain circumstances. However, Rule 45 does not permit a nonparty to precondition responding to a valid subpoena on the payment of still-yet-unknown costs. *See, e.g., In re First Am. Corp.*, 184 F.R.D. 234, 239 (S.D.N.Y. 1998) ("[I]t may be preferable to leave uncertain costs to be determined after the materials have been produced.") (quoting FRCP 45(c)(2)(B) advisory committee's note). Indeed, given that SL-x has not yet reviewed or produced any documents, it is hard to see how SL-x could claim that it has incurred significant expense in responding to the subpoena. *See In re Honeywell Int'l, Inc. Sec. Litig.*, 230 F.R.D. 293, 303 (S.D.N.Y. 2003) (rejecting cost-shifting in part because the third party had not determined the scope of its productions and thus had "not offered any basis for determining the reasonable costs for compliance with the subpoena").

We therefore believe that the parties should continue their negotiations regarding the scope of the subpoena, and SL-x should promptly produce documents in response to the subpoena. To the extent that SL-x believes that it is entitled to reimbursement of costs, it can seek whatever relief it believes appropriate with the Court following its productions. Defendants will oppose for the reasons noted below.

Please let us know promptly if SL-x intends to unilaterally refuse to respond to JPMorgan's subpoenas.

Best,

Robbie

From: Day, Robert

Sent: Thursday, September 19, 2019 6:49 PM

To: 'Robert Glunt' <glunt@mandelbhandari.com>; Liu, Henry <hliu@cov.com>; Zugay, Jack <JZugay@cov.com>

Cc: Evan Mandel <em@mandelbhandari.com>

Subject: RE: IPERS Subpoena - Payment of Costs

Rob,

JPMorgan is surprised to receive this proposal. When we last spoke about SL-x's request for cost-shifting over a month ago, we informed you that defendants were not inclined to agree to such a request, but asked that you provide the request in writing so we could properly consider it. We never received the proposal and you have not raised the topic during our three discussions since. Now, just five days before our agreed-upon deadline for reaching agreement on search terms, we received the proposed stipulation seeking an order that defendants pay SL-x a host of technical, vendor, and attorney costs for responding to the subpoena.

While defendants will continue to work with you to minimize costs and burden associated with the subpoenas served on SL-x, we are unwilling to agree to the proposed stipulation for several reasons.

1. As you know, SL-x has sued defendants for the exact same conduct alleged in the class action. Cost-shifting under Rule 45 is inappropriate where a subpoena recipient has sued defendants, was ready and willing to bear the costs of litigation discovery, and has a direct interest in the outcome of the litigation. *See In re Honeywell Int'l, Inc. Securities Litig.*, 230 F.R.D. 293, 303 (S.D.N.Y. 2003) (Rule 45 requires consideration of "whether the nonparty actually has an interest in the outcome of the case," and rejecting cost shifting where nonparty "is not a classic disinterested non-party").

2. Insofar as SL-x's action were to proceed, SL-x will be required to bear substantially the same costs for document discovery in its separate lawsuit against defendants, as the productions undoubtedly will largely overlap. *See Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 533 (1994) ("[I]t is the general rule in this country that unless Congress provides otherwise, parties are to bear their own attorney's fees.").

3. SL-x's status as a non-party in the class action is immaterial. Defendants have received documents from the class plaintiffs that SL-x provided to them, and the class plaintiffs have informed us that SL-x employees have personal awareness and familiarity with the first-hand statements by defendants' employees quoted in the complaint. Moreover, both SL-x and the interim lead counsel for the class have asserted a common interest privilege between individuals affiliated with SL-x and class plaintiffs. On that basis, we are forced to conclude that you are cooperating with and actively assisting the class plaintiffs in their prosecution of the class action.

4. We assume that counsel for SL-x are retained on a contingency basis and are bearing at least some of the costs you seek to recover. If that is correct, cost-shifting is not available because SL-x is not directly incurring the costs for which you seek reimbursement. If our assumption is incorrect, please let us know.

Finally, to the extent SL-x remains concerned about processing and review costs, SL-x should permit defendants to inspect and copy all of the documents, ESI, and data you and SL-x has in its possession. That would eliminate the need for SL-x to incur any costs at all in responding to the subpoena.

Please let us know if it would be useful to discuss this issue further.

Best,

Robbie

From: Robert Glunt <glunt@mandelbhandari.com>

Sent: Monday, September 16, 2019 5:20 PM

To: Day, Robert <RDay@cov.com>; Liu, Henry <hliu@cov.com>; Gould, Brandon <BGould@cov.com>

Cc: Evan Mandel <em@mandelbhandari.com>

Subject: IPERS Subpoena - Payment of Costs

EXTERNAL

Rob -

Forgive the seriatim emails, but I'm hoping to move the ball forward on a number of discrete matters in light of our goal of reaching resolution by the end of the week. Attached is a proposal for Defendants' payment of costs in connection with the production of documents in response to the subpoenas.

Best regards,

Rob Glunt

Mandel Bhandari LLP

80 Pine Street, 33rd Floor
New York, NY 10005

glunt@mandelbhandari.com

www.mandelbhandari.com

T: [\(212\) 381-0690](tel:(212)381-0690)

F: [\(646\) 964-6667](tel:(646)964-6667)

THIS COMMUNICATION COMES FROM THE LAW OFFICES OF MANDEL BHANDARI LLP AND MAY BE PRIVILEGED AND CONFIDENTIAL. IF YOU HAVE RECEIVED THIS MESSAGE IN ERROR, PLEASE DESTROY IT.

COVINGTON

BEIJING BRUSSELS DUBAI FRANKFURT JOHANNESBURG
LONDON LOS ANGELES NEW YORK PALO ALTO
SAN FRANCISCO SEOUL SHANGHAI WASHINGTON

Henry B. Liu

Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5536
hliu@cov.com

Via ECF

October 4, 2019

The Honorable Katherine Polk Failla
United States District Court, Southern District of New York
40 Foley Square
New York, NY 10007

Re: *Iowa Public Employees' Retirement System v. Bank of America Corp.*, No. 17-cv-6221-KPF (S.D.N.Y.)

Dear Judge Failla:

Relying almost exclusively on out-of-circuit and inapposite cases, SL-x argues that Defendants must pay all costs that SL-x incurs in responding to a subpoena seeking documents crucial to this litigation. But as decisions in *this* Circuit have made clear, cost-shifting is inappropriate where, as here, the subpoenaed party has an interest in the outcome of the litigation and the equities demand otherwise.

SL-x is no neutral bystander. Instead, it is one of three allegedly boycotted entities at the heart of Plaintiffs' allegations and has sued the exact same Defendants for the exact same conduct as Plaintiffs allege here. SL-x has also resisted a discovery stay in its separate lawsuit, thus evincing a willingness to produce these exact same documents at its own expense. Finally, SL-x appears to be an active participant in *this* action as well, having freely provided Plaintiffs with its documents and claiming a "common interest privilege" over its communications with Plaintiffs. Having made the choice to help Plaintiffs—and place SL-x's documents at issue—SL-x cannot now turn around and seek reimbursement from Defendants for their involvement in this action. There is no reason Defendants should be forced to finance SL-x's production of documents pertaining to claims as to which it seeks recovery.

1. SL-x relies on inapposite out-of-circuit precedent. Contrary to SL-x's contention, nothing in the 1991 amendments to Rule 45 require mandatory shifting of the costs of responding to a subpoena. Rather, courts in this Circuit are clear that "a party issuing a subpoena is not required to bear the subpoenaed nonparty's cost of compliance." *In re World Trade Ctr. Disaster Site Litig.*, 2010 WL 3582921, at *1 (S.D.N.Y. Sept. 14, 2010). Whether a nonparty should be required to bear the expenses of complying with a subpoena is a fact-intensive inquiry. "Customarily, determining each party's share of the cost of compliance turns on three factors: (1) whether the nonparty has an interest in the outcome of the case; (2) whether the nonparty can more readily bear the costs; and (3) whether the litigation is of public importance." *Id.* (citing cases); *see also In re Law Firms of McCourts & McGrigor Donald*, 2001 WL 345233, at *1 (S.D.N.Y. Apr. 9, 2001) (same). Each of these factors favors Defendants.

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2. Because SL-x has a direct interest in this case, cost-shifting is not warranted. SL-x argues that it is not a putative class member and therefore has “no direct stake in the outcome” of this case. *See* Dkt. 209, at 3. Not so. The question is not whether SL-x is a *party* to this case, but whether it stands to benefit from this case’s *outcome*, and the answer is plainly yes. SL-x argues that it only learned of the alleged conspiracy after Plaintiffs filed suit, and that Plaintiffs’ allegations prompted SL-x to file its own substantially identical action. *See* Dkt. 5, ¶ 8, *SL-x IP S.á.r.l v. Bank of Am. Corp.*, No. 18-cv-10179 (S.D.N.Y.) (“*SL-x IP*”). To underscore the point, SL-x waited until Plaintiffs prevailed on a motion to dismiss in this case before filing its own lawsuit so that it could rely on that result in its own action (which it did, *see* Dkt. 77, at 1, *SL-x IP*), and has explicitly claimed a common legal interest with Plaintiffs here. This Court has consistently held that a nonparty must bear its own costs in such circumstances. *See, e.g., Chevron Corp. v. Donziger*, 2013 WL 1087236, at *33 & n.261 (S.D.N.Y. Mar. 15, 2013) (denying costs where nonparty was involved in the underlying conduct and had separately sued); *In re Honeywell Int’l, Inc. Sec. Litig.*, 230 F.R.D. 293, 303 (S.D.N.Y. 2003) (denying costs where subpoena recipient was “not a classic disinterested non-party”); *see also Wells Fargo Bank, N.A. v. Konover*, 259 F.R.D. 206, 207 (D. Conn. 2009) (denying costs where “non-party was substantially involved in the underlying transaction”).

SL-x’s interest in the outcome of this litigation is also evident from the voluntary assistance that SL-x has provided to Plaintiffs. To date, individuals affiliated with SL-x (including its Chairman and CEO) appear to have provided Plaintiffs over 1,500 documents. *See* Ex. A (R. Day Decl. ¶¶ 3-4).¹ SL-x should not be allowed to avoid the costs of producing documents to Defendants when it appears to be voluntarily providing documents to Plaintiffs. Nor is it an answer to say that Defendants are already receiving SL-x documents from Plaintiffs; neither SL-x nor Plaintiffs has provided any explanation about how, when, or by whom those documents were selected for production. Defendants should not have to pay to ensure that a full—rather than cherry-picked—set of SL-x documents are part of the record in this case, all while SL-x stands to recover on its claims against Defendants. *See Cornell v. Columbus McKinnon Corp.*, 2015 WL 4747260, at *5 (N.D. Cal. Aug. 11, 2015) (cost-shifting “was not intended as a mechanism for entities which stand to benefit from certain litigation outcomes to evade discovery costs”).

3. The other equities also favor Defendants’ position. The other two factors identified by courts in this district also weigh against cost-shifting. *First*, SL-x has demonstrated both a capability and a willingness to bear the costs of discovery. Not only was it able to retain sophisticated counsel and file a lawsuit substantively identical to this one, it refused to consent to a proposed stay of discovery pending Defendants’ motion to dismiss. Had a stay not been

¹ Plaintiffs also previously indicated that their factual allegations are based on interviews of a number of individuals, including “designers of the platforms themselves.” Ex. B (1/10/18 Conf. Tr. at 12). Given that Plaintiffs and SL-x have asserted a joint common interest privilege, Defendants assume that individuals affiliated with SL-x are among those allegedly interviewed by Plaintiffs’ counsel before bringing this case. *See* Ex. C (8/13/19 R. Glunt Ltr. at 2) (asserting a common interest privilege with Plaintiffs); Ex. D (9/12/19 Pls’ Privilege Log) (asserting work product over an email and memorandum shared with SL-x employees).

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entered, SL-x would have been compelled to produce at its own expense documents at least as broad in scope as those sought here. *Second*, SL-x also has recognized the “public importance” of this case by stating that the “stock lending enables many extremely common practices in the financial markets, over a trillion dollars of securities are lent every year.” Dkt. 5, ¶ 75, *SL-x IP*.

4. SL-x fails to establish that it has incurred “significant expense.” SL-x’s request also should be denied because it has not incurred “significant expense” resulting from compliance. *See* Fed. R. Civ. P. 45(d)(2)(B)(ii).

First, notwithstanding that three months have passed since Defendants served their subpoena, SL-x has yet to produce a single document. Indeed, the parties continue to negotiate search terms and other conditions in an effort to *reduce* SL-x’s burden. It would be premature and speculative for SL-x to suggest that its costs are “significant” when it has yet to incur any such costs. Furthermore, in addition to reducing costs by limiting search terms and custodians, Defendants also offered to inspect and copy the documents SL-x has in its possession at Defendants’ expense, which would have significantly decreased or eliminated SL-x’s costs. *See* Ex. E (9/19/19 R. Day Email at 4). Tellingly, SL-x rejected that proposal.

Second, as discussed above, were SL-x’s separate lawsuit against Defendants to proceed, SL-x would be required to bear the same costs it seeks to shift to Defendants here. SL-x acknowledges as much when it argues that Defendants’ subpoena seeks “documents that would be discoverable in connection with the SL-x actions.” Dkt. 209, at 1.

Third, SL-x has oddly refused to confirm that SL-x itself—as opposed to its counsel or a litigation funding entity—is bearing the costs of responding to the subpoena. SL-x has taken the position that Defendants’ request for such information is “inappropriate.” Ex. E (10/1/19 R. Glunt Email at 1). Yet Rule 45 provides cost-shifting only where the subpoena recipient itself incurs “significant expense.” It does not authorize payment of costs to lawyers or other entities that may be paying compliance costs. Moreover, although SL-x claims it would need to spend between \$300,000 and \$400,000 to respond to Defendants’ subpoena, it has failed to provide any basis for that assertion, which thus entitles it to no weight.² *See In re Honeywell*, 230 F.R.D. at 303 (rejecting costs where nonparty had “not offered any basis for determining the reasonable costs for compliance with the subpoena”).

For these reasons, the Court should deny SL-x’s request in its entirety. In the alternative, the Court should deny SL-x’s request until such time as (i) it has produced documents to Defendants and quantified the costs of its production and (ii) Defendants’ motion to dismiss the SL-x action has been decided.

² Notably, the cases on which SL-x relies do not allow complete cost-shifting, as SL-x requests here. *See, e.g., In re Am. Nurses Ass’n*, 643 F. App’x 310, 314 (4th Cir. 2016) (shifting of attorney’s fees appropriate only where “actually necessary” to comply with the subpoena).

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October 4, 2019

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Respectfully submitted,

s/ Henry B. Liu

*Counsel for J.P. Morgan
Securities LLC; J.P. Morgan
Prime, Inc.; J.P. Morgan
Strategic Securities Lending
Corp.; J.P. Morgan Chase
Bank, N.A.*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
UNITED STATES OF AMERICA	:	
	:	S6 22 Cr. 673 (LAK)
v.	:	
	:	
SAMUEL BANKMAN-FRIED,	:	
	:	
Defendant.	:	
-----X	:	

**DECLARATION OF CHRISTIAN R. EVERDELL IN SUPPORT OF DEFENDANT
SAMUEL BANKMAN-FRIED’S OPPOSITION TO THE GOVERNMENT’S MOTIONS
IN LIMINE**

I, Christian R. Everdell, an attorney duly admitted to practice before this Court hereby declare pursuant to 28 U.S.C. § 1746 and Local Criminal Rule 16.1 as follows:

1. I am a partner of the law firm Cohen & Gresser LLP, attorneys for Defendant Samuel Bankman-Fried.

2. Attached as Exhibit A are true and correct copies of Signal messages from a group chat titled, “small group chat,” dated November 9, 2022 and bearing Bates number SBF Signal_Batch 03_0000000097.

3. Attached as Exhibit B are true and correct copies of Slack messages between Zach Dexter and Michael Giles, dated November 11, 2022, and bearing Bates numbers SDNY_02_00411940-SDNY_02_00411941.

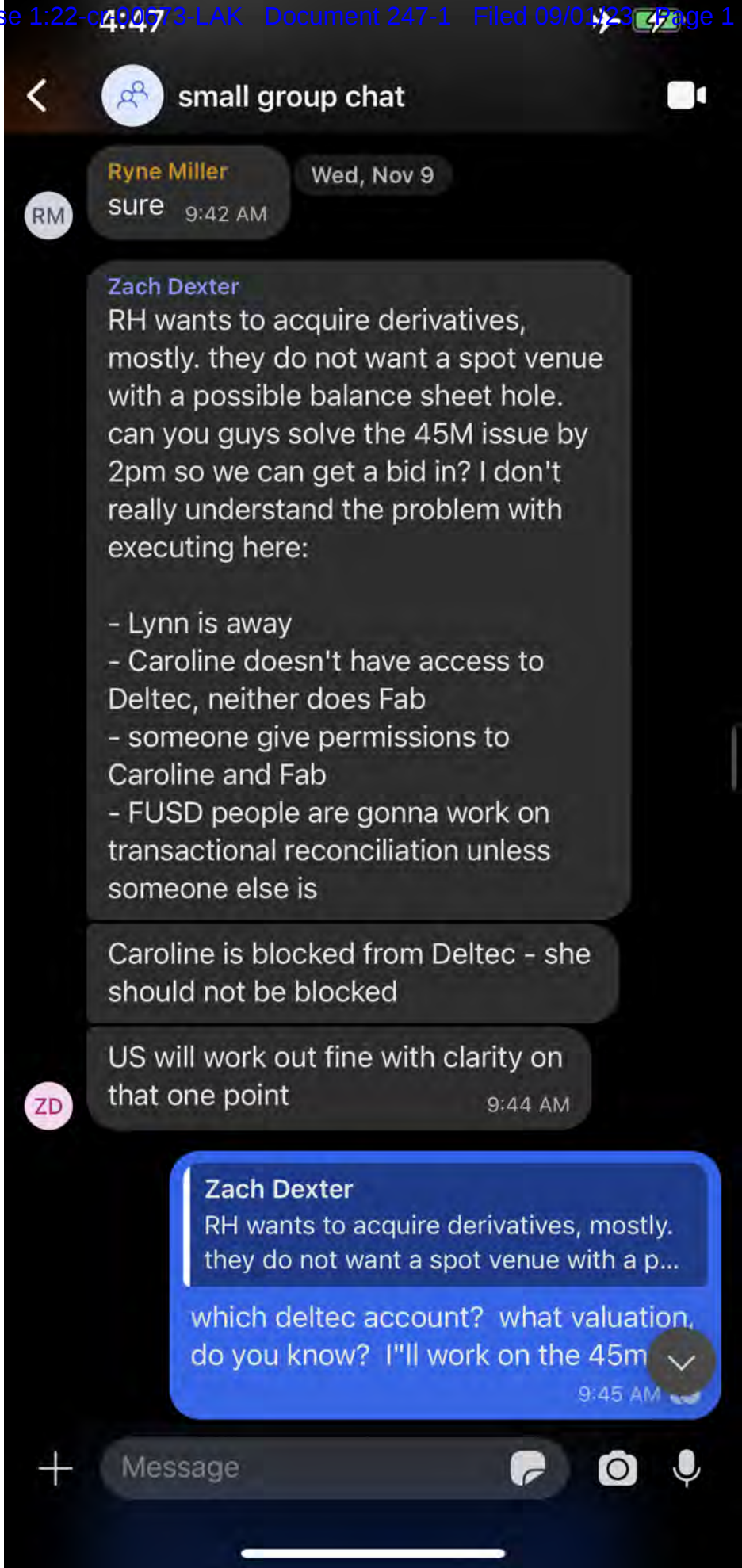
4. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, pursuant to 28 U.S.C. § 1746.

Dated: September 1, 2023
New York, New York

Respectfully submitted,

/s/ Christian R. Everdell
Christian R. Everdell
COHEN & GRESSER LLP
800 Third Avenue, 21st Floor
New York, NY 10022
(212) 957-7600
ceverdell@cohengresser.com

Attorneys for Samuel Bankman-Fried



Short Message Report

Conversations: 1	Participants: 2
Total Messages: 4	Date Range: 11/11/2022

Outline of Conversations



D0493KXPGRE • 4 messages on 11/11/2022 • Michael Giles • Zach Dexter

Messages in chronological order (times are shown in GMT +00:00)



D0493KXPGRE

ZD Zach Dexter 11/11/2022, 3:33 AM
Michael, we're trying to get Sam to sign a control agreement that will empower a restructuring professional to immediately make a series of critical decisions without the delays and disengagement Sam has been providing us.

ZD Zach Dexter 11/11/2022, 3:35 AM
those decisions include the appropriate/best actions on FTXUS - need someone who can consult with counsel to quickly wind down activity there in the most appropriate way for customers - all Sam needs to do is sign. he's been unable to relinquish control or approve / delegate authority to approve material decisions - I hope we're able to cross that bridge tonight.

MG Michael Giles 11/11/2022, 3:44 AM
Sounds like the right approach to me. We are in contact with all of our own regulators daily and it's hard to navigate without direction and ability to make big decisions. We are currently focused on assisting with the off boarding of FTXCM customers and ensuring they can liquidate and receive their funds (likely from Embed Clearing directly).

ZD Zach Dexter 11/11/2022, 3:56 AM
I'm on the phone with Sam's personal lawyers at Paul Weiss essentially yelling at them about how the internal ledger doesn't work, but if Sam authorizes an executive authority, that person will have the capacity to make the decisions we absolutely must make to bring in people who can help us fix this

Exhibit F

To: Yuri Mushkin [REDACTED] Zac Prince [REDACTED]
From: Caroline Ellison [REDACTED] Case 22-11068-JTD Doc 292-1 Filed 12/22/22 Page 76 of 174
Sent: Wed 11/9/2022 9:21:48 AM (UTC)
Subject: loan repayment

We've put together a spreadsheet of our [liquid assets](#) and our [outstanding loans](#)

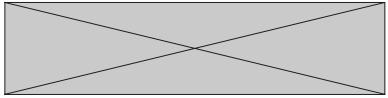
We have \$1.1b of shares in HOOD+GBTC+ETHE+BITW that we could post as collateral.

Here's a proposed [repayment schedule](#); would this work?

Caroline Ellison

Exhibit G

To: Samuel Bankman-Fried [REDACTED]
From: Zac Prince [REDACTED] Case 22-11068-JTD Doc 292-1 Filed 12/22/22 Page 78 of 174
Sent: Thur 11/10/2022 3:30:37 PM (UTC)
Subject: Fwd: loan repayment



Zac Prince
CEO

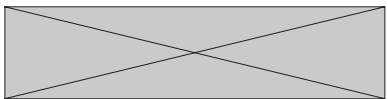


Twitter: [REDACTED]

----- Forwarded message -----

From: **Zac Prince** [REDACTED]
Date: Thu, Nov 10, 2022 at 10:30 AM
Subject: Re: loan repayment
To: Yuri Mushkin [REDACTED]
Cc: <caroline@usec.rho> [REDACTED], Amit Cheela [REDACTED], Flori Marquez [REDACTED]

payment instructions for anything coming over:



Zac Prince
CEO



Twitter: [REDACTED]

On Thu, Nov 10, 2022 at 5:07 AM Yuri Mushkin [REDACTED] wrote:

Hi Caroline

Are you guys able to make some incremental pay-downs, in meantime, eg 75m to complete yesterdays 200m amount

A few quick questions on HOOD, a) would that be the pledged shares in EDF account, b) how many shares are there in total in EDF, c) what do you think would be estimated proceeds ? d) any ballpark on timing for potential buyer

since EDF HOOD shares are pledged as collateral, just need to double check how that works (eg maybe buyer could settle with blockfi directly?)

Yuri

On Thu, 10 Nov 2022 at 00:49, Caroline Ellison [REDACTED] wrote:

great thanks!

we are talking to a couple buyers interested in buying the remaining HOOD OTC. if that comes through, would it work to just use the proceeds from that to repay the loan?

I think that would get a majority of the remaining loan notional though it would be in USD and not BTC

—
Caroline Ellison

On November 10, 2022 at 12:04 PM GMT+8 [yuri](#) [REDACTED] wrote:

Thanks a lot Caroline , acknowledging signed pledges.

We are up - if you want to sync up on anything , or if we can help in any way.

Our team is working with ED&F so that ACA can be setup for the pledges.

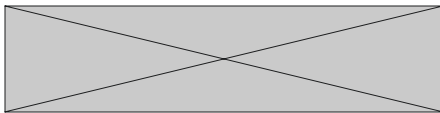
On Wed, 9 Nov 2022 at 19:13, Yuri Mushkin [REDACTED] wrote:

hi Caroline, we heard Binance is holding your funds, another idea (after signing the pledge) is to give us instructions to sell some of the pledged collateral (or other ED&F collateral which you have listed) and we can use proceeds for loan repayment.

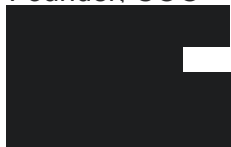
Yuri

On Wed, Nov 9, 2022 at 5:59 PM Flori Marquez [REDACTED] wrote:

Caroline,
Are you able to sign this tonight?



Flori Marquez
Founder, COO



On Wed, Nov 9, 2022 at 6:56 PM <[usec.rho](#)> [REDACTED] wrote:

Caroline,

Attached please find the following agreements:

1. Amendment and Forbearance Agreement between BF Lending, BF International and Alameda.
 - a. BF forbears exercising remedies in return for additional pledge and payments made per the payment schedule in Exhibit B

2. Pledge Agreement between BF Lending, BF International, and Alameda
 - a. Pledges GBTC, ETHE, and BITW Shares. **We need the Number of Shares filled in Schedule A**

3. Pledge Agreement between BF Lending, BF International and Emergent Fidelity Technologies Ltd (who we assume holds HOOD shares, please confirm)
 - a. Pledges HOOD Shares. **We need Notice information on page 8, and the number of shares in Schedule A**

Please note that we are in the process of setting up a brokerage account to accept the additional collateral. The Pledge Agreements contemplate that the shares will be transferred to the account upon notice from BlockFi that set up is done.



Usec Rho

Deputy General Counsel



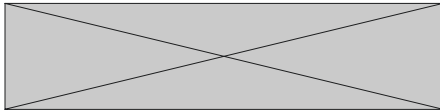
From: Flori Marquez [REDACTED]
Sent: Wednesday, November 9, 2022 6:47 PM

To: Zac Prince [REDACTED]

Cc: [caroline](#) [REDACTED] Amit Cheela [REDACTED] Yuri Mushkin [REDACTED]

Usec Rho [REDACTED]

Subject: Re: loan repayment

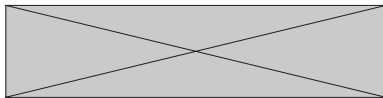


Flori Marquez
Founder, COO



On Wed, Nov 9, 2022 at 5:14 PM Zac Prince [REDACTED] wrote:

Got it - any commentary you can give us on next steps re timing for the remaining 75M for today or payments for tomorrow? We have our next board session at 630 and would love to speak before then if you are available



Zac Prince
CEO



On Wed, Nov 9, 2022 at 4:35 PM Caroline Ellison [REDACTED] wrote:

Hi sorry, hearing that we can do another 75m today. One of our exchange accounts that we were counting on just got frozen so we aren't able to withdraw.

Sorry if this makes things tougher with the board

—

Caroline Ellison

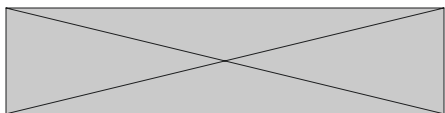
On November 9, 2022 at 3:14 PM EST [flori](#) [REDACTED] wrote:

Hey Caroline,

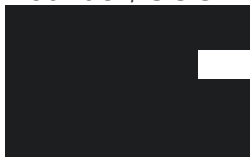
Thank you for completing the first repayment. We're meeting with the board again tonight because at the time of the meeting we had not received the \$50M. Can you give us an estimate on timing for the \$150M so that we can communicate that to them? Does 5PM EST work?

Best,

Flori

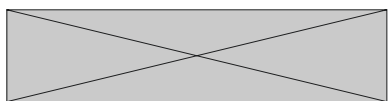


Flori Marquez
Founder, COO



On Wed, Nov 9, 2022 at 11:06 AM Zac Prince [REDACTED] wrote:

Hi Caroline - we just heard from our trading team that Terence communicated that you would only be able to send 50M USDT by 12 ET. Is that correct? We have critical decisions and regulatory conversations happening starting at 12 so an update would be appreciated.

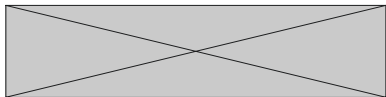


Zac Prince
CEO



On Wed, Nov 9, 2022 at 10:30 AM Zac Prince [REDACTED] wrote:

Hi Caroline - one small adjustment we need to make to the repayment schedule would be the timing - 5 PM is a bit too late, could we move that to 9 (preferred) or 12 ET for each repayment?



Zac Prince

CEO



On Wed, Nov 9, 2022 at 7:15 AM Zac Prince [REDACTED] wrote:

Sounds good, just sent an invite

On Wed, Nov 9, 2022 at 6:59 AM Caroline Ellison [REDACTED] wrote:

Great news, sounds good!

A call at 9 am ET sounds good; feel free to invite me and I can add whoever is relevant from our side.

On Wed, Nov 9, 2022 at 7:56 PM Zac Prince [REDACTED] wrote:

Hi Caroline,

Thanks for sharing this information. We should be able to make the repayment schedule work if we can get the HOOD/GBTC/ETHE/BITW shares pledged and the first payment done today. Ideally before 12 ET.

Don't hesitate to ping / call us anytime and thanks for the attention here.

Best,

Zac

On Wed, Nov 9, 2022 at 4:21 AM Caroline Ellison [REDACTED]

[REDACTED] wrote:

We've put together a spreadsheet of our [liquid assets](#) and our [outstanding loans](#)

We have \$1.1b of shares in HOOD+GBTC+ETHE+BITW that we could post as collateral.

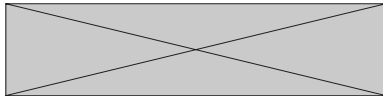
Here's a proposed [repayment schedule](#); would this work?

—

Caroline Ellison

.

--

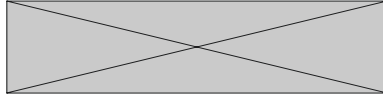


Zac Prince
CEO



For more information, please see [BlockFi's Terms of Service](#).

--



Zac Prince
CEO



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Exhibit H

	notional	
Interactive brokers balance	598,327,809	(this is a subset of liquid assets but represents the most major ones)
GBTC + ETHE + BITW	381,810,430	
EDF additional collateral	409,405,732	(some are more liquid than others; eg GBTC less liquid)
HOOD	739,358,487	
Binance account	180,651,817	
OKX account	119,305,665	
Bybit account	117,635,115	
Kucoin account	66,712,670	
Bitfinex account	49,424,777	
total	2,662,632,502	

Exhibit I

To: caroline [REDACTED] Case 22-11068-JTD Doc 202-1 Filed 12/22/22 Page 89 of 174
Cc: Jonathan Meyers [REDACTED] Kit Spicer [REDACTED] Usec Ric [REDACTED] Joe
Hickey [REDACTED]; Brian Oliver [REDACTED]; Zac Prince [REDACTED] Terence
Choo [REDACTED]; Richard Chang [REDACTED] Richard Chang [REDACTED]
From: Yuri Mushkin [REDACTED]
Sent: Wed 11/9/2022 4:45:34 PM (UTC)
Subject: Re: BlockFi synch

hi Caroline, [@Terence Choo](#)

thank you!. could we ask alameda ops team to fill out the units (e.g., #HOOD shares) and include a pdf /copy of statements in another tab in ghsheet here from the EDF account.

[Alameda Pledge - Google Sheets](#)

tvm,

On Wed, Nov 9, 2022 at 10:37 AM Caroline Ellison [REDACTED] wrote:

confirmed!

—
Caroline Ellison

On November 10, 2022 at 12:33 AM GMT+8 [jonathan](#) [REDACTED] wrote:

Hi Caroline,

Please confirm by way of reply to this email that you have the power to and do pledge on behalf of Alameda Research Limited, all of the HOOD shares held in EDF account [REDACTED] COMBINED as well as all of the assets in EDF is account [REDACTED] COMBINED including, but not limited to, all of the GBTC, ETHE and BITW held therein to BlockFi Lending LLC and BlockFi International as Collateral under their respective Master Loan Agreements and the Loans thereunder. This pledge will be binding upon acceptance by reply to this email and will later be further memorialized via documentation.

Best,

Jonathan

On Wed, Nov 9, 2022 at 11:20 AM Yuri Mushkin [REDACTED] wrote:

yes pledge all of it works.

+ Zac and Jonathan

On Wed, Nov 9, 2022 at 10:18 AM Caroline Ellison [REDACTED] wrote:

ah I don't think I have edit access, but:

- HOOD in EDF account [REDACTED] COMBINED
- other two EDF is account [REDACTED] COMBINED
- amount pledged: can do all of it?

—
Caroline Ellison

On November 10, 2022 at 12:04 AM GMT+8 [yuri](#) [REDACTED] wrote:

[@Terence Choo](#) [@Richard Chang](#) [@Caroline Ellison](#) pls see below, could you add

[Alameda Pledge - Google Sheets](#)

On Wed, Nov 9, 2022 at 9:56 AM Yuri Mushkin [REDACTED] wrote:

+ Kit (we are adding columns to your gsheet, to let you specify account numbers/and quantity you are pledging)

On Wed, Nov 9, 2022 at 8:55 AM Terence Choo [REDACTED] wrote:

Hey Joe,

Sorry for the delay. Will give you a ring later.

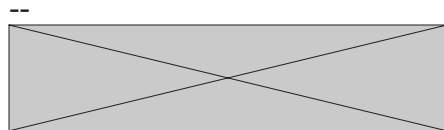
On Wed, Nov 9, 2022 at 10:30 PM Joe Hickey [REDACTED] wrote:

Hi Terence -

Let me know when is good to synchronize and what medium

Thank you.

[REDACTED]



Joseph Hickey, CFA, FRM

Managing Director, Global Head of Trading

[REDACTED]

[REDACTED]

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Debtor Name: West Realm Shires Services Inc.

Case Number: 22-11071 (JTD)

Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy

SOFA Question 9: List all gifts or charitable contributions the debtor gave to a recipient within 2 years before filing this case unless the aggregate value of the gifts to that recipient is less than \$1,000

Recipient Name and Address	Relationship to Debtor	Description	Date	Value
FLORIDA INTERNATIONAL UNIVERSITY 11200 SW 8th Street MARC 5th Floor Miami, FL 33199		Cash	08/11/2022	\$600,000.00
FOOD ON FOOT ADDRESS UNKNOWN		Cash	10/05/2022	\$10,000.00
Sawyer / Berkeley Existential Risk Initiative ADDRESS UNKNOWN	Political Donation	Cash	12/20/2021	\$100,000.00
Sawyer / Berkeley Existential Risk Initiative ADDRESS UNKNOWN	Political Donation	Cash	12/20/2021	\$25,000.00
Sawyer / Berkeley Existential Risk Initiative ADDRESS UNKNOWN	Political Donation	Cash	01/19/2022	\$26,000.00
Sawyer / Berkeley Existential Risk Initiative ADDRESS UNKNOWN	Political Donation	Cash	01/19/2022	\$199,947.30
HURRY UP SLOWLY LLC 7 NW 27TH STREET MIAMI, FL 33127		Cash	10/05/2022	\$500,000.00
HUSH HUSH 16 GULPH MILL RD. SOMERS POINT, NJ 08244		Cash	06/03/2022	\$4,200.00
INTERNATIONAL POLICY NETWORK ADDRESS UNKNOWN		Cash	07/19/2022	\$100,000.00
John Gayler ADDRESS ON FILE		Cash	05/25/2022	\$15,000.00
Kaley Reinhartz ADDRESS ON FILE		Cash	08/16/2022	\$15,000.00
MAJORITY FORWARD 700 13TH ST. NW, NO. 600 WASHINGTON, DC 20005	Political Donation	Cash	09/15/2022	\$1,000,000.00
MAKE A WISH FOUNDATION ADDRESS UNKNOWN		Cash	12/15/2021	\$34,611.50
MANAGED FUNDS ASSOCIATION 1301 PENNSYLVANIA AVE. NW STE 350 WASHINGTON, DC 20004		Cash	09/16/2022	\$100,000.00
Maria Gabriela Arevalo ADDRESS ON FILE		Cash	08/16/2022	\$15,000.00
Maria Martine ADDRESS ON FILE		Cash	05/25/2022	\$15,000.00
Marie F Pierre ADDRESS ON FILE		Cash	05/10/2022	\$15,000.00
Matthew Squeri ADDRESS ON FILE		Cash	06/22/2022	\$15,000.00
Michael McKenzie ADDRESS ON FILE		Cash	06/22/2022	\$15,000.00
MONTREAL CHILDREN'S FOUNDATION ADDRESS UNKNOWN		Cash	09/24/2022	\$7,458.79
MONUMENTAL SPORTS & ENTERTAINMENT ADDRESS UNKNOWN		Cash	09/22/2022	\$52,175.00
MUSIC FOR MOVEMENTS ADDRESS UNKNOWN		Cash	07/21/2022	\$20,000.00
Natasha Colebrook-Williams ADDRESS ON FILE		Cash	05/27/2022	\$15,000.00
NATIONAL FINANCIAL SERVICES LLC ADDRESS UNKNOWN		Cash	05/10/2022	\$15,000.00

Debtor Name: Alameda Research LLC

Case Number: 22-11066 (JTD)

Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy

SOFA Question 9: List all gifts or charitable contributions the debtor gave to a recipient within 2 years before filing this case unless the aggregate value of the gifts to that recipient is less than \$1,000

Recipient Name and Address	Relationship to Debtor	Description	Date	Value
Actblue ADDRESS UNKNOWN	Political Donation	Cash [Paid via AMEX]	07/18/2022	\$1,000.00
Actblue ADDRESS UNKNOWN	Political Donation	Cash [Paid via AMEX]	09/28/2022	\$5,000.00
Actblue ADDRESS UNKNOWN	Political Donation	Cash [Paid via AMEX]	09/28/2022	\$5,000.00
Actblue ADDRESS UNKNOWN	Political Donation	Cash [Paid via AMEX]	10/17/2022	\$5,000.00
Actblue ADDRESS UNKNOWN	Political Donation	Cash [Paid via AMEX]	10/17/2022	\$5,000.00
Actblue ADDRESS UNKNOWN	Political Donation	Cash [Paid via AMEX]	10/17/2022	\$5,000.00
Actblue ADDRESS UNKNOWN	Political Donation	Cash [Paid via AMEX]	10/17/2022	\$5,000.00
Angie Craig (Actblue) ADDRESS ON FILE	Political Donation	Cash [Paid via AMEX]	07/02/2022	\$2,900.00
Angie Craig (Actblue) ADDRESS ON FILE	Political Donation	Cash [Paid via AMEX]	09/28/2022	\$2,900.00
AUTISM SCIENCE FOUNDATION INC 3 CONTINENTAL ROAD SCARSDALE, NY 10583		Cash	05/11/2021	\$30,000.00
AXNE PAX (Actblue) ADDRESS ON FILE	Political Donation	Cash [Paid via AMEX]	09/28/2022	\$5,000.00
BAPTIST HEALTH SOUTH FLORIDA FOUNDATION 6855 SW 57TH STREET, SUITE 600 S. MIAMI, FL 33143-3518		Cash	08/30/2021	\$30,000.00
BRINK TECHNOLOGY ADDRESS UNKNOWN		Cash	09/10/2021	\$150,000.00
CARBONPLAN ADDRESS UNKNOWN		Cash	07/21/2021	\$200,000.00
Cindy Axne (Actblue) ADDRESS ON FILE	Political Donation	Cash [Paid via AMEX]	10/17/2022	\$2,900.00
DOZY INC ADDRESS UNKNOWN		Cash	06/28/2021	\$150,000.00
EAT. LEARN. PLAY. FOUNDATION 369 THIRD STREET SUITE A OAKLAND, CA 94607	Contractual Agreement	Cash	11/05/2021	\$500,000.00
EAT. LEARN. PLAY. FOUNDATION 369 THIRD STREET SUITE A OAKLAND, CA 94607	Contractual Agreement	Cash	12/09/2021	\$40,000.00
FIN MOORHOUSE ADDRESS UNKNOWN		Cash	02/15/2022	\$10,000.00
FLORIDA INTERNATIONAL UNIVERSITY 11200 SW 8th Street MARC 5th Floor Miami, FL 33199		Cash	07/01/2021	\$119,945.00
FONDATION CONNAISSANCE ET LIBERTE ADDRESS UNKNOWN		Cash	08/27/2021	\$25,000.00
HONNOLD FOUNDATION 159 WEST 300 SOUTH 200 SALT LAKE CITY, UT 84101		Cash	07/27/2021	\$50,000.00
HONNOLD FOUNDATION 159 WEST 300 SOUTH 200 SALT LAKE CITY, UT 84101		Cash	05/09/2022	\$140,000.00
Jim Costa (Actblue) ADDRESS ON FILE	Political Donation	Cash [Paid via AMEX]	07/02/2022	\$2,900.00
Josh Harder (Actblue) ADDRESS ON FILE	Political Donation	Cash [Paid via AMEX]	09/28/2022	\$2,900.00

Debtor Name: Alameda Research LLC

Case Number: 22-11066 (JTD)

Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy

SOFA Question 9: List all gifts or charitable contributions the debtor gave to a recipient within 2 years before filing this case unless the aggregate value of the gifts to that recipient is less than \$1,000

Recipient Name and Address	Relationship to Debtor	Description	Date	Value
Kirsten Gillibrand (Actblue) ADDRESS ON FILE	Political Donation	Cash [Paid via AMEX]	06/20/2022	\$10,800.00
Lou Correa (Actblue) ADDRESS ON FILE	Political Donation	Cash [Paid via AMEX]	09/28/2022	\$2,900.00
Marisa Lynne Jurczyk ADDRESS ON FILE		Cash	07/28/2022	\$10,000.00
NEWORLD ONE BAY STREET ADDRESS UNKNOWN		Cash	01/14/2022	\$470,010.65
NEWORLD ONE BAY STREET ADDRESS UNKNOWN		Cash	02/09/2022	\$197,101.24
NEWORLD ONE BAY STREET ADDRESS UNKNOWN		Cash	04/12/2022	\$879,374.77
NEWORLD ONE BAY STREET ADDRESS UNKNOWN		Cash	05/27/2022	\$612,731.89
NEWORLD ONE BAY STREET ADDRESS UNKNOWN		Cash	07/19/2022	\$581,274.94
NEWORLD ONE BAY STREET ADDRESS UNKNOWN		Cash	07/29/2022	\$621,076.11
NORTH VALLEY COMMUNITY FOUNDATION ADDRESS UNKNOWN		Cash	07/27/2021	\$200,000.00
PAUL LABOSCO ADDRESS ON FILE		Cash	09/28/2022	\$18,200.00
Petra Kosonen ADDRESS ON FILE		Cash	02/15/2022	\$10,000.00
Petra Kosonen ADDRESS ON FILE		Cash	05/27/2022	\$2,760.91
PHIL AND AMY MICKELSON FOUNDATION ADDRESS UNKNOWN		Cash	07/27/2021	\$200,000.00
Salud Carbajal (Actblue) ADDRESS ON FILE	Political Donation	Cash [Paid via AMEX]	07/02/2022	\$2,900.00
Sanford Bishop (Actblue) ADDRESS ON FILE	Political Donation	Cash [Paid via AMEX]	07/02/2022	\$2,900.00
STANFORD UNIVERSITY DEVELOPMENT ADDRESS UNKNOWN		Cash	05/18/2022	\$500,000.00
Steven Horsford (Actblue) ADDRESS ON FILE	Political Donation	Cash [Paid via AMEX]	10/17/2022	\$2,900.00
TB12 FOUNDATION, INC. ADDRESS UNKNOWN		Cash	07/27/2021	\$50,000.00
THE BRYSON DECHAMBEAU FOUNDATION ADDRESS UNKNOWN		Cash	07/27/2021	\$50,000.00
THE CONRAD FOUNDATION ADDRESS UNKNOWN		Cash	08/20/2021	\$30,000.00
THE GOOD FOOD INSTITUTE, INC. ADDRESS UNKNOWN		Cash	07/21/2021	\$250,000.00
Tom O'Halleran (Actblue) ADDRESS ON FILE	Political Donation	Cash [Paid via AMEX]	10/17/2022	\$2,900.00
UDONIS HASLEM CHILDRENS FOUNDATION ADDRESS UNKNOWN	Contractual Agreement	Cash	10/05/2021	\$20,000.00
UDONIS HASLEM CHILDRENS FOUNDATION ADDRESS UNKNOWN	Contractual Agreement	Cash	11/05/2021	\$50,000.00

Debtor Name: Alameda Research LLC

Case Number: 22-11066 (JTD)

Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy

SOFA Question 13: Transfers not already listed on this statement

Creditor Name and Address	Description of Property	Relationship to Debtor	Date	Amount
Bankman-Fried, Samuel ADDRESS ON FILE	Cash Payment	Founder	01/05/2021	\$500,000.00
Bankman-Fried, Samuel ADDRESS ON FILE	Cash Payment	Founder	01/15/2021	\$500,000.00
Friedberg, Daniel ADDRESS ON FILE	Cash Transfer	Officer	06/15/2021	\$3,007,451.30
GUARDING AGAINST PANDEMICS INC. 2828 N CENTRAL AVE. PHOENIX, AZ 85004	Cash Transfer in the name of Samuel Bankman-Fried		10/01/2021	\$20,000,000.00
Mount Olympus Capital LP 9 LAGORCE CIR MIAMI BEACH, FL 33141-4519	Cash Investment in Mount Olympus Capital LP for the benefit of SGN Albany (100% owned by Sam, Gary, Nishad, and Alameda Research Ltd.)		06/07/2022	\$100,000,000.00
Planning for Tomorrow 1 E Washington St Ste 2300 Phoenix, AZ 85004	Cash Transfer in the name of Nishad Singh		08/16/2021	\$1,000,000.00
Planning for Tomorrow 1 E Washington St Ste 2300 Phoenix, AZ 85004	Cash Transfer in the name of Samuel Bankman-Fried		06/16/2021	\$1,000,000.00
Planning for Tomorrow 1 E Washington St Ste 2300 Phoenix, AZ 85004	Cash Transfer in the name of Samuel Bankman-Fried		07/20/2021	\$2,000,000.00

Responses to this question do not currently include all transfers of cryptocurrency, other digital assets or other assets.

Debtor Name: West Realm Shires Services Inc.

Case Number: 22-11071 (JTD)

Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy

SOFA Question 9: List all gifts or charitable contributions the debtor gave to a recipient within 2 years before filing this case unless the aggregate value of the gifts to that recipient is less than \$1,000

Recipient Name and Address	Relationship to Debtor	Description	Date	Value
American Patriots PAC ADDRESS UNKNOWN	Political Donation	Cash	09/02/2022	\$150,000.00
AMFAR 120 WALL STREET, 13TH FLOOR NEW YORK, NY 10005		Cash	04/14/2022	\$50,000.00
Andres Bonilla and Sandra Rosales ADDRESS ON FILE		Cash	05/27/2022	\$15,000.00
ARBOR DAY FOUNDATION PO BOX 80208 LINCOLN, NE 68501		Cash	05/10/2022	\$145,000.00
AUTISM SCIENCE FOUNDATION INC 3 CONTINENTAL ROAD SCARSDALE, NY 10583		Cash	07/22/2022	\$30,000.00
BAPTIST HEALTH SOUTH FLORIDA FOUNDATION 6855 SW 57TH STREET, SUITE 600 S. MIAMI, FL 33143-3518		Cash	01/27/2022	\$75,000.00
BLACK GIRLS CODE ADDRESS UNKNOWN		Cash	09/26/2022	\$10,030.00
BOYS & GIRLS CLUB ADDRESS UNKNOWN		Cash	10/06/2022	\$10,000.00
BREAKTHROUGH NEW YORK ADDRESS UNKNOWN		Cash	06/30/2022	\$5,000.00
BRINK TECHNOLOGY ADDRESS UNKNOWN		Cash	09/21/2022	\$150,000.00
CARE FOR SPECIAL NEEDS CHILDREN FOUNDATION 1977 CONEY ISLAND AVE. BROOKLYN, NY 11223-2328		Cash	06/17/2022	\$350,000.00
Catherine Vega ADDRESS ON FILE		Cash	05/25/2022	\$15,000.00
CELEBRITY SPORTS ACADEMY LLC 3839 W 115TH ST CHICAGO, IL 60803		Cash	08/16/2022	\$5,000.00
CENTER FOR A NEW AMERICAN SECURITY 1152 15th Street NW Suite 950 Washington DC, 20005		Cash	09/02/2022	\$25,000.00
CHALLENGED ATHLETES FOUNDATION ADDRESS UNKNOWN		Cash	10/05/2022	\$10,000.00
CHILDREN'S HEALTHCARE OF ATLANTA INC ADDRESS UNKNOWN		Cash	12/01/2021	\$137,500.00
CONGRESSIONAL LEADERSHIP FUND ADDRESS UNKNOWN		Cash	08/15/2022	\$750,000.00
Daniel Bradley Rutstein ADDRESS ON FILE		Cash	05/10/2022	\$15,000.00
DAVID ORTIZ CHILDREN'S FUND ADDRESS UNKNOWN	Contractual Agreement	Cash	09/28/2022	\$125,000.00
EAT. LEARN. PLAY. FOUNDATION 369 THIRD STREET SUITE A OAKLAND, CA 94607	Contractual Agreement	Cash	06/30/2022	\$92,000.00
EQUITY AND TRANSFORMATION ADDRESS UNKNOWN		Cash	07/12/2022	\$393,085.00

Debtor Name: Clifton Bay Investments LLC

Case Number: 22-11070 (JTD)

Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy

SOFA Question 13: Transfers not already listed on this statement

Creditor Name and Address	Description of Property	Relationship to Debtor	Date	Amount
K5 Global Holdings LLC 9 LAGORCE CIRCLE MIAMI BEACH, FL 33141	Cash Investment in K5 Global Holdings LLC for the benefit of SGN Albany (100% owned by Sam, Gary, Nishad, and Alameda Research Ltd.)		03/08/2022	300000000

Responses to this question do not currently include all transfers of cryptocurrency, other digital assets or other assets.

Debtor Name: Alameda Research Ltd

Case Number: 22-11067 (JTD)

Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy

SOFA Question 13: Transfers not already listed on this statement

Creditor Name and Address	Description of Property	Relationship to Debtor	Date	Amount
Bankman-Fried, Samuel ADDRESS ON FILE	Cash Payment	Founder	08/01/2021	\$250,500.00
Bankman-Fried, Samuel ADDRESS ON FILE	Cash Payment	Founder	08/15/2021	\$500,000.00
Bankman-Fried, Samuel ADDRESS ON FILE	Cash Payment	Founder	08/27/2021	\$500,000.00
Bankman-Fried, Samuel ADDRESS ON FILE	Cash Payment	Founder	10/15/2021	\$301,298.00
Bankman-Fried, Samuel ADDRESS ON FILE	Cash Payment	Founder	11/05/2021	\$300,894.00
Bankman-Fried, Samuel ADDRESS ON FILE	Common Stock Purchase pursuant to the Purchase Agreement for Class B Common Stock of West Realm Shires Inc.	Founder	07/18/2021	\$170,394,453.00
Bankman-Fried, Samuel ADDRESS ON FILE	Intercompany Payable from Alameda Research Ltd. to FTX Trading Ltd created for the benefit of Samuel Bankman-Fried as a result of the payment from FTX Trading Ltd. to the sellers of One Cable Beach Unit 311 (titled in the name of Samuel Bankman-Fried)	Founder	06/03/2021	\$2,200,000.00
Deltec International Group ATTN: LEGAL DEPARTMENT DELTEC HOUSE LYFORD CAY NASSAU, WALLIS AND FUTUNA, BAHAMAS	Loan to Deltec arranged by Ryan Salame		10/25/2021	\$50,000,000.00
Ellison, Caroline ADDRESS ON FILE	Cash Payment	Director/Officer	05/14/2021	\$22,000.00
Ellison, Caroline ADDRESS ON FILE	Cash Payment	Director/Officer	05/25/2021	\$100,000.00
LayerZero Labs Ltd. P.O. Box 4301 Road Town, Tortola, BRITISH VIRGIN ISLANDS	Shares of LayerZero Labs Ltd. (LayerZero) owned by Alameda Research Ltd. and described in the Share Transfer Agreement between the Debtor and LayerZero transferred to LayerZero in exchange for the cancellation of a \$45MM payable from Alameda to LayerZero		11/08/2022	Undetermined
Mount Olympus Capital LP 9 LAGORCE CIR MIAMI BEACH, FL 33141-4519	Cash Investment in Mount Olympus Capital LP for the benefit of SGN Albany (100% owned by Sam, Gary, Nishad, and Alameda Research Ltd.)		05/26/2022	\$200,000,000.00
Mount Olympus Capital LP 9 LAGORCE CIR MIAMI BEACH, FL 33141-4519	Cash Investment in Mount Olympus Capital LP for the benefit of SGN Albany (100% owned by Sam, Gary, Nishad, and Alameda Research Ltd.)		09/20/2022	\$100,000,000.00
Valdez K. Russell ADDRESS ON FILE	Intercompany Payable from Alameda Research Ltd. to FTX Digital Markets Ltd. created for the benefit of Valdez Russell as a result of the payment from FTX Digital Markets Ltd. to the sellers of Turnberry Lot #39 (titled in the name of Valdez Russell)	Former Employee	02/28/2022	\$1,068,046.00

Debtor Name: Alameda Research LLC

Case Number: 22-11066 (JTD)

Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy

SOFA Question 13: Transfers not already listed on this statement

Creditor Name and Address	Description of Property	Relationship to Debtor	Date	Amount
Bankman-Fried, Samuel ADDRESS ON FILE	Cash Payment	Founder	01/05/2021	\$500,000.00
Bankman-Fried, Samuel ADDRESS ON FILE	Cash Payment	Founder	01/15/2021	\$500,000.00
Friedberg, Daniel ADDRESS ON FILE	Cash Transfer	Officer	06/15/2021	\$3,007,451.30
GUARDING AGAINST PANDEMICS INC. 2828 N CENTRAL AVE. PHOENIX, AZ 85004	Cash Transfer in the name of Samuel Bankman-Fried		10/01/2021	\$20,000,000.00
Mount Olympus Capital LP 9 LAGORCE CIR MIAMI BEACH, FL 33141-4519	Cash Investment in Mount Olympus Capital LP for the benefit of SGN Albany (100% owned by Sam, Gary, Nishad, and Alameda Research Ltd.)		06/07/2022	\$100,000,000.00
Planning for Tomorrow 1 E Washington St Ste 2300 Phoenix, AZ 85004	Cash Transfer in the name of Nishad Singh		08/16/2021	\$1,000,000.00
Planning for Tomorrow 1 E Washington St Ste 2300 Phoenix, AZ 85004	Cash Transfer in the name of Samuel Bankman-Fried		06/16/2021	\$1,000,000.00
Planning for Tomorrow 1 E Washington St Ste 2300 Phoenix, AZ 85004	Cash Transfer in the name of Samuel Bankman-Fried		07/20/2021	\$2,000,000.00

Responses to this question do not currently include all transfers of cryptocurrency, other digital assets or other assets.

Debtor Goodman Investments Ltd.
Name

Case number (if known) 22-11126 (JTD)

24. Has the debtor notified any governmental unit of any release of hazardous material?

- No
 Yes. Provide details below.

Site name and address	Governmental unit name and address	Environmental law, if known	Date of notice
_____ Street _____ City State Zip Code	_____ Street _____ City State Zip Code	_____	_____

Part 13: Details About the Debtor's Business or Connections to Any Business

25. Other businesses in which the debtor has or has had an interest

List any business for which the debtor was an owner, partner, member, or otherwise a person in control within 6 years before filing this case. Include this information even if already listed in the Schedules.

- None

Business name and address	Describe the nature of the business	Employer Identification number Do not include Social Security number or ITIN.
25.1 Modulo Capital Alpha Fund LP	Fund Investment	EIN: <u>Unknown</u>
<p align="right">Dates business existed</p> <p align="right">From <u>Undetermined</u> To <u>Current</u></p>		
Business name and address	Describe the nature of the business	Employer Identification number Do not include Social Security number or ITIN.
25.2 MODULO CAPITAL INC 127 S. OCEAN ROAD ALBANY, UNIT TETRIS 2E New Providence 99999 BAHAMAS	Undetermined	EIN: <u>Unknown</u>
<p align="right">Dates business existed</p> <p align="right">From <u>06/16/2022</u> To <u>Current</u></p>		
Business name and address	Describe the nature of the business	Employer Identification number Do not include Social Security number or ITIN.
25.3		EIN: _____
<p align="right">Dates business existed</p> <p align="right">From _____ To _____</p>		

Debtor Name: **FTX Property Holdings Ltd**

Case Number: 22-11076 (JTD)

Assets - Real and Personal Property**Part 9, Question 55:** Any building, other improved real estate, or land which the debtor owns or in which the debtor has an interest

Description and location of property Include street address or other description such as Assessor Parcel Number (APN), and type of property (for example, acreage, factory, warehouse, apartment or office building), if available.	Nature and extent of debtor's interest in property	Net book value of debtor's interest (Where available)	Valuation method used for current value	Current value of debtor's interest
Buildings & Land	Buildings & Land	\$234,654,087.55	Net Book Value	\$234,654,087.55
Construction In Progress	Construction In Progress	\$6,611,970.37	Net Book Value	\$6,611,970.37
Albany Lot #44 West District, New Providence The Bahamas	Property (Owned)	Undetermined	N/A	Undetermined
Albany Bldg. 10 Unit 4A (Charles) West District, New Providence The Bahamas	Property (Owned)	Undetermined	N/A	Undetermined
Albany Bldg. 10 Unit 3B (Charles) West District, New Providence The Bahamas	Property (Owned)	Undetermined	N/A	Undetermined
Albany Bldg. 10 Unit 5A (Charles) West District, New Providence The Bahamas	Property (Owned)	Undetermined	N/A	Undetermined
Albany Bldg. 7 Unit 2C (Coral) West District, New Providence The Bahamas	Property (Owned)	Undetermined	N/A	Undetermined
Albany Bldg. 3 Unit 1B (Cube) West District, New Providence The Bahamas	Property (Owned)	Undetermined	N/A	Undetermined
Albany Bldg. 9 Unit 1D (Gemini) West District, New Providence The Bahamas	Property (Owned)	Undetermined	N/A	Undetermined
Albany Bldg. 1 Unit 2A (Honeycomb) West District, New Providence The Bahamas	Property (Owned)	Undetermined	N/A	Undetermined
Albany Bldg. 1 Unit 3E (Honeycomb) West District, New Providence The Bahamas	Property (Owned)	Undetermined	N/A	Undetermined
Albany Bldg. 1 Unit 2C (Honeycomb) West District, New Providence The Bahamas	Property (Owned)	Undetermined	N/A	Undetermined
Albany Bldg. 8 Unit 6 (Orchid Penthouse) West District, New Providence The Bahamas	Property (Owned)	Undetermined	N/A	Undetermined
Albany Bldg. 8 Unit 3B (Orchid) West District, New Providence The Bahamas	Property (Owned)	Undetermined	N/A	Undetermined
Albany Bldg. 8 Unit 1A (Orchid) West District, New Providence The Bahamas	Property (Owned)	Undetermined	N/A	Undetermined
Albany Bldg. 4 Unit 3D (Tetris) West District, New Providence The Bahamas	Property (Owned)	Undetermined	N/A	Undetermined
Albany Bldg. 4 Unit D2 (Tetris) West District, New Providence The Bahamas	Property (Owned)	Undetermined	N/A	Undetermined
Albany Bldg. 4 Unit 2E (Tetris) West District, New Providence The Bahamas	Property (Owned)	Undetermined	N/A	Undetermined
Blake Road (Vacant Land) West District, New Providence The Bahamas	Property (Owned)	Undetermined	N/A	Undetermined

Debtor Name: FTX Property Holdings Ltd

Case Number: 22-11076 (JTD)

Assets - Real and Personal Property

Part 9, Question 55: Any building, other improved real estate, or land which the debtor owns or in which the debtor has an interest

Description and location of property Include street address or other description such as Assessor Parcel Number (APN), and type of property (for example, acreage, factory, warehouse, apartment or office building), if available.	Nature and extent of debtor's interest in property	Net book value of debtor's interest (Where available)	Valuation method used for current value	Current value of debtor's interest
One Cable Beach Unit 207 West District, New Providence The Bahamas	Property (Owned)	Undetermined	N/A	Undetermined
One Cable Beach Unit 309 West District, New Providence The Bahamas	Property (Owned)	Undetermined	N/A	Undetermined
One Cable Beach Unit G12 West District, New Providence The Bahamas	Property (Owned)	Undetermined	N/A	Undetermined
One Cable Beach Unit 603 West District, New Providence The Bahamas	Property (Owned)	Undetermined	N/A	Undetermined
Old Fort Bay Lots 5A & 5B - Fincastle Island West District, New Providence The Bahamas	Property (Owned)	Undetermined	N/A	Undetermined
Ocean Terrace West District, New Providence The Bahamas	Property (Owned)	Undetermined	N/A	Undetermined
West Bay Street (fmrly. Bayside - Pictet) West District, New Providence The Bahamas	Property (Owned)	Undetermined	N/A	Undetermined
Veridian Corporate Center #18, 30, 27, 26, 25, 24 West District, New Providence The Bahamas	Office Location (Owned)	Undetermined	N/A	Undetermined
Veridian Corporate Center #23 West District, New Providence The Bahamas	Property (Owned)	Undetermined	N/A	Undetermined
Pineapple House West District, New Providence The Bahamas	Property (Owned)	Undetermined	N/A	Undetermined
Veridian Corporate Center #1-17, 19-22, 28, 29 West District, New Providence The Bahamas	Office Location (Owned)	Undetermined	N/A	Undetermined
			TOTAL	\$241,266,057.92 + Undetermined Amounts

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

22 CR 231 (LTS)

5 WILLIAM TOMITA,

6 Defendant.

7 -----x
8 New York, N.Y.
9 April 22, 2022
2:35 p.m.

10 Before:

HON. LAURA TAYLOR SWAIN,

District Judge

11 APPEARANCES

12
13
14 DAMIAN WILLIAMS
15 United States Attorney for the
16 Southern District of New York
MATTHEW D. PODOLSKY
ANDREW M. THOMAS
Assistant United States Attorneys

17 HELEN V. CANTWELL
18 ADELE STICHEL
19 Attorneys for Defendant

20 ALSO PRESENT:

21 MARLON OVALLES, Pretrial Services
22 ANDREAS ECONOMOU-ELLISON, FBI

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1 (Case called)

2 THE COURT: Good afternoon.

3 Counsel, agents, pretrial services officer, would you
4 please introduce yourselves.

5 MR. PODOLSKY: Good afternoon, your Honor. Matthew
6 Podolsky and Andrew Thomas, for the government. And with us at
7 counsel table is Special Agent Andreas Economou-Ellison, of the
8 **Federal Bureau of Investigation.**

9 THE COURT: Good afternoon, Mr. Podolsky, Mr. Thomas,
10 and Special Agent Economou-Ellison. You may be seated.

11 MR. THOMAS: Good afternoon, your Honor.

12 MR. OVALLES: Marlon Ovalles, on behalf of pretrial
13 services. Good afternoon, your Honor.

14 THE COURT: Good afternoon, Officer Ovalles. You may
15 be seated.

16 MS. CANTWELL: Good afternoon, your Honor. Helen
17 Cantwell and Adele Stichel, from Debevoise & Plimpton, on
18 behalf of Mr. Tomita. Nice to see you.

19 THE COURT: Nice to see you.

20 Good afternoon, Ms. Cantwell; good afternoon,
21 Ms. Stichel; and good afternoon, Mr. Tomita.

22 Is the gentleman in the back of the courtroom with
23 either of the parties?

24 MR. PODOLSKY: Yes, your Honor. I can represent that
25 he is also a special agent with the FBI.

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1 THE COURT: Thank you.

2 Good afternoon, sir.

3 I have received a sealed application for an order
4 maintaining this case under seal, providing that the
5 documentation and docket entries in this case be kept under
6 seal, and that the case be captioned on the docket as United
7 States v. John Doe. That, of course, also implicates the
8 sealed filing until further order of the Court of the
9 transcript of these proceedings.

10 Ms. Cantwell, is there any objection to the
11 application?

12 MS. CANTWELL: No, your Honor.

13 THE COURT: I've read it thoroughly and conclude that
14 it does set forth appropriate grounds for holding this
15 information from public access, given certain law enforcement
16 considerations. So I am granting it. I note that it provides
17 for an update within three months concerning the continuing
18 need, if any, to maintain these materials under seal.

19 So, Ms. Ng, have we been given a signature copy?

20 THE DEPUTY CLERK: Of what, the advice of rights?

21 THE COURT: Well, no. This is the sealing order. The
22 copy that I have just has a printed S --

23 THE DEPUTY CLERK: I'll give it to you. Sorry.

24 (Pause)

25 THE COURT: So that is the order. Great. Thank you.

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1 I will sign it now.

2 I have signed the order.

3 It is my understanding that, today, we are here for a
4 first appearance and anticipated waiver of indictment,
5 arraignment, and plea proceeding.

6 Is that correct?

7 MR. PODOLSKY: Yes, your Honor.

8 MS. CANTWELL: Yes, your Honor.

9 THE COURT: Thank you.

10 First, I must share with you some important
11 information. Federal Rule of Criminal Procedure 5(f) requires
12 the Court to remind the parties orally and in writing of the
13 prosecution's obligations under the Supreme Court's 1963 *Brady*
14 *v. Maryland* decision and the cases that have built upon that
15 decision and of the possible consequences of violating those
16 obligations.

17 I hereby direct the government to comply with its
18 obligations under *Brady v. Maryland* and its progeny to disclose
19 to the defense all information, whether admissible or not, that
20 is favorable to the defendant, material either to guilt or to
21 punishment, and known to the government. Possible consequences
22 for noncompliance may include dismissal of individual charges
23 or the entire case, exclusion of evidence, and professional
24 discipline or court sanctions on the attorneys responsible.

25 I will enter a written order more fully describing

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1 this obligation and the possible consequences of failing to
2 meet it, and I direct the government to review and comply with
3 that order.

4 Mr. Podolsky, do you and your colleagues understand
5 these obligations, and do you confirm that they have been
6 fulfilled or will be fulfilled?

7 MR. PODOLSKY: Yes, your Honor, I can represent that
8 the government understands its obligations and will comply with
9 them as required in this case.

10 THE COURT: Thank you.

11 I will now turn to the first appearance. And I inform
12 counsel that the arraignment on the information and the waiver
13 of indictment will be addressed as part of the anticipated plea
14 allocution colloquy.

15 So, first, Mr. Tomita, would you please stand.

16 Thank you.

17 Please state your full name.

18 THE DEFENDANT: My full name is William Kenji Tomita,
19 your Honor.

20 THE COURT: How old are you, sir?

21 THE DEFENDANT: Thirty-eight years old.

22 THE COURT: I will now explain to you certain rights
23 that you have under the Constitution of the United States. You
24 have the right to remain silent; you need not make any
25 statement. Even if you've already made statements to the

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1 authorities, you need not make any additional statements. Any
2 statements that you do make can be used against you.

3 Do you understand these rights?

4 THE DEFENDANT: I understand, your Honor.

5 THE COURT: You have the right to be released, either
6 conditionally or unconditionally, pending trial unless I find
7 that there are no conditions that would reasonably assure your
8 presence at future court hearings and the safety of the
9 community. If the government were to ask me to detain you
10 pending trial, you are entitled to a prompt hearing on whether
11 such conditions exist.

12 Do you understand this right?

13 THE DEFENDANT: I understand, your Honor.

14 THE COURT: Are you a citizen of the United States?

15 THE DEFENDANT: That is correct.

16 THE COURT: Are you also a citizen of any other
17 country?

18 THE DEFENDANT: I'm a dual national of Japan, your
19 Honor.

20 THE COURT: Because of your dual nationality, you are
21 entitled to have Japan's consular representatives here in the
22 United States notified that you have been arrested or detained.
23 After your consular officials are notified, they may call or
24 visit you. You are not required to accept their assistance,
25 but they may be able to help you with legal counsel and may

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1 contact your family and visit you if you are detained, among
2 other things.

3 I now direct the Office of the United States Attorney
4 to make the appropriate consular notification if you request
5 that that be made.

6 THE DEFENDANT: Thank you, your Honor.

7 THE COURT: Mr. Podolsky will do that if there is a
8 request.

9 MR. PODOLSKY: Correct.

10 THE COURT: Thank you.

11 Mr. Tomita, you have the right to be represented by an
12 attorney today and at all future proceedings in this case, and
13 if you are unable to afford an attorney, I will appoint an
14 attorney to represent you.

15 Do you understand these rights?

16 THE DEFENDANT: I do, your Honor. Thank you.

17 THE COURT: Do you wish to have, and are you able to
18 obtain and afford, counsel on your own?

19 THE DEFENDANT: That is correct, your Honor.

20 THE COURT: Have you retained Ms. Cantwell and her
21 firm, Debevoise & Plimpton, to represent you in this case?

22 THE DEFENDANT: That is correct, your Honor.

23 THE COURT: Do you understand that you're responsible
24 for paying the fees and expenses associated with Ms. Cantwell's
25 defense of you in this case?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: And, for the record, do you want the Court
3 to appoint counsel for you?

4 THE DEFENDANT: Not at this time, your Honor. Thank
5 you.

6 THE COURT: Thank you. You may be seated.

7 I would ask that Ms. Cantwell remain standing.

8 I'm informed that Mr. Tomita has an application to
9 waive indictment and enter a plea of guilty to the five-count
10 superseding information that is labeled United States v.
11 William Tomita.

12 Is that correct, Ms. Cantwell?

13 MS. CANTWELL: Yes, your Honor.

14 THE COURT: And is this plea pursuant to an agreement
15 with a printed date of April 15, 2022, and an execution date of
16 April 22, 2022, which has been marked as Government Exhibit 1
17 in its executed form?

18 MS. CANTWELL: Yes, your Honor.

19 THE COURT: Thank you.

20 And do you have that marked copy of the agreement
21 there at defense table?

22 MS. CANTWELL: Yes.

23 THE COURT: Thank you.

24 Is there an executed Advice of Rights Form that has
25 been marked as Court Exhibit 1?

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1 MS. CANTWELL: Yes, your Honor.

2 THE COURT: Do you have that at defense table as well?

3 MS. CANTWELL: I do.

4 THE COURT: Thank you, Ms. Cantwell and Ms. Stichel.

5 You can be seated at this time.

6 Mr. Podolsky, would you please make a statement for
7 the record regarding the government's victim identification and
8 notification activities, if any, in connection with this
9 proceeding.

10 MR. PODOLSKY: Yes, your Honor.

11 We understand our obligations in that respect and will
12 comply with them -- reasonably comply with them under the
13 circumstances of this case.

14 THE COURT: And I take it that given the particular
15 circumstances of this proceeding, although there may or may not
16 have been victims identified, there would be no notification at
17 this point?

18 MR. PODOLSKY: To this point in time, that is correct,
19 but we will make reasonable efforts to notify them as we can.

20 THE COURT: Thank you. And that is for the reasons
21 that are set forth in the application relating to the sealing
22 of the materials?

23 MR. PODOLSKY: That's correct, your Honor.

24 THE COURT: Thank you.

25 Mr. Tomita, before I accept your waiver of indictment

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1 and your guilty plea, there are a number of questions that I
2 must ask you while you are under oath to assure that your
3 waiver and plea are valid. At times, I may cover a point more
4 than once, and I may cover matters that were also addressed in
5 the Advice of Rights Form that you have seen. If I do, that
6 will be because it is very important that you understand what
7 is happening here today.

8 In that connection, if you don't understand something
9 that I ask you, please say so, and I will reword the question
10 or you may speak with your attorney. Do you understand that?

11 THE DEFENDANT: I do, your Honor. Thank you.

12 THE COURT: Thank you.

13 Please stand now to take the oath.

14 (Defendant sworn)

15 THE COURT: Please remain standing, but put your hand
16 down.

17 Please, again, state your full name for the record.

18 THE DEFENDANT: My full name is William Kenji Tomita.

19 THE COURT: Mr. Tomita, do you understand that you
20 have solemnly promised to tell the truth, and that if you
21 answer any of my questions falsely, your false or untrue
22 answers may later be used against you in another prosecution
23 for perjury, or making a false statement?

24 THE DEFENDANT: I understand, your Honor.

25 THE COURT: Thank you. You can be seated for the next

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1 portion of the proceeding.

2 THE DEFENDANT: Thank you.

3 THE COURT: You are 38 years old; is that correct?

4 THE DEFENDANT: Correct.

5 THE COURT: How far did you go in school?

6 THE DEFENDANT: I finished a four-year Bachelor's
7 program.

8 THE COURT: In what field?

9 THE DEFENDANT: In economics and international
10 studies.

11 THE COURT: Are you able to read, speak, and
12 understand the English language well?

13 THE DEFENDANT: Yes.

14 THE COURT: And you are a citizen of both the United
15 States and of Japan?

16 THE DEFENDANT: That is correct, your Honor.

17 THE COURT: How did you become a citizen of the United
18 States?

19 THE DEFENDANT: By birth, your Honor.

20 THE COURT: Are you now, or have you recently been,
21 under the care of a doctor or a psychiatrist?

22 THE DEFENDANT: I have in the past, your Honor.

23 THE COURT: Are you currently suffering from any
24 conditions for which you are under treatment?

25 THE DEFENDANT: I do have anxiety related to public

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1 speaking, your Honor.

2 THE COURT: Does that condition affect you today in
3 terms of your ability to understand and respond to information
4 here in court?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: Are you taking any medication that would
7 affect negatively your ability to understand and respond to
8 information?

9 THE DEFENDANT: I took a Xanax, per my doctor's
10 prescription, just because of my fear of public speaking, but
11 that will not prevent me from public speaking.

12 THE COURT: And so do you feel comfortable speaking in
13 the courtroom today?

14 THE DEFENDANT: Yes, I do, very comfortable right now.
15 Thank you.

16 THE COURT: Do you feel comfortable making important
17 decisions for yourself today?

18 THE DEFENDANT: I do, your Honor.

19 THE COURT: Have you ever been hospitalized for any
20 mental illness or treated or hospitalized for any type of
21 addiction, including drug or alcohol addiction?

22 THE DEFENDANT: I have not, your Honor.

23 THE COURT: In the past 24 hours, have you taken any
24 drugs, medicine, or pills or had any alcohol to drink?

25 THE DEFENDANT: No, your Honor.

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1 THE COURT: Other than the prescribed medication that
2 you just mentioned?

3 THE DEFENDANT: Correct, your Honor.

4 THE COURT: Have you ever been addicted to any drugs
5 or alcohol?

6 THE DEFENDANT: I have not, your Honor.

7 THE COURT: Is your mind clear today?

8 THE DEFENDANT: It is, your Honor.

9 THE COURT: Are you feeling well physically today?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Are you represented by lawyers here today?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: And what are your lawyers' names?

14 THE DEFENDANT: Helen Cantwell and Adele Stichel, from
15 Debevoise, your Honor.

16 THE COURT: Thank you.

17 Ms. Cantwell, Ms. Stichel, do either of you have any
18 doubt as to Mr. Tomita's competence to waive indictment and
19 plead guilty at this time?

20 MS. CANTWELL: No, your Honor.

21 MS. STICHEL: No.

22 THE COURT: Thank you.

23 Mr. Podolsky, Mr. Thomas, does either of you have any
24 doubt as to Mr. Tomita's competence to waive indictment and
25 plead guilty?

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1 MR. PODOLSKY: No, your Honor.

2 MR. THOMAS: No, your Honor.

3 THE COURT: Mr. Tomita, your attorney has informed me
4 that you want to waive indictment and enter a plea of guilty to
5 a five-count superseding information.

6 Do you wish to waive indictment and plead guilty?

7 THE DEFENDANT: That is correct, your Honor.

8 THE COURT: Have you fully discussed your case with
9 your attorneys, including the charges to which you intend to
10 plead guilty, and any defenses that you may have to those
11 charges?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Have you and your attorneys also discussed
14 the consequences of pleading guilty?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Are you satisfied with your attorneys and
17 their representation of you?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: On the basis of Mr. Tomita's responses to
20 my questions and my observations of his demeanor, I find that
21 he is fully competent to waive indictment and enter an informed
22 plea at this time.

23 Before I accept your waiver of indictment and plea,
24 sir, I'm going to ask you some additional questions. These
25 questions are intended to satisfy the Court that you want to

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1 plead guilty because you are, in fact, guilty and that you
2 fully understand your rights and the consequences of your plea.

3 I am now going to describe to you certain rights that
4 you have under the Constitution and laws of the United States.
5 You will be giving up these rights if you plead guilty. Please
6 listen carefully. If you don't understand something that I'm
7 saying or describing, stop me, and I or your attorney will
8 explain it more fully.

9 Under the Constitution and laws of the United States,
10 you have the right to a speedy and public trial by a jury on
11 the charges against you that are set out in the superseding
12 information.

13 Do you understand that?

14 THE DEFENDANT: I do, your Honor.

15 THE COURT: Do you understand that you have the right
16 to plead not guilty, and to continue to plead not guilty to
17 each of the charges?

18 THE DEFENDANT: I do, your Honor.

19 THE COURT: If there were a trial, you would be
20 presumed innocent, and the government would be required to
21 prove you guilty by competent evidence and beyond a reasonable
22 doubt. You would not have to prove that you were innocent at a
23 trial.

24 Do you understand that?

25 THE DEFENDANT: I understand that, your Honor.

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1 THE COURT: If there were a trial, a jury composed of
2 12 people selected from this district would have to agree
3 unanimously in order to find you guilty. Do you understand
4 that?

5 THE DEFENDANT: I understand, your Honor.

6 THE COURT: If there were a trial, and at all stages
7 leading up to it, you would have the right to be represented by
8 an attorney, and if you could not afford one, an attorney would
9 be provided to you free of cost.

10 Do you understand that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: If there were a trial, you would have the
13 right to see and hear all of the witnesses against you, and
14 your attorney could cross-examine them. In addition, you would
15 have the right to have your attorney object to the government's
16 evidence and offer evidence on your behalf if you so desired.
17 You would also have the right to have witnesses required to
18 come to court to testify in your defense, and you would have
19 the right to testify yourself, but you would not be required to
20 testify.

21 Do you understand all of that?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Do you understand that, if there were a
24 trial, and you decided not to testify, no adverse inference
25 could be drawn against you based on your decision not to

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1 testify?

2 THE DEFENDANT: I understand, your Honor.

3 THE COURT: Do you understand that if you were
4 convicted at a trial, you would have the right to appeal that
5 verdict?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you understand each and every one of
8 the rights that I have asked you about?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Do you have any questions about any of
11 these rights?

12 THE DEFENDANT: I do not, your Honor.

13 THE COURT: Do you understand that by pleading guilty
14 today, you will be giving up each and every one of these
15 rights?

16 THE DEFENDANT: I understand that, your Honor.

17 THE COURT: Do you also understand that you will be
18 giving up any possible claim that your constitutional rights
19 may have been violated?

20 THE DEFENDANT: I understand that, your Honor.

21 THE COURT: And do you understand that if you plead
22 guilty today, you will not have a trial?

23 THE DEFENDANT: I understand that, your Honor.

24 THE COURT: Do you understand that by pleading guilty,
25 you will also have to give up your right not to incriminate

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1 yourself because I will ask you questions about what you did in
2 order to satisfy myself that you are guilty as charged, and you
3 will have to admit and acknowledge your guilt?

4 THE DEFENDANT: I understand that, your Honor.

5 THE COURT: Do you understand that you can change your
6 mind right now and refuse to plead guilty; you don't have to
7 enter this plea if you don't want to for any reason.

8 Do you understand that fully?

9 THE DEFENDANT: I understand that fully, your Honor.

10 THE COURT: And do you still want to plead guilty?

11 THE DEFENDANT: Yes, I would like to proceed, your
12 Honor.

13 THE COURT: The document that contains the charges to
14 which you've indicated you wish to plead guilty is called a
15 superseding information. It has been issued by the United
16 States Attorney. You have a constitutional right to be charged
17 by an indictment rather than an information. An indictment
18 would be a charge issued from a grand jury.

19 Do you understand that?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Ms. Cantwell, would you please show
22 Mr. Tomita the waiver of indictment form.

23 MS. CANTWELL: He has it, your Honor.

24 THE COURT: Thank you.

25 Mr. Tomita, have you signed this form?

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1 THE DEFENDANT: I have, your Honor.

2 THE COURT: Did you read it before you signed it?

3 THE DEFENDANT: I did, your Honor.

4 THE COURT: Did you discuss it with your attorney
5 before you signed it?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: And did you fully understand it before you
8 signed it?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Do you understand that if you do not waive
11 indictment, if the government wants to prosecute you on the
12 particular charges that are in the superseding information, the
13 government would have to present the charges to a grand jury,
14 which might or might not indict you on them?

15 THE DEFENDANT: I understand that, your Honor.

16 THE COURT: Do you understand that you're under no
17 obligation to waive indictment?

18 THE DEFENDANT: I understand that, your Honor.

19 THE COURT: And do you understand that by signing the
20 waiver of indictment, you are giving up your right to have
21 these charges presented to a grand jury?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Do you understand what a grand jury is?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Has anyone given you anything or made any

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1 threats or promises to you to get you to waive indictment?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: Have you seen a copy of the superseding
4 information, which is captioned United States of America v.
5 William Tomita?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Have you read it?

8 THE DEFENDANT: Several times, your Honor.

9 THE COURT: Have you discussed it with your attorney?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you understand the charges against you
12 that are detailed in that information?

13 THE DEFENDANT: I do, your Honor.

14 THE COURT: If you want me to, I will read the
15 information out loud now here in full to you in court.

16 Would you like me to read it out loud to you in court?

17 THE DEFENDANT: For me, that's not necessary, your
18 Honor.

19 THE COURT: Then it's not necessary for me, if it's
20 not necessary for you.

21 THE DEFENDANT: Okay.

22 THE COURT: Thank you. You've waived the public
23 reading.

24 I find that Mr. Tomita's waiver of indictment is
25 knowing and voluntary. It is accepted and so ordered.

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1 I will now, however, ask you summary questions about
2 the charges in the information.

3 So, first, do you understand that Count One of the
4 information charges you with violating Title 18 of the United
5 States Code, Section 1962(d) by willfully and knowingly being
6 part of a conspiracy, from at least in or about 2020 up to and
7 including in or about March 2021, to violate the racketeering
8 laws of the United States by conducting and participating,
9 directly and indirectly, in the affairs of what the superseding
10 information defines as the Archegos Enterprise through a
11 pattern of activity consisting of multiple offenses involving
12 fraud in the sale of securities, and that's indictable under
13 Title 18 Section 1343, relating to wire fraud, and that this
14 count charges that it was part of the conspiracy that you
15 agreed that a conspirator would commit at least two acts of
16 racketeering activity in the conduct of the affairs of the
17 Archegos Enterprise?

18 I always need you to answer in words.

19 THE DEFENDANT: Sorry. The question --

20 THE COURT: So do you understand that that is the
21 charge?

22 THE DEFENDANT: I understand that's the charge, yes,
23 your Honor.

24 THE COURT: Thank you.

25 Do you understand that Count Two charges you with

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1 violating Title 17 of the Code of Federal Regulations,
2 Section 240.10b-5, Title 15 of the United States Code, Sections
3 78j(b) and 78ff, and Section 2 of Title 18 of the United States
4 Code, by engaging in and aiding and abetting a scheme to
5 secretly amass market power in numerous securities traded on
6 United States securities exchanges, and to use that market
7 power and manipulative and abusive trading techniques for the
8 purpose of fraudulently altering the prices of those
9 securities, from at least in or about 2020 up to and including
10 at least in or about March of 2021?

11 THE DEFENDANT: That is correct, your Honor, I
12 understand it.

13 THE COURT: So you understand that that is the charge?

14 THE DEFENDANT: I understand that that's the charge,
15 correct.

16 THE COURT: Thank you.

17 Do you understand that Count Three charges you with
18 violating Title 15 of the United States Code, Sections
19 78i(a)(2) and 78ff, as well as Title 18, Section 2, by engaging
20 in and aiding and abetting a series of transactions in
21 securities and securities-based swaps underlying certain of
22 Archegos' positions in order to raise or depress the price of
23 and induce others to purchase those securities, from at least
24 in or about 2020 up to and including at least in or about March
25 of 2021?

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1 THE DEFENDANT: I understand it, your Honor.

2 THE COURT: Do you understand that Count Four charges
3 you with violating Title 15 of the United States Code, Sections
4 78j(b) and 78ff, Title 17, CFR, Section 240.10b-5, and Title 18
5 of the United States Code, Section 2, by engaging in and aiding
6 and abetting a scheme to defraud Archegos' counterparties
7 through false and misleading statements regarding aspects of
8 Archegos' business, portfolio, and assets, from at least in or
9 about 2020 up to and including at least in or about March of
10 2021?

11 THE DEFENDANT: I understand what it means, your
12 Honor.

13 THE COURT: Do you understand that -- when you say you
14 understand what it means, you understand what the charge
15 written in the information means?

16 THE DEFENDANT: Yes, I understand what the charge is
17 and agree to the charge.

18 That's the question, right?

19 THE COURT: Yes, the question is: Do you understand
20 what you're charged with?

21 THE DEFENDANT: Yes, I understand what I'm charged
22 with.

23 THE COURT: Thank you.

24 THE DEFENDANT: The one we just read, I understand it.

25 THE COURT: Yes, thank you. So we have one more now.

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1 Do you understand that Count Five charges you with
2 violating Title 18 of the United States Code, Sections 1343 and
3 2, by engaging in and aiding and abetting a scheme to defraud
4 Archegos' counterparties of their rights to control their
5 assets, and thereby exposing Archegos' counterparties to risk
6 of economic harm by false and misleading statements regarding
7 aspects of Archegos' business, portfolio, and assets, including
8 statements conveyed through interstate wires, from in or about
9 2020 up to and including in or about March 2021?

10 THE DEFENDANT: I understand the charge, your Honor.

11 THE COURT: Thank you.

12 Do you understand that the government would have to
13 prove each and every part, or element, of each of these charges
14 beyond a reasonable doubt at a trial if you did not plead
15 guilty?

16 THE DEFENDANT: I understand that, your Honor.

17 THE COURT: Thank you.

18 Mr. Podolsky, would you please explain what the
19 government would have to prove if we were to go to trial on the
20 charges in the superseding information.

21 MR. PODOLSKY: Yes, your Honor.

22 As to Count One, racketeering conspiracy, the
23 government would have to prove beyond a reasonable doubt:

24 First, that the enterprise alleged in the indictment
25 existed;

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1 Second, that the enterprise affected interstate or
2 foreign commerce;

3 Third, that the defendant was associated with, or was
4 employed by, the enterprise;

5 And, fourth, that the defendant knowingly and
6 willfully conspired with at least one other person to
7 participate in the conduct of the affairs of the enterprise
8 through a pattern of racketeering activity.

9 I will note that the racketeering activities -- the
10 predicate racketeering activities are alleged in paragraph 2 of
11 the information, and your Honor has already read them just a
12 few moments ago.

13 As to both Counts Two and Four, which both charge
14 Title 15 securities fraud, the government would have to prove
15 beyond a reasonable doubt:

16 First, that in connection with the purchase or sale of
17 a security, the defendant did any one or more of the following:

18 First, employed a device, scheme, or artifice to
19 defraud;

20 Or second, made an untrue statement of a material
21 fact, or omitted to state a material fact, which made what was
22 said under the circumstances misleading;

23 Or, third, engaged in an act, practice, or course of
24 business that operated or would operate as a fraud or deceit
25 upon a purchaser or seller;

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1 Second, that the defendant acted willfully, knowingly,
2 and with the intent to defraud;

3 And, third, that the defendant knowingly used or
4 caused to be used any means or instruments of transportation or
5 communication in interstate commerce or the use of the mails in
6 furtherance of the fraudulent conduct.

7 As to Count Three, market manipulation, the government
8 would have to prove beyond a reasonable doubt:

9 First, that the defendant effected a series of
10 transactions in a security;

11 Second, that the series of transactions either
12 created -- either (a) created actual or apparent active trading
13 in the security, or (b) raised or depressed the price of the
14 security;

15 Third, that the conduct involved, directly or
16 indirectly, the use of the mails, any means of interstate
17 commerce, or any facility of a national securities exchange;

18 And, fourth, that the defendant acted willfully and
19 with the purpose of inducing the purchase or sale of a security
20 by others.

21 As to Count Five, wire fraud, the government would
22 have to prove beyond a reasonable doubt:

23 First, that there was a scheme or artifice to defraud
24 or to obtain money or property by materially false and
25 fraudulent pretenses, representations, or promises;

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1 Second, that the defendant knowingly and willfully
2 participated in a scheme or artifice to defraud with knowledge
3 of its fraudulent intent and with the specific intent to
4 defraud;

5 And, third, that in the execution of the scheme, the
6 defendant used or caused the use of interstate or foreign
7 wires, such as telephone calls, emails, or the transmission of
8 money through the use of wire transfers.

9 The government would also have to prove venue in the
10 Southern District of New York by a preponderance of the
11 evidence as to each count.

12 THE COURT: Thank you, Mr. Podolsky.

13 Mr. Tomita, do you understand what the government
14 would have to prove if you did not plead guilty to these
15 charges?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Do you understand that the maximum
18 possible penalty for the crime charged in Count One is 20 years
19 of imprisonment, plus a fine of the greatest of \$250,000, twice
20 the gain resulting from the offense, or twice the loss to other
21 people resulting from the offense, plus a \$100 special
22 assessment, plus three years of supervised release after your
23 term of imprisonment, plus full restitution to all persons
24 injured by your criminal conduct?

25 THE DEFENDANT: I understand that, your Honor.

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1 THE COURT: Do you understand that the maximum
2 possible penalty for the crimes charged in each of Counts Two
3 and Four is 20 years of imprisonment, plus a fine of the
4 greatest of \$5 million, twice the gain resulting from the
5 offense, or twice the loss to other people resulting from the
6 offense, plus a \$100 special assessment, plus three years of
7 supervised release after your term of imprisonment, plus full
8 restitution to all persons injured by your criminal conduct?

9 THE DEFENDANT: I understand that, your Honor.

10 THE COURT: Do you understand that the maximum
11 possible penalty for the crime charged in Count Three is
12 20 years of imprisonment, plus a fine of the greatest of
13 \$5 million, twice the gain resulting from the offense, or twice
14 the loss to other people resulting from the offense, plus a
15 \$100 special assessment, plus three years of supervised release
16 after your term of imprisonment, plus full restitution to all
17 persons injured by your criminal conduct?

18 THE DEFENDANT: I understand that, your Honor.

19 THE COURT: Do you understand that the maximum
20 possible penalty for the crime charged in Count Five is
21 20 years of imprisonment, plus a fine of the greatest of
22 \$250,000, twice the gain resulting from the offense, or twice
23 the loss to other people resulting from the offense, plus a
24 \$100 special assessment, plus three years of supervised release
25 after your term of imprisonment, plus full restitution to all

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1 persons injured by your criminal conduct?

2 THE DEFENDANT: I understand that, your Honor.

3 THE COURT: Do you understand that the maximum
4 possible combined penalty for the five crimes to which you
5 propose to plead guilty is 100 years of imprisonment, plus a
6 fine of \$15,500,000, or, if greater, the sums of the relevant
7 gains, losses, and statutory amounts associated with your
8 offenses, plus full restitution to all persons injured by your
9 criminal conduct, plus a total of \$500 as the mandatory special
10 assessment, plus supervised release for three years after your
11 term of imprisonment?

12 THE DEFENDANT: I understand that, your Honor.

13 THE COURT: I will now give you some information and
14 verify your understanding of the supervised release aspect of
15 the potential penalty.

16 Supervised release means that you will be subject to
17 monitoring when you are released from prison. Terms and
18 conditions will be imposed. If you violate any of the set
19 terms and conditions, you can be sent back to prison without a
20 jury trial.

21 If you are on supervised release, and you do not
22 comply with any of the set terms or conditions, you can be sent
23 pack to prison for up to two years. You will be given no
24 credit for the time that you served in prison as a result of
25 your sentence and no credit for any time spent on postrelease

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1 supervision. So, for example, if you received a prison term
2 and then a three-year term of supervised release, and, after
3 you left prison, you lived up to the terms of supervised
4 release for almost three years, but then you violated some term
5 of the supervised release, you could be sent to prison for two
6 whole years.

7 Do you understand that?

8 THE DEFENDANT: I understand that, your Honor.

9 THE COURT: Do you also understand that if I accept
10 your guilty plea and adjudge you guilty, that adjudication may
11 deprive you of valuable civil rights, such as the right to
12 vote, the right to hold public office, the right to serve on a
13 jury, and the right to possess any kind of firearm?

14 THE DEFENDANT: I understand that, your Honor.

15 THE COURT: Do you understand that there are
16 sentencing guidelines that the Court must consider in
17 determining your sentence?

18 THE DEFENDANT: I do, your Honor.

19 THE COURT: Have your attorneys discussed the
20 sentencing guidelines with you?

21 THE DEFENDANT: They have, your Honor.

22 THE COURT: Do you understand that in determining your
23 sentence, the Court must calculate the applicable sentencing
24 guidelines range and consider that range, possible departures
25 under the sentencing guidelines, and other sentencing factors

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1 under Title 18 of the United States Code, Section 3553(a)?

2 THE DEFENDANT: I understand that, your Honor.

3 THE COURT: Do you understand that if your attorneys
4 or anyone else has attempted to estimate or predict what your
5 sentence will be, their estimate or prediction could be wrong?

6 THE DEFENDANT: I do, your Honor.

7 THE COURT: Do you also fully understand that even if
8 your sentence is different from what your attorneys or anyone
9 else told you it might be, or if it is different from what you
10 expect, you will still be bound to your guilty plea, and you
11 will not be allowed to withdraw your guilty plea?

12 THE DEFENDANT: I understand that, your Honor.

13 THE COURT: Do you understand that the sentence to be
14 imposed will be determined solely by the Court, and that I can
15 only determine the sentence to be imposed after the probation
16 office prepares a presentence report?

17 THE DEFENDANT: I understand that, your Honor.

18 THE COURT: Do you understand that the Court has
19 discretion, while taking into account the specific provisions
20 and policy statements in the guidelines, to sentence you to any
21 period of imprisonment between time served, at the low end of
22 the range, and the 100-year combined statutory maximums, at the
23 high end?

24 THE DEFENDANT: I understand this, your Honor.

25 THE COURT: Are you now serving any state or federal

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1 sentence, or are you being prosecuted for any other crime?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: Do you understand that in connection with
4 Count One, the information also includes a forfeiture
5 allegation, in which the government asserts that you are
6 required to forfeit to the United States any interest acquired
7 or maintained in violation of Title 18 of the United States
8 Code, Section 1963, any interest in, security of, claim
9 against, or property or contractual right of any kind affording
10 a source of influence over any enterprise which you and your
11 coconspirators established, operated, controlled, conducted, or
12 participated in the conduct of, in violation of Title 18,
13 Section 1962, and any property constituting or derived from any
14 proceed obtained, directly or indirectly, from the racketeering
15 activity charged in Count One?

16 THE DEFENDANT: I understand this, your Honor.

17 THE COURT: Do you understand that in connection with
18 Counts Two through Five, the information includes an additional
19 forfeiture allegation, in which the government asserts that you
20 are required to forfeit to the United States any and all
21 property, real and personal, that constitutes or is derived
22 from proceeds traceable to the commission of the offenses
23 charged in those counts, including, but not limited to, a sum
24 of money in United States currency representing the amount of
25 proceeds traceable to the commission of those offenses?

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1 THE DEFENDANT: I understand this, your Honor.

2 THE COURT: Would you please look again at your
3 agreement, which has been marked as Government Exhibit 1.

4 Have you signed this agreement?

5 THE DEFENDANT: Yes, I have, your Honor.

6 THE COURT: Did you read it before you signed it?

7 THE DEFENDANT: I did, your Honor.

8 THE COURT: Did you discuss it with your attorney
9 before you signed it?

10 THE DEFENDANT: Yes, I did, your Honor.

11 THE COURT: Did you fully understand the agreement
12 before you signed it?

13 THE DEFENDANT: That is correct, your Honor.

14 THE COURT: Does the agreement reflect accurately your
15 complete and total understanding of the entire agreement
16 between the government, your attorney, and you?

17 THE DEFENDANT: It does, your Honor.

18 THE COURT: Is everything that you understand about
19 your plea, cooperation, and sentence covered in the agreement?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Has anything been left out?

22 THE DEFENDANT: No, I do not believe so, your Honor.

23 THE COURT: Has anyone made any promises to you, other
24 than what is written in that agreement, or threatened you or
25 forced you or given you anything to get you to plead guilty or

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1 enter into the agreement?

2 THE DEFENDANT: None of the above, your Honor.

3 THE COURT: Do you understand that even if the
4 government does not oppose or take a position on what your
5 attorney will ask as a sentence, I am free to impose whatever
6 sentence I believe is appropriate under the circumstances and
7 the applicable law, and you will have no right to withdraw your
8 plea?

9 THE DEFENDANT: I fully understand that, your Honor.

10 THE COURT: Do you understand that the agreement
11 provides that you must cooperate fully with the Office of the
12 United States Attorney, the Federal Bureau of Investigation,
13 and any other law enforcement agency designated by the United
14 States Attorney?

15 THE DEFENDANT: I understand that, your Honor.

16 THE COURT: Do you understand that the agreement does
17 not bind any federal, state, or local prosecuting authority,
18 other than the United States Attorney?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you understand that the agreement
21 provides that, if the United States Attorney determines that
22 you have provided substantial assistance in an investigation or
23 prosecution, and if you have fully complied with the
24 understandings specified in the agreement, the United States
25 Attorney will file a motion pursuant to Section 5K1.1 of the

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1 sentencing guidelines, requesting that the Court sentence you
2 in light of the factors set forth in Section 5K1.1(a)(1)
3 through (5)?

4 THE DEFENDANT: I understand that, your Honor.

5 THE COURT: Do you understand that the factors that
6 the Court may consider under Section 5K1.1 include the
7 significance and usefulness of your assistance, taking into
8 consideration the government's evaluation of your assistance,
9 the truthfulness, completeness, and reliability of any
10 information or testimony you provided, the nature and extent of
11 your assistance, any injury suffered or any danger or risk of
12 injury to you or your family as a result of your assistance,
13 and the timeliness of your assistance?

14 THE DEFENDANT: I understand that, your Honor.

15 THE COURT: Do you understand that even if the United
16 States Attorney files such a motion, the sentence to be imposed
17 on you remains within the sole discretion of the Court?

18 THE DEFENDANT: I understand this, your Honor.

19 THE COURT: Do you understand that you will not be
20 entitled to withdraw your plea, even if the Court denies the
21 motion?

22 THE DEFENDANT: I understand that, your Honor.

23 THE COURT: Do you understand that if the United
24 States Attorney determines that you have not provided
25 substantial assistance in an investigation or prosecution, or

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1 that you have violated any provision of the agreement, the
2 United States Attorney is not obligated to file a motion under
3 Section 5K1.1?

4 THE DEFENDANT: I understand this, your Honor.

5 THE COURT: Do you understand that you will not be
6 entitled to withdraw your guilty plea, even if the United
7 States Attorney does not file the motion?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Do you understand that, on page 4, your
10 agreement provides that, if you commit any further crimes, or
11 it is determined that you gave false, incomplete, or misleading
12 testimony or information, or that you otherwise violated any
13 provision of the agreement, you will be subject to prosecution
14 for any federal violations of which the United States Attorney
15 has knowledge, including perjury and obstruction of justice?

16 THE DEFENDANT: I understand this, your Honor.

17 THE COURT: Do you understand that, also on page 4,
18 the agreement provides that, if you commit any further crimes,
19 or it is determined that you gave false, incomplete, or
20 misleading testimony or information, or otherwise violated any
21 provision of the agreement, all statements that you have made
22 to the United States Attorney and other designated law
23 enforcement agents, and any testimony that you have given
24 before a grand jury or other tribunal, may be admissible in
25 evidence in any criminal proceedings against you?

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1 Do you understand that?

2 THE DEFENDANT: I do, your Honor.

3 THE COURT: Do you understand that your agreement also
4 provides that you may not assert a claim that such statements
5 should be suppressed from evidence, and that you have waived
6 your right to claim that such statements should be suppressed
7 from evidence?

8 THE DEFENDANT: I do, your Honor.

9 THE COURT: Do you understand that, on page 2, the
10 plea agreement includes your agreement, with respect to
11 Count One of the information, to forfeit to the United States
12 any interest acquired or maintained as a result of the
13 racketeering activity charged in Count One; any interest in,
14 security of, claim against, or property or contractual right of
15 any kind affording a source of influence over any enterprise
16 which you and your coconspirators established, operated,
17 controlled, conducted, or participated in the conduct of, in
18 violation of Title 18, Section 1962, as charged in Count One;
19 and any property constituting or derived from any proceeds
20 obtained, directly or indirectly, from the racketeering
21 activity charged in Count One?

22 THE DEFENDANT: I understand this, your Honor.

23 THE COURT: Do you understand that page 2 of the
24 agreement also includes your agreement with respect to
25 Counts Two through Five of the information to forfeit to the

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1 United States any and all property, real or personal, that
2 constitutes, or is derived from, the commission of the offenses
3 alleged in Counts Two through Five?

4 THE DEFENDANT: I understand this, your Honor.

5 THE COURT: Do you understand that any amount that you
6 do forfeit will not be credited toward any fines, restitution,
7 cost of imprisonment, or any other additional penalty that the
8 Court may impose on you?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Do you understand that, on page 4, the
11 agreement provides that the government will not object to your
12 continued release upon bail conditions to be set, but that the
13 government reserves the right to move for revocation or
14 modification of those conditions without notice to you if it
15 determines that you have violated any provision of your
16 agreement or any release condition, or if it determines that
17 revocation or modification is otherwise appropriate?

18 THE DEFENDANT: I understand this, your Honor.

19 THE COURT: Do you still want to plead guilty pursuant
20 to this plea agreement?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Ms. Cantwell, do you know of any valid
23 reason why Mr. Tomita would prevail at trial?

24 MS. CANTWELL: No, your Honor.

25 THE COURT: Do you know of any reason why he should

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1 not be permitted to plead guilty?

2 MS. CANTWELL: No, your Honor.

3 THE COURT: Mr. Tomita, would you and your attorneys
4 please stand, and would you tell me what makes you guilty of
5 each of the crimes to which you are pleading guilty today.

6 MS. CANTWELL: And, your Honor, just to be clear, he
7 is going to read from a prepared statement that we worked on
8 together.

9 THE COURT: Very good. And I may have some questions
10 for him following the reading of the statement.

11 MS. CANTWELL: Okay.

12 THE DEFENDANT: Okay.

13 From March 2020 through March 2021, I was head trader
14 at Archegos Capital Management. During this time, I and others
15 executed trades that allowed the fund to amass market power and
16 certain securities traded on U.S. exchanges. Archegos used
17 security-based swaps to gain exposure to these securities while
18 concealing the true size of the fund's positions from the
19 market and our trading counterparties.

20 Once Archegos gained market power in these securities,
21 I and others used this power to trade in such a way as to
22 artificially manipulate the prices of the securities.

23 Acting at the direction of the head of the fund, I
24 traded to increase the prices of names in which Archegos held
25 long positions and reduced the prices of securities in which

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1 the fund helped short positions. I did this by, for example,
2 buying large amounts of a stock when the price dropped in
3 response to negative news or trading premarket when I knew the
4 fund's activity would have a greater impact on price.

5 I manipulated the prices of these securities in order
6 to influence others in the market to buy or sell the securities
7 in ways that would benefit Archegos' key positions and increase
8 Archegos' purchasing power through variation margin.

9 In addition to manipulating the prices of certain
10 securities, I also made misrepresentations to Archegos' trading
11 counterparties. These counterparties were banks and brokers
12 who extended the fund credit to trade on margin and entered
13 into swap agreements with the fund.

14 I knew that the fund's counterparties considered
15 Archegos' portfolio and assets when setting margin rates and
16 limits on swap capacity. In order to maintain favorable margin
17 rates and gain additional swap capacity, I made false and
18 misleading statements and omissions regarding the size and the
19 composition of the fund's portfolio. I knew that doing so
20 would mislead counterparties as to the true risks presented by
21 the fund. I made these false and misleading statements and
22 omissions during phone calls and email exchanges with
23 representatives from the banks.

24 While engaged in the activities I described, I worked
25 under the supervision of Sung Kook Hwang, also known as Bill

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1 Hwang, the founder and head of Archegos. I agreed with Bill
2 and others to carry out the business of Archegos through a
3 pattern of manipulating the prices of securities and deceiving
4 counterparties. I did so knowing that I, Bill, or others
5 committed at least two manipulative or deceptive acts in the
6 course of conducting Archegos' affairs. I knew that Archegos'
7 trading activity was carried out over interstate wires and
8 affected interstate commerce.

9 I knew this conduct was wrong at the time that I
10 participated in it, and I knew that things I did were illegal.

11 Thank you.

12 THE COURT: Thank you.

13 Does everything that you have just read to me from
14 those notes truthfully relate your actions and your knowledge
15 at the relevant time?

16 THE DEFENDANT: Correct, your Honor.

17 THE COURT: Mr. Podolsky, are there any further
18 factual issues that the government would like addressed in the
19 plea allocution?

20 MR. PODOLSKY: Just one, your Honor.

21 If you could ask whether any of the activities that
22 Mr. Tomita just described took place in Manhattan or in New
23 York City, just to clarify venue.

24 THE DEFENDANT: The answer to that question is, yes,
25 some of these activities took place in Manhattan.

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1 THE COURT: Thank you.

2 Mr. Tomita and your counsel, you can be seated for a
3 moment, and I am going to ask Mr. Podolsky to summarize the
4 government's evidence against Mr. Tomita.

5 MR. PODOLSKY: Thank you, your Honor.

6 If we were to proceed to trial in this case, the
7 evidence offered by the government would include: Testimony by
8 law enforcement officials and percipient witnesses, extensive
9 email Bloomberg message and text message records, notes and
10 recordings of telephone calls, and corporate bank and other
11 financial and trading records.

12 THE COURT: And it is the government's position that
13 that body of evidence would be sufficient to establish guilt
14 beyond a reasonable doubt?

15 MR. PODOLSKY: Very much, your Honor, yes.

16 THE COURT: Thank you.

17 Mr. Tomita, would you please stand again.

18 How do you now plead to the charge in Count One of the
19 information, guilty or not guilty?

20 THE DEFENDANT: Guilty, your Honor.

21 THE COURT: How do you plead to the charge in
22 Count Two of the information?

23 THE DEFENDANT: Guilty, your Honor.

24 THE COURT: How do you plead to the charge in
25 Count Three of the information?

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1 THE DEFENDANT: Guilty, your Honor.

2 THE COURT: How do you plead to the charge in
3 Count Four of the information?

4 THE DEFENDANT: Guilty, your Honor.

5 THE COURT: And how do you plead to the charge in
6 Count Five of the information?

7 THE DEFENDANT: Guilty, your Honor.

8 THE COURT: Are you pleading guilty to each of these
9 charges because you are, in fact, guilty of the crimes charged?

10 THE DEFENDANT: That is correct, your Honor.

11 THE COURT: Are you pleading guilty voluntarily and of
12 your own free will?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Would you please look at the Advice of
15 Rights Form, which has been labeled Court Exhibit 1.

16 Have you signed this form?

17 THE DEFENDANT: I have, your Honor.

18 THE COURT: Did you read it before you signed it?

19 THE DEFENDANT: I did, your Honor.

20 THE COURT: Did you discuss it with your attorneys
21 before you signed it?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: And did you understand it before you
24 signed it?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: Ms. Cantwell, did you also review and sign
2 Court Exhibit 1?

3 MS. CANTWELL: I did, your Honor.

4 THE COURT: Ms. Cantwell, are there any other
5 questions that you believe I should ask Mr. Tomita in
6 connection with this plea?

7 MS. CANTWELL: No, your Honor.

8 THE COURT: Mr. Podolsky, are there any other
9 questions that you believe I should ask in connection with the
10 plea?

11 MR. PODOLSKY: No, your Honor.

12 THE COURT: Mr. Tomita, you have acknowledged that you
13 are guilty as charged in the superseding information. I find
14 that you know your rights and that you are waiving them
15 voluntarily. Because your plea is entered knowingly and
16 voluntarily, and is supported by an independent basis in fact
17 containing each of the essential elements of each offense, I
18 accept your guilty plea, and I adjudge you guilty of the
19 offenses charged in Counts One, Two, Three, Four, and Five of
20 the superseding information captioned United States of America
21 v. William Tomita, to which you have pleaded guilty.

22 Ms. Cantwell, do you wish to be present for any
23 interview of Mr. Tomita in connection with the presentence
24 report?

25 MS. CANTWELL: I do, your Honor.

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1 THE COURT: Thank you. You can be all be seated.

2 So, counsel, what is your desire with respect to
3 setting a sentencing date or a control date?

4 MR. PODOLSKY: Your Honor, in the circumstances of
5 this case, I think additional time would afford an opportunity
6 for the Court to receive information that would be important to
7 Mr. Tomita's sentencing. For that reason, we would request a
8 control date within six months, at which time we will update
9 the Court as to whether a presentence investigation report
10 should be prepared, whether additional time is necessary. Of
11 course, in the interim, if it becomes clear that we can proceed
12 to sentence sooner, we'll update the Court and request
13 preparation of the report at a sooner time.

14 THE COURT: Thank you.

15 Ms. Ng, may we have a control date about six months
16 out from here?

17 THE DEPUTY CLERK: Friday, October 28, 2022, at
18 11:00 a.m.

19 THE COURT: Counsel, are you all available on
20 October 28, 2022, at 11:00 in the morning, for a control date?

21 MR. PODOLSKY: We are, your Honor.

22 MS. CANTWELL: Sure thing, your Honor. Thank you.

23 THE COURT: Thank you.

24 October 28, 2022, at 11:00 a.m., is set as the control
25 date for sentencing.

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1 Counsel, when it does come time to have the
2 presentence report prepared, I would ask that you give your
3 comments and any objections back promptly to the probation
4 office when the initial disclosure is made, and I ask that you
5 make your submissions in accordance with my sentencing
6 submission procedures, which are part of my individual
7 practices on the Court's website.

8 Mr. Tomita, at some point, the probation office will
9 be preparing a presentence report to assist me in sentencing
10 you. You will be interviewed by the probation office. It is
11 important that the information that you give to the probation
12 officer be truthful and accurate. The report is important in
13 my decision as to what your sentence will be. You and your
14 attorney have a right and will have an opportunity to examine
15 the report, to challenge or comment on it, and to speak on your
16 behalf before sentencing. Failing to be truthful with the
17 probation officer and the Court may have an adverse effect on
18 your sentence and may subject you to prosecution.

19 Do you understand that?

20 THE DEFENDANT: I understand that, your Honor.

21 THE COURT: Thank you.

22 Is there a proposed bail package?

23 MR. PODOLSKY: There is, your Honor.

24 We've discussed with defense counsel and would jointly
25 propose that Mr. Tomita be released today upon his signature of

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1 a \$500,000 personal recognizance bond, to be signed within
2 three weeks by one financially responsible person or one
3 additional financially responsible person.

4 THE COURT: One person in addition to Mr. Tomita?

5 MR. PODOLSKY: Exactly, your Honor.

6 THE COURT: Okay.

7 MR. PODOLSKY: His travel to be restricted to the
8 Continental United States, and he will surrender today both his
9 United States and Japanese passports and any other travel
10 documents.

11 And I will say that in light of the agreement between
12 Mr. Tomita and the government and the fact that he has his
13 passports to be surrendered here with him, we do believe that
14 these conditions would reasonably assure his appearance in
15 court, as well as the protection of the community.

16 THE COURT: Thank you.

17 Would it be regular supervision?

18 MR. PODOLSKY: Yes, your Honor.

19 THE COURT: Officer Ovalles, are there any other
20 conditions that you think need to be specified in the
21 disposition sheet?

22 MR. OVALLES: Your Honor, the only condition that I
23 would ask that your Honor note, as opposed to regular pretrial
24 supervision, it would be pretrial supervision as directed.
25 Besides that, nothing else, your Honor.

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1 THE COURT: Very good.

2 I will now prepare the disposition form.

3 This is a voluntary surrender, correct?

4 MS. CANTWELL: Yes, your Honor.

5 THE COURT: Today?

6 MS. CANTWELL: Yes, your Honor.

7 THE COURT: Shall I say defendant to be released on
8 own signature plus surrender of passports?

9 MR. PODOLSKY: Yes, your Honor.

10 THE COURT: What I have written on this form is:

11 Date of arrest: 4/22/22, voluntary surrender.

12 Agreed conditions of release: \$500,000 PRB1FRP;
13 travel restricted to Continental United States; surrender
14 travel documents and no new applications; pretrial supervision
15 as directed by pretrial services.

16 Defendant to be released on own signature plus the
17 following conditions: Surrender of passports; remaining
18 conditions to be met by 21 days.

19 Is there anything else you would expect me to write on
20 this form?

21 MR. PODOLSKY: No, your Honor. Thank you.

22 THE COURT: Officer Ovalles, anything else?

23 MR. OVALLES: Nothing further, your Honor. Thank you.

24 THE COURT: Very good.

25 Let me print out copies to sign them.

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1 I find that these conditions are appropriate and
2 sufficient based on the representations that have been made
3 here to assure against risk of flight and any danger to the
4 public.

5 (Pause)

6 THE COURT: I've provided the five copies to Ms. Ng.
7 Mr. Tomita, do you understand the conditions that I
8 have imposed for your release pending sentencing?

9 THE DEFENDANT: I do, your Honor. Thank you.

10 THE COURT: And do you understand that the violation
11 of any conditions can have severe consequences?

12 THE DEFENDANT: I certainly do, your Honor.

13 THE COURT: Thank you.

14 Do you also understand that if you don't appear in
15 court on the date that is finally set for your actual
16 sentencing, you will be guilty of a criminal act for which you
17 could be sentenced to imprisonment separate and apart from, and
18 in addition to, any other sentence that you might receive for
19 the crimes to which you have just pleaded guilty?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Then I will expect to see you on the
22 appropriate date.

23 And I also encourage you to get yourself vaccinated
24 and get the boosters that are available to you to protect
25 yourself and your family.

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1 THE DEFENDANT: Thank you, your Honor. I'll keep up
2 with my vaccinations, as I have been.

3 THE COURT: Thank you. Glad to hear it.

4 I didn't just single you out for that. I encourage
5 everybody.

6 Is there anything else that we need to take up
7 together this afternoon?

8 MR. PODOLSKY: No, your Honor. Thank you.

9 MS. CANTWELL: No, your Honor. Thank you very much.

10 THE COURT: Thank you.

11 Thank you, all. Stay safe and be well. We're
12 adjourned.

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA,

4 v. 22 Cr. 673 (RA)

5 CAROLINE ELLISON,

6 Defendant.
7 -----x

New York, N.Y.
December 19, 2022
4:30 p.m.

11 Before:

12 HON. RONNIE ABRAMS,

District Judge

14 APPEARANCES

15 DAMIAN WILLIAMS
16 United States Attorney for the
Southern District of New York

17 DANIELLE SASSOON
18 NICOLAS ROOS
Assistant United States Attorney

19 ANJAN SAHNI
20 PETER G. NEIMAN
STEPHANIE AVAKIAN
21 NICK WERLE
Attorneys for Defendant

22 Also Present:

23 Lea Harmon, Pretrial Services Officer

24

25

1 (Case called)

2 LAW CLERK: Counsel, please state your name for the
3 record.

4 MS. SASSOON: Good afternoon, your Honor. Danielle
5 Sassoon and Nick Roos for the United States. And with us at
6 counsel's table is Lea Harmon from pretrial services.

7 THE COURT: Good afternoon to all of you.

8 MR. SAHNI: Good afternoon, your Honor. Anjan Sahni,
9 Peter Neiman, Stephanie Avakian and Nick Werle from WilmerHale
10 on behalf of Ms. Caroline Ellison.

11 THE COURT: Good afternoon to all of you.

12 I do want to note for the record that Mr. Sahni and I
13 worked together at the US attorney's office many years ago.

14 You can be seated.

15 As I said in my endorsement earlier today, I do not
16 believe that Ms. Ellison has met the high standard for closing
17 the courtroom. I intend to file her letter requesting as much
18 together with my endorsement once the other filings in this
19 matter have been unsealed. And I'll address the related
20 sealing issues at the end of this proceeding.

21 So, Ms. Ellison, I understand that you wish to plead
22 guilty to Counts One through Seven of the superseding
23 information; is that correct?

24 THE DEFENDANT: Yes.

25 THE COURT: So before deciding whether to accept you

1 plea, I'm going to ask you certain questions so that I can be
2 sure you understand your rights and that you are pleading
3 guilty voluntarily and because you are guilty and not for any
4 other reason. It's important that you answer my questions
5 honestly and completely, but if at any time you have questions
6 about anything, feel free to ask me or feel free to consult
7 with your counsel; okay?

8 THE DEFENDANT: Okay.

9 THE COURT: Could you please place Ms. Ellison under
10 oath.

11 (Defendant sworn)

12 THE COURT: So you are now under oath. You should
13 know if you answer any of my questions falsely, you could be
14 charged with a separate crime of perjury.

15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: So I'm going to start by asking you
18 questions to ensure that you are competent to plead guilty.
19 These are questions I ask of everyone in your situation.

20 How old are you?

21 THE DEFENDANT: 28.

22 THE COURT: How far did you go in school?

23 THE DEFENDANT: I got a bachelor's degree.

24 [REDACTED]

25 [REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

THE COURT: Have you ever been hospitalized for mental illness, alcoholism or drug addiction?

THE DEFENDANT: No.

THE COURT: In the past 24 hours, have you taken any drugs, medicine or pills or drunk any alcoholic beverages?

THE DEFENDANT: I had one beer at about 8:00 p.m. last night. That's it.

THE COURT: Is your mind clear today?

THE DEFENDANT: Yes.

THE COURT: And do you understand what's happening in these proceedings?

THE DEFENDANT: Yes.

THE COURT: Does either counsel have any doubt as to Ms. Ellison's competence to plead guilty at this time?

MS. SASSOON: No doubt, your Honor.

MR. SAHNI: No, your Honor.

THE COURT: On the basis of Ms. Ellison's responses to my questions and my observations of her demeanor here in court

1 and representations of counsel, I find that she's fully
2 competent to enter an informed plea of guilty at this time.

3 Have you had enough time and opportunity to discuss
4 your case with your attorneys, including the nature of the
5 charges to which you intend to plead guilty to and any possible
6 defenses you may have?

7 THE DEFENDANT: Yes, I have.

8 THE COURT: Have you had enough time to discuss with
9 them the consequences of pleading guilty and the sentence which
10 may be imposed?

11 THE DEFENDANT: Yes.

12 THE COURT: Are you satisfied with their
13 representation of you?

14 THE DEFENDANT: Yes.

15 THE COURT: So I understand, as I noted, that you
16 intend to plead guilty to the charges contained in a
17 superseding information, which is a document containing a
18 formal accusation brought by the government.

19 Have you received a copy of the superseding
20 information?

21 THE DEFENDANT: Yes, I have.

22 THE COURT: And have you read it?

23 THE DEFENDANT: Yes.

24 THE COURT: Have you discussed it with your attorneys?

25 THE DEFENDANT: Yes.

1 THE COURT: Would you like me to read it out loud or
2 do you waive its public reading?

3 THE DEFENDANT: I waive the public reading.

4 THE COURT: So under our legal system, before you or
5 anyone else can be charged with a felony offense, the
6 government is obligated to go to a grand jury, which must
7 decide whether there's probable cause to believe that an
8 offense was committed and that you committed it, and that
9 decision can result in what's called an indictment. I want to
10 make sure that you understand that by allowing the government
11 to charge you by way of this superseding information, you are
12 giving up your right to being charged by a grand jury in an
13 indictment.

14 THE DEFENDANT: Yes, I do.

15 THE COURT: And I have a waiver of indictment form
16 that you appear to have signed.

17 Did you just sign this waiver of indictment form?

18 THE DEFENDANT: Yes.

19 THE COURT: And did you discuss it with your attorneys
20 before signing it?

21 THE DEFENDANT: Yes.

22 THE COURT: Were any threats or promises made -- other
23 than by the prosecution in the written plea agreement -- to get
24 you to waive indictment?

25 THE DEFENDANT: No.

1 THE COURT: Does any counsel believe that Ms. Ellison
2 has not knowingly and voluntarily waived her right to be
3 charged by a grand jury?

4 MR. SAHNI: No, your Honor.

5 MS. SASSOON: It appears her waiver is knowing, your
6 Honor.

7 THE COURT: I find that Ms. Ellison has knowingly and
8 voluntarily waived her right to be charged by a grand jury and
9 authorize the filing of the information.

10 So what now I'm going to do is explain certain
11 constitutional rights that you have to you. These are rights
12 that you will be giving up if you enter a guilty plea.

13 First, under the Constitution and laws of the United
14 States, you have a right to plead not guilty to the charges in
15 the superceding information.

16 Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: If you did plead not guilty, you would be
19 entitled under the Constitution to a speedy and public trial by
20 jury to those charges.

21 Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: In advance of trial, if you went to trial,
24 you would have the opportunity to seek suppression of any or
25 all of the evidence against you, on the basis that it was

1 obtained in violation of the Constitution.

2 Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: At trial, again, if you chose to go to
5 trial, you would be presumed innocent. That means that you
6 would not have to prove that you were innocent. Instead, the
7 government would need to prove your guilt beyond a reasonable
8 doubt before you could be found guilty. So even if you did
9 nothing or said nothing at trial, you could not be convicted
10 unless a jury of 12 people agreed unanimously that you are
11 guilty.

12 Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: During trial, if you chose to go to trial,
15 the witnesses for the prosecution would have to come to court
16 and testify in your presence, where you could see them and hear
17 them and your lawyer could cross-examine them. If you wanted
18 to, your lawyer could offer evidence on your behalf. You would
19 be able to use the Court's power to compel witnesses to come to
20 court to testify truthfully in your defense, even if they
21 didn't want to come.

22 Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: And at trial, again, if you went to trial,
25 you would have the right to testify if you wanted to, but you

1 would also have the right not to testify. And if you chose not
2 to testify, that could not be used against you in any way. So
3 no inference or suggestion of guilt could be made from the fact
4 that you chose not to testify.

5 Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: At trial and every stage of your case, you
8 would be entitled to be represented by an attorney. And if you
9 could not afford an attorney, one would be appointed at public
10 expense, meaning free of cost, to represent you.

11 Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: If you were convicted at trial, if you
14 chose to go to trial, you would have the right to appeal that
15 verdict to a higher court.

16 Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: As I said before, you have the right to
19 plead not guilty. So even as you sit here right now for
20 purposes of entering a guilty plea, you have the right to
21 change your mind and to go to trial. If you do plead guilty
22 and I accept your plea, there will be no trial and you will be
23 giving up the rights that I just described.

24 Do you understand that?

25 THE DEFENDANT: Yes.

1 THE COURT: If you plead guilty, I will sentence you
 2 at the appropriate time based on your admissions, after
 3 considering whatever submissions I get from you and from your
 4 lawyers and from the government, as well as a presentence
 5 report prepared by the probation department. But there will be
 6 no appeal with respect to whether the government could use the
 7 evidence it has against you or with respect to whether you did
 8 or did not commit the crime.

9 Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: If you plead guilty, you also have to
 12 understand that you are giving up your right not to incriminate
 13 yourself since I'm going to ask you certain questions here in
 14 court today in order to satisfy myself that you are in fact
 15 guilty as charged.

16 Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: So I understand that you intend to plead
 19 guilty to Counts One through Seven of the superseding
 20 information, and that includes conspiracy to commit wire fraud
 21 on customers, wire fraud on customers, conspiracy to commit
 22 wire fraud on lenders, wire fraud on lenders, conspiracy to
 23 commit commodities fraud, conspiracy to commit securities fraud
 24 and conspiracy to commit money laundering.

25 Would the government please state the elements of the

1 offenses in question.

2 MS. SASSOON: Yes, your Honor.

3 Counts One and Three charge the defendant with
4 conspiracy to commit wire fraud in violation of 18 USC 1349.

5 This has two elements:

6 First, the existence of the conspiracy to commit wire
7 fraud, and I'll walk through the elements of wire fraud in a
8 moment; and

9 Second, that the defendant knowingly and willfully
10 became a member and joined in the conspiracy.

11 The elements of wire fraud -- and wire fraud is also
12 charged in Counts Two and Four in the superseding
13 information -- are as follows:

14 First, that there was a scheme or artifice to defraud
15 or to obtain money or property by materially false and
16 fraudulent pretenses, representations or promises;

17 Second, that the defendant knowingly participated in
18 the scheme or artifice to defraud with knowledge of its
19 fraudulent nature and with specific intent to defraud, or that
20 she knowingly and intentionally aided and abetted others in the
21 scheme; and

22 Third, that in the execution of that scheme, the
23 defendant used or caused the use of interstate or international
24 wires, and wires refers to use of the telephone, text messages,
25 emails, and it also refers to wire transfers of funds.

1 Count Five charges conspiracy to commit commodities
2 fraud in violation of 18 USC §371. Conspiracy under 371 has
3 three elements:

4 First, that two or more persons entered the unlawful
5 agreement charged in the specific count of the indictment;

6 Second, that the defendant knowingly and willfully
7 became a member of that conspiracy; and

8 Third, that one of the members of the conspiracy
9 knowingly committed at least one overt act in furtherance of
10 the conspiracy.

11 Count Five charges the defendant with conspiracy to
12 commit commodities fraud in violation of Title 7 United States
13 Code §91 and 13(a)(5) and Title 17 Code of Federal Regulations
14 §180.1. And there are three elements to this crime:

15 First, in connection with any swap or contract of sale
16 of any commodity in interstate commerce or contract for future
17 delivery on or subject to the rules of any registered entity;

18 Second, the defendant or one of her coconspirators did
19 any one of the following: A, employed or attempted to use or
20 employ a manipulative device, scheme or artifice to defraud; B,
21 made or attempted to make an untrue or misleading statement of
22 a material fact or omitted to state a material fact necessary
23 in order to make the statements made not untrue or misleading;
24 or C, engaged or attempted to engage in an act, practice or
25 course of business that operated or would operate as a fraud or

1 deceit upon any person; and

2 Third, that the defendant acted knowingly, willfully
3 and with the intent to defraud.

4 Count Six charges a conspiracy to commit securities
5 fraud in violation of Title 18 United States Code §371. I
6 listed the elements of 371, so I'll now state the elements of
7 securities fraud in violation of Title 15 United States Code
8 §78JB and 78FF and Title 17 Code of Federal Regulations
9 §240.10b-5. There are three elements:

10 First, that in connection with the purchase or sale of
11 securities, the proposed defendant either employed a device,
12 scheme or artifice to defraud or made an untrue statement of
13 material fact or omitted to state a material fact which made
14 what was said under the circumstances misleading, or three,
15 engaged in an act, practice or course of business that operated
16 or would operate as a fraud or deceit upon a purchaser or
17 seller;

18 Second, the defendant acted knowingly, willfully, and
19 with intent to defraud; and

20 Third, that the defendant knowingly used or caused to
21 be used any means or instruments of transportation or
22 communication in interstate commerce or the use of the mails in
23 furtherance of the fraudulent conduct.

24 The last count, Count Seven, charges the defendant
25 with conspiracy to commit money laundering in violation of 18

1 USC §1956(h). The elements of money laundering conspiracy are:

2 First, that two or more people entered into an
3 unlawful agreement to commit money laundering; and

4 Second, that the defendant knowingly and willfully
5 entered into the agreement.

6 Count Seven charges two objects of the conspiracy:

7 First, a concealment object, that the defendant
8 conducted or attempted to conduct a financial transaction which
9 must in some way or degree have affected interstate or foreign
10 commerce;

11 Second, that the financial transaction at issue
12 involved the proceeds of specified unlawful activity, which
13 here is alleged to have been a wire fraud scheme;

14 Third, that the defendant knew that the financial
15 transaction involved the proceeds of some form of unlawful
16 activity; and

17 Fourth, that the defendant knew that the transaction
18 was designed in whole or in part to either disguise the nature,
19 location, source, ownership or control of the proceeds of the
20 unlawful activity.

21 The second object of the money laundering conspiracy
22 is engaging in money transactions of over \$10,000 in property
23 derived from specified unlawful activity. The elements are:

24 First, that the defendant engaged in a monetary
25 transaction in or affecting interstate commerce;

1 Second, that the monetary transaction involved
2 criminally derived property of a value greater than \$10,000;

3 Third, that the property was derived from specified
4 unlawful activity;

5 Fourth, that the defendant acted knowing that the
6 transaction involved proceeds of a criminal offense; and

7 Fifth, that the transaction took place in the United
8 States.

9 If this case proceeded to trial, the government would
10 also have to prove venue in the Southern District of New York
11 by a preponderance of the evidence.

12 THE COURT: Thank you.

13 Ms. Ellison, I know that was a lot of legalese, but
14 the real question is: Do you understand if you were to go to
15 trial, the government would need to prove all of the elements
16 of those crimes to a jury beyond a reasonable doubt, as well as
17 venue at a lower standard, by a preponderance of the evidence?

18 Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: So now let's discuss the maximum

21 penalties. The maximum means the most that could possibly be
22 imposed. It doesn't necessarily mean it is the sentence you
23 will receive. But you have to understand that by pleading
24 guilty, are you exposing yourself to the possibility of
25 receiving any combination of punishments up to the maximums I'm

1 about to describe.

2 So the maximum sentences for Counts One, Two, Three

3 and Four are all the same, so I'm going to read them together,

4 okay, at once. So with respect to your liberty, the maximum

5 term of imprisonment for each of the four counts, One through

6 Four, is 20 years in prison.

7 Do you understand that?

8 THE DEFENDANT: Yup.

9 THE COURT: Any term of imprisonment that you do

10 receive may be followed by a term of supervised release of

11 three years on each count.

12 Do you understand that?

13 THE DEFENDANT: Yup.

14 THE COURT: Supervised release means that, if you are

15 sentenced to prison, after you are released from prison, you

16 will be subject to the supervision of the probation department,

17 you will be required to obey certain rules, and if you violate

18 those rules, you can be returned to prison without a jury trial

19 to serve additional time even beyond your original sentence.

20 Do you understand that?

21 THE DEFENDANT: Yup.

22 THE COURT: You should also understand that there is

23 no parole in the federal system. So if you are sentenced to

24 prison, you will not be released early on parole. Although,

25 there is a limited opportunity to earn credit for good

1 behavior.

2 Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: Now, in addition to these restrictions on

5 your liberty, the punishment for these crimes may also include

6 certain financial penalties. The maximum allowable fine on

7 each of Counts One through Four is \$250,000, twice the gross

8 pecuniary gain derived from the offense or twice the gross

9 pecuniary loss to persons other than yourself resulting from

10 the offense, whichever is greatest.

11 Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: I'm also required to impose a mandatory

14 special assessment or fee of \$100 on each count.

15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: In addition, I must order restitution to

18 any persons or entities injured as a result of your criminal

19 conduct, and I can order you to forfeit all property derived

20 from the offense or used to facilitate the offense.

21 So do you understand that those are the maximum

22 penalties for each of Counts One through Four?

23 THE DEFENDANT: Yes.

24 THE COURT: Now, we're going to turn to Counts Five

25 through Six. And again, I'm going to group these and talk

1 about them together.

2 With respect to your liberty on Counts Five and Six,

3 the maximum term of imprisonment for each count is five years.

4 Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: Any term of imprisonment may be followed

7 by a term of supervised release of three years on each count.

8 And in addition, the punishment, again, includes certain

9 financial penalties. The maximum allowable penalty is, again,

10 \$250,000 for each of Counts Five and Six or twice the gross

11 pecuniary gain derived from the offense or twice the gross

12 pecuniary loss to persons other than yourself resulting from

13 the offense, whichever is greatest.

14 Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: Again, I'm required to impose a mandatory

17 special assessment of \$100 on each count. And I must order

18 restitution to any persons or entities injured as a result of

19 your criminal conduct, and I can order you to forfeit all

20 property derived from the offense or used to facilitate the

21 offense.

22 And then lastly, on Count Seven, that has a maximum

23 term of imprisonment of 20 years and a maximum term of

24 supervised release of three years, a maximum allowable fine of

25 \$500,000 or twice the value of the property involved in the

1 transaction, whichever is greater.

2 Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: I'm also required to impose the mandatory
5 special assessment of \$100, as I mentioned earlier, on each of
6 these counts. And I must, again, order restitution to any
7 persons or entities injured as a result of your criminal
8 conduct, and I can order you to forfeit all property derived
9 from the offense or used to facilitate the offense.

10 Do you understand that these are the maximum penalties
11 for each of the counts, Counts One through Seven?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you understand that the total maximum
14 sentence of incarceration on Counts One through Seven of the
15 superseding information is 110 years in prison?

16 THE DEFENDANT: Yes.

17 THE COURT: Is Ms. Ellison now serving a state or
18 federal sentence or otherwise being prosecuted or investigated
19 elsewhere, as far as you know?

20 MS. SASSOON: No, your Honor, not criminally
21 investigated.

22 THE COURT: Understood. Thank you.

23 So you should be aware that the punishments that I
24 have just described are those that may be part of a sentence.
25 Being convicted of a felony may have other consequences.

1 Are you a United States citizen?

2 THE DEFENDANT: Yes.

3 THE COURT: Then you should understand that as a
4 result of your guilty plea, you may lose certain valuable civil
5 rights, to the extent that you have them now, such as the right
6 to vote, the right to hold public office, the right to serve on
7 a jury and the right to possess any kind of firearm.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: So now we're going to talk about the
11 sentencing guidelines. In imposing sentence, federal judges
12 are required to consider the recommendations of the federal
13 sentencing guidelines. The guidelines are a complicated set of
14 rules for determining an appropriate sentence. And although,
15 at one time, they were mandatory -- meaning judges were
16 required to follow them -- they are no longer mandatory or
17 binding on judges, but nonetheless, judges must consider the
18 guidelines and properly calculate them before imposing
19 sentence.

20 Ultimately, though, a judge is required to give the
21 sentence that she believes best satisfies the purposes of the
22 criminal law as set forth in a provision of the law, which is
23 18 United States Code §3553(a), even if that's higher or lower
24 than a guidelines recommendation.

25 Do you understand all of that?

1 THE DEFENDANT: Yes.

2 THE COURT: Did you discuss the sentencing guidelines
3 with your attorneys?

4 THE DEFENDANT: Yes.

5 THE COURT: And do you understand that they're only
6 recommendations to the Court?

7 THE DEFENDANT: Yes.

8 THE COURT: Now, I understand that you have entered
9 into a written plea agreement with the government; is that
10 correct?

11 THE DEFENDANT: Yes.

12 THE COURT: I have before me an agreement that's dated
13 December 18th, addressed to your attorneys, signed by various
14 representatives on behalf of the government. I'm going to mark
15 it as Court Exhibit 1. And I'm going to ask my law clerk just
16 to show it to you and ask you if your signature is on the last
17 page.

18 Is that your signature?

19 THE DEFENDANT: Yes.

20 THE COURT: Before you signed this agreement, did you
21 read the entire agreement?

22 THE DEFENDANT: Yes.

23 THE COURT: And did you discuss it with your
24 attorneys?

25 THE DEFENDANT: Yes.

1 THE COURT: I understand it's a somewhat lengthy
2 document, it contains some technical legal language. But after
3 reviewing it and discussing it with your attorneys, do you
4 understand all of the terms of the agreement?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you have any questions about it?

7 THE DEFENDANT: No.

8 THE COURT: I'm going to ask the government to
9 summarize the primary terms of the agreement.

10 MS. SASSOON: Yes, your Honor.

11 The agreement begins by outlining the seven charges to
12 which Ms. Ellison will plead guilty and the penalties
13 associated with those charges. It specifies that the defendant
14 is agreeing to waive any defense related to venue with respect
15 to the seven charges in the information. The defendant admits
16 to the forfeiture allegations and states that she understands
17 she'll be making restitution with respect to the charges.

18 The agreement then describes some of the terms of the
19 defendant's cooperation with the government and the obligations
20 she's committing to in order to fulfill her cooperation with
21 the government. It then outlines essentially the defendant's
22 immunity that she's receiving under this agreement, both for
23 the charges in Counts One through Seven and also other conduct
24 in which she has engaged and disclosed to the government.

25 On page 4, the agreement outlines what the government

1 will do if the defendant provides substantial assistance to the
2 government and upholds her end of the cooperation agreement,
3 including informing the Court of her assistance and making a
4 motion under United States Sentencing Guidelines §5K1.1, while
5 noting that her sentence is ultimately going to be determined
6 by the Court at the time of sentencing.

7 On page 5, the agreement outlines the proposed bail
8 package to the Court for the defendant. And the agreement also
9 notes that the defendant has chosen not to request discovery
10 materials and understands that the government will also not be
11 producing any discovery or material under *Brady* and *Giglio*.

12 THE COURT: Thank you.

13 Ms. Ellison, is that consistent with your
14 understanding of this agreement?

15 THE DEFENDANT: Yes, it is.

16 THE COURT: I'm just going to follow up just very
17 briefly with two of them.

18 I want you to understand that it's up to the
19 government and not to me to decide whether whatever cooperation
20 you provide is productive enough for the government to file the
21 5K1.1 motion it mentioned and recommend a sentence that's below
22 the sentencing guidelines.

23 Do you understand that's up to the government?

24 THE DEFENDANT: Yes.

25 THE COURT: You should also understand that even if

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1 the government does that, it's ultimately up to me to decide
2 whether to give you any credit and, if so, how much for any
3 cooperation you may have provided.

4 Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: Did you willingly sign this agreement?

7 THE DEFENDANT: Yes, I did.

8 THE COURT: Are you willingly pleading guilty today?

9 THE DEFENDANT: Yes.

10 THE COURT: Has anyone threatened, bribed or forced
11 you either to sign the plea agreement or to plead guilty?

12 THE DEFENDANT: No.

13 THE COURT: Other than what's in the plea agreement,
14 has anyone offered you any inducement to plead guilty?

15 THE DEFENDANT: No.

16 THE COURT: Has anyone made any promise to you as to
17 what your sentence will be?

18 THE DEFENDANT: No.

19 THE COURT: Do you understand that if anyone has
20 attempted to predict what your sentence will be that that
21 prediction will be wrong?

22 Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: And I say that because no one here knows
25 for sure what your sentence will be -- your lawyers don't, the

1 government doesn't, I don't -- because that's not going to be
2 determined until a later date, after I get a presentence report
3 from the probation department, I calculate the guidelines, I
4 get submissions from you, the government and the probation
5 department.

6 But even if your sentence is different from what you
7 had hoped for or expected, you won't be allowed to withdraw
8 your plea on that basis.

9 Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: So now that you have been advised of the
12 charges against you and the possible penalties you face and the
13 rights you are giving up, is it still your intention to plead
14 guilty?

15 THE DEFENDANT: Yes, it is.

16 THE COURT: So I'm going to ask you the official
17 question as to whether you are guilty or not guilty with
18 respect to each of the seven counts, one at a time.

19 So with respect to Count One of the superseding
20 information, conspiracy to commit wire fraud on customers, how
21 do you plead?

22 THE DEFENDANT: Guilty.

23 THE COURT: And with respect to Count Two, wire fraud
24 on customers, how do you plead?

25 THE DEFENDANT: Guilty.

1 THE COURT: With respect to Count Three, conspiracy to
2 commit wire fraud on lenders, how do you plead?

3 THE DEFENDANT: Guilty.

4 THE COURT: With respect to Count Four, wire fraud on
5 lenders, how do you plead?

6 THE DEFENDANT: Guilty.

7 THE COURT: With respect to Count Five, conspiracy to
8 commit commodities fraud, how do you plead?

9 THE DEFENDANT: Guilty.

10 THE COURT: With respect to Count Six, conspiracy to
11 commit securities fraud, how do you plead?

12 THE DEFENDANT: Guilty.

13 THE COURT: With respect to Count Seven, conspiracy to
14 commit money laundering, how do you plead?

15 THE DEFENDANT: Guilty.

16 THE COURT: Now, tell me in your own words what you
17 did that makes you believe that you are guilty of these crimes.

18 THE DEFENDANT: Yeah, so from approximately March 2018
19 through November 2022 --

20 THE COURT: I'm going to ask you to speak very slowly,
21 please. Thank you.

22 THE DEFENDANT: From approximately March 2018 through
23 November 2022, I worked at Alameda Research, a cryptocurrency
24 trading firm principally owned by Sam Bankman-Fried. At
25 Alameda Research, I first worked as a cryptocurrency trader and

1 was later appointed by Mr. Bankman-Fried as the co-CEO and
2 eventually CEO of Alameda Research Ltd., the subsidiary that
3 housed the firm's main trading and market making operations.
4 In those roles, I reported to Mr. Bankman-Fried.

5 From 2019 through 2022, I was aware that Alameda was
6 provided access to a borrowing facility on FTX.com, the
7 cryptocurrency exchange run by Mr. Bankman-Fried. I understood
8 that FTX executives had implemented special settings on
9 Alameda's FTX.com account that permitted Alameda to maintain
10 negative balances in various fiat currencies and crypto
11 currencies. In practical terms, this arrangement permitted
12 Alameda access to an unlimited line of credit without being
13 required to post collateral, without having to pay interest on
14 negative balances and without being subject to margin calls or
15 FTX.com's liquidation protocols. I understood that if
16 Alameda's FTX accounts had significant negative balances in any
17 particular currency, it meant that Alameda was borrowing funds
18 that FTX's customers had deposited onto the exchange.

19 While I was co-CEO and then CEO, I understood that
20 Alameda had made numerous large illiquid venture investments
21 and had lent money to Mr. Bankman-Fried and other FTX
22 executives. I also understood that Alameda had financed these
23 investments with short-term and open-term loans worth several
24 billion dollars from external lenders in the cryptocurrency
25 industry. When many of those loans were recalled by Alameda's

1 lenders in and around June 2022, I agreed with others to borrow
2 several billion dollars from FTX to repay those loans. I
3 understood that FTX would need to use customer funds to finance
4 its loans to Alameda. I also understood that many FTX
5 customers invested in crypto derivatives and that most FTX
6 customers did not expect that FTX would lend out their digital
7 asset holdings and fiat currency deposits to Alameda in this
8 fashion.

9 From in and around July 2022 through at least
10 October 2022, I agreed with Mr. Bankman-Fried and others to
11 provide materially misleading financial statements to Alameda's
12 lenders. In furtherance of this agreement, for example, we
13 prepared certain quarterly balance sheets that concealed the
14 extent of Alameda's borrowing and the billions of dollars in
15 loans that Alameda had made to FTX executives and to related
16 parties. I also understood that FTX had not disclosed to FTX's
17 equity investors that Alameda could borrow a potentially
18 unlimited amount from FTX, thereby putting customer assets at
19 risk. I agreed with Mr. Bankman-Fried and others not to
20 publicly disclose the true nature of the relationship between
21 Alameda and FTX, including Alameda's credit arrangement.

22 I also understood that Mr. Bankman-Fried and others
23 funded certain investments in amounts more than \$10,000 with
24 customer funds that FTX had lent to Alameda. The investments
25 were done in the name of Alameda instead of FTX in order to

1 conceal the source and nature of those funds.

2 I am truly sorry for what I did. I knew that it was
3 wrong. And I want to apologize for my actions to the affected
4 customers of FTX, lenders to Alameda and investors in FTX.
5 Since FTX and Alameda collapsed in November 2022, I have worked
6 hard to assist with the recovery of assets for the benefit of
7 customers and to cooperate with the government's investigation.

8 I am here today to accept responsibility for my actions by
9 pleading guilty.

10 THE COURT: You mentioned that you knew that what you
11 were doing was wrong. Did you also know that it was illegal?

12 THE DEFENDANT: Yes.

13 THE COURT: Does the government want to make a proffer
14 with respect to venue?

15 MS. SASSOON: Yes.

16 With respect to venue and wires, your Honor, if the
17 case proceeded to trial, the government would prove that
18 certain acts in furtherance of each of the counts took place in
19 the Southern District of New York, including communications
20 with investors who were in New York, Tweets that were viewed by
21 customers and investors who were in the Southern District of
22 New York. Among other things, that FTX had an office in the
23 Southern District of New York. And in addition to that, that
24 the defendant has agreed to waive venue with respect to the
25 charges.

1 In terms of wires, the proof at trial would include
2 evidence of wires transmitted in furtherance of the charges,
3 including emails, transmission of funds and Tweets.

4 THE COURT: And what would the government's evidence
5 beyond that be if you were to go to trial against Ms. Ellison?

6 MS. SASSOON: With respect to wires?

7 THE COURT: With respect to all of the seven counts.

8 MS. SASSOON: I see, your Honor.

9 The evidence against Ms. Ellison would include witness
10 testimony, as well as documentary and physical evidence, to
11 include signal communications, emails, documents transmitted to
12 investors and lenders, documents collected from FTX, including
13 evidence from FTX's software database and its code.

14 THE COURT: Are there any additional questions you
15 would like me to ask Ms. Ellison?

16 MS. SASSOON: No. Thank you, your Honor.

17 THE COURT: Do both parties agree that there's a
18 sufficient factual predicate for the guilty plea?

19 MS. SASSOON: Yes, your Honor.

20 MR. SAHNI: Yes, your Honor.

21 THE COURT: Ms. Ellison, do you also admit to the
22 forfeiture allegation in the superseding information?

23 THE DEFENDANT: Yes.

24 THE COURT: Ms. Ellison, because you acknowledge that
25 you are in fact guilty as charged in Counts One through Seven

1 of the superseding information and because I'm satisfied that
2 you understand your rights, including your right to go to
3 trial, and that you are aware of the consequences of your plea,
4 including the sentence which may be imposed, because I find
5 that you are knowingly and voluntarily pleading guilty, I
6 accept your guilty plea to Counts One through Seven of the
7 superseding information.

8 Should we set a control date for sentencing
9 approximately, maybe, a year out?

10 MS. SASSOON: Yes, your Honor. We would propose a
11 control date maybe a year from now.

12 THE COURT: Why don't we set a control date for
13 sentencing on December 19th of 2023.

14 Now, let's talk about bail. I understand that the
15 parties have agreed on a bail package, which was in the plea
16 agreement. I have read the pretrial services report, but I
17 would be happy to hear further from any of the parties if they
18 would like to be heard.

19 MS. SASSOON: Yes, your Honor.

20 The government stands by the proposal in the plea
21 agreement. I know there's some additional conditions in the
22 pretrial services report. We don't think the travel
23 restrictions or the monetary restrictions are necessary, based
24 on the information we have about the defendant.

25 THE COURT: Would pretrial like to be heard, or is

1 that not necessary? It's up to you.

2 MS. HARMON: I don't think so, your Honor.

3 THE COURT: Thank you.

4 So I'm going to grant that request. Having reviewed
5 the pretrial services report, among other things, Ms. Ellison
6 has no criminal history and strong ties to the community, and
7 thus, I am releasing her on the following bail conditions: A
8 \$250,000 personal recognizance bond signed by her, travel
9 restricted to the continental United States, for her to
10 surrender all travel documents and refrain from making any new
11 applications, supervision will be as directed by pretrial
12 services, and she must adhere to all other standard conditions
13 of release.

14 Just to be clear, the government is not recommending
15 that the bond be signed by anybody other than Ms. Ellison?

16 MS. SASSOON: That's correct, your Honor.

17 That was based on discussion with defense counsel
18 about the feasibility of having a prompt cosigner and our
19 confidence that Ms. Ellison does not pose a flight risk.

20 THE COURT: In light of that representation, I will
21 sign off on the bail conditions as requested.

22 Ms. Ellison, you should understand that if you don't
23 appear for any court proceedings for which you are scheduled to
24 appear, including sentencing, that you could be charged with a
25 separate crime of bail jumping and subject to additional fines

1 and prison sentence in addition to whatever sentence you may
2 receive for the crimes to which you pleaded guilty.

3 Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: Moreover, if you violate any of the
6 conditions of your release, a warrant will be issued for your
7 arrest. That may lead to revocation of your bail with
8 forfeiture of the bond that's being executed, as well as your
9 being detained. And you could be prosecuted for contempt of
10 court as well.

11 Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: In addition, if you commit any crimes
14 while on release, that may lead to more severe punishment than
15 you would get for committing the same crimes at any other time
16 and, in addition, would likely constitute a breach of your
17 agreement with the government.

18 Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: Finally, I should just advise you that
21 it's a crime to try and influence any juror or witness or any
22 person who may have information about the case or to retaliate
23 against anyone who may have provided information in the case or
24 otherwise attempt to obstruct justice.

25 Do you understand that?

1 THE DEFENDANT: Yes.

2 THE COURT: Should we talk next about sealing and the
3 government's request that the documents in connection with this
4 proceeding, as well as the transcript, be sealed and docketing
5 delayed until tomorrow? I'm happy to hear you out.

6 MS. SASSOON: Yes, your Honor.

7 As has been reported in the media, it's our
8 understanding that the defendant had some -- it was our
9 expectation that he was going to consent to extradition today,
10 and there have been some hiccups in the Bahamian courtroom.
11 We're still expecting extradition soon, but given that he has
12 not yet entered his consent, we think it could potentially
13 thwart our law enforcement objectives to extradite him if
14 Ms. Ellison's cooperation were disclosed at this time. We're
15 therefore seeking a limited period of sealing until he's
16 brought here and presented in the Southern District of New
17 York.

18 THE COURT: And my understanding is that there's no
19 objection from the defendant; is that correct?

20 MR. SAHNI: That's correct, your Honor.

21 THE COURT: So that application is granted.

22 I agree the compelling law enforcement interests
23 support an order directing that filings and other docket
24 entries temporarily be made under seal. Exposure of
25 cooperation could hinder law enforcement officials' ability to

1 continue the ongoing investigation and, in addition, may affect
2 Mr. Bankman-Fried's decision to waive extradition in this case.

3 Although there is a qualified right of public access
4 to court documents, the Second Circuit has recognized that
5 documents may be filed under seal to protect, among other
6 things, further ongoing law enforcement efforts. And the
7 Second Circuit has specifically recognized that the docketing
8 and the applications to seal those materials could themselves
9 be prejudicial and that, in such cases, the applications
10 themselves and related notes to the docket could be sealed.

11 And I'm just going to cite *Alacantara* for that.

12 So the transcript of this proceeding shall thus remain
13 sealed and docketing delayed until -- and you don't want it
14 based on tomorrow, just until Mr. Bankman-Fried is presented
15 here in this district; is that correct?

16 MS. SASSOON: That's correct.

17 And at this point, I think it's unlikely that it will
18 be by noon tomorrow.

19 THE COURT: Understood, for the reasons I just noted.

20 Are there any further applications on either side?

21 MS. SASSOON: Not from the government. Thank you,
22 your Honor.

23 MR. SAHNI: No, your Honor. Thank you.

24 THE COURT: We're adjourned. Thank you.

25 (Adjourned)

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 UNITED STATES OF AMERICA,

4 v.

22 Cr. 673 (RA)

5 ZIXIAO WANG,

6

7 Defendant.

8

Plea

9

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10

New York, N.Y.
December 19, 2022
11:00 a.m.

11

12 Before:

13

HON. RONNIE ABRAMS,

14

District Judge

15

APPEARANCES

16

DAMIAN WILLIAMS

17

United States Attorney for the
Southern District of New York

18

BY: NICOLAS ROOS

DANIELLE SASSOON

19

Assistant United States Attorneys

20

ILAN GRAFF

ALEX MILLER

21

Attorneys for Defendant

22

ALSO PRESENT:

Evelyn Alvayero, U.S. Pretrial Services

23

24

25

1 (Case called)

2 MR. ROOS: Good morning, your Honor.

3 Nick Roos, Danielle Sassoon, and Evelyn Alvayero, from
4 pretrial services.

5 THE COURT: Good morning to all of you.

6 MR. GRAFF: Good morning, your Honor. Ilan Graff for
7 Mr. Wang, who is standing to my right.

8 I am joined by my colleague Alex Miller.

9 THE COURT: Good morning to all of you. You can be
10 seated. So are we all ready to get started?

11 MR. ROOS: Yes, your Honor.

12 THE COURT: Mr. Wang, I understand that you wish to
13 plead guilty to Counts One through Four of the information.

14 Is that correct?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Okay. Before deciding whether to accept
17 your plea, I am going to ask you certain questions so that I
18 can be sure that you understand your rights and that you are
19 pleading guilty voluntarily and because you are guilty and not
20 for some other reason. So it is important that you answer my
21 questions honestly and completely.

22 If at any time you are having trouble understanding
23 anything or you want to talk to your lawyer, just let me know.

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Mr. Fields, could you please place

1 Mr. Wang under oath.

2 (Defendant sworn)

3 THE COURT: All right.

4 You are now under oath. So you should know that if
5 answer any of my questions falsely, you could be charged with a
6 separate crime, perjury.

7 Do you understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: I am going to start by asking you some
10 questions to ensure that you are competent to plead guilty.
11 These are questions that I ask of everyone in your position.

12 So, first, how old are you?

13 THE DEFENDANT: Twenty-nine.

14 THE COURT: How far did you go in school?

15 THE DEFENDANT: I graduated college.

16 THE COURT: Are you currently or have you recently
17 been under the care of a medical professional, psychiatrist, or
18 other mental health care provider?

19 THE DEFENDANT: No, your Honor.

20 THE COURT: Have you ever been hospitalized for mental
21 illness, alcoholism, or drug addiction?

22 THE DEFENDANT: No.

23 THE COURT: In the past 24 hours have you taken any
24 drugs, medicine, or pills or drunk any alcoholic beverages?

25 THE DEFENDANT: No.

1 THE COURT: Is your mind clear today?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Do you understand what's happening in
4 these proceedings?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Does either counsel have any doubts as to
7 the defendant's competence to plead guilty at this time?

8 MR. ROOS: No, your Honor.

9 MR. GRAFF: No, your Honor.

10 THE COURT: On the basis of Mr. Wang's responses to my
11 questions and my observations of his demeanor here in court and
12 representations of counsel, I find that he is fully competent
13 to enter an informed plea of guilty at this time.

14 Have you had enough time and opportunity to discuss
15 your case with your attorney, including the nature of the
16 charges to which you intend to plead guilty, any possible
17 defenses you may have, and the rights that you will be giving
18 up by pleading guilty?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: All right. Has your attorney discussed
21 with you the consequences of pleading guilty?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: All right. Are you satisfied with your
24 attorney's representation of you?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: Okay. So now what I want to talk about is
2 the charging instrument. It a superseding information. That's
3 the document, the charge that the government is seeking to file
4 in this case.

5 Have you received a copy of the superseding
6 information?

7 It's titled S1 22 Cr. 673.

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Have you reviewed it?

10 THE DEFENDANT: Yes.

11 THE COURT: Have you discussed it with your attorney?

12 THE DEFENDANT: Yes.

13 THE COURT: So under our legal system, before you or
14 anyone else can be charged with a felony offense, the
15 government is obligated to go to a grand jury, which must
16 decide whether there's probable cause to believe that an
17 offense was committed and that you committed it. And that
18 decision may result in what's called an indictment.

19 I want to make sure that you understand that by
20 allowing the government to charge you by way of this
21 information, you are waiving, or giving up, your right to be
22 charged by a grand jury in an indictment?

23 Do you understand that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Do I have the signed waiver of indictment

1 forms?

2 Do you have a signed version?

3 MR. ROOS: We have a signed one. I think we probably
4 actually should sign it again because it is already witnessed.
5 So I have a second copy. I will just pass it back to counsel
6 right now.

7 THE COURT: Why don't you do that. All right.

8 So, Mr. Wang, I understand and witnessed that you just
9 signed this waiver of indictment form.

10 Did you discuss this form before signing it with your
11 attorney?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Okay. Again, you understand that you are
14 agreeing to give up your right to be charged by a grand jury?

15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: Were any threats or promises made other
18 than by the prosecution in the written plea agreement to get
19 you to waive indictment?

20 THE DEFENDANT: No, your Honor.

21 THE COURT: Okay. Does either counsel have any reason
22 to believe that Mr. Wang has not knowingly and voluntarily
23 waived his right to be charged by a grand jury?

24 MR. ROOS: No, your Honor.

25 MR. GRAFF: No, your Honor.

1 THE COURT: Okay.

2 I find that he has knowingly and voluntarily waived
3 his right to be charged by a grand jury, and I authorize the
4 filing of the superseding information.

5 Now what I am going to do is I am going to explain
6 certain constitutional rights that you have. These are rights
7 that you will be giving up if you enter a guilty plea.

8 So, first, under the Constitution and laws of the
9 United States, you have a right to plead not guilty to the
10 charges in that superseding information.

11 Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: If you did plead not guilty, you would be
14 entitled under the Constitution to a speedy and public trial by
15 jury of those charges.

16 Do you understand that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: In advance of trial, if you chose to go to
19 trial, you would have the opportunity to seek suppression of
20 any or all of the evidence against you on the basis that it was
21 obtained in violation of the Constitution.

22 Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: At trial, again, if you chose to go to
25 trial, you would be presumed innocent. That means that you

1 would not have to prove that you were innocent. Instead, the
2 government would need to prove your guilt beyond a reasonable
3 doubt before you could be found guilty.

4 So even if you did nothing or said nothing at trial,
5 again, if you chose to go to trial, you could not be convicted
6 unless a jury of 12 people agreed unanimously that you are
7 guilty.

8 Do you understand that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: During trial, if you chose to go to trial,
11 the witnesses for the prosecution would have to come to court
12 and testify in your presence, where you could see them and hear
13 them and your lawyer could cross-examine them.

14 If you wanted to, your lawyer could offer evidence on
15 your behalf. You would be able to use the Court's power to
16 compel or force witnesses to come to court to testify
17 truthfully in your defense, even if they didn't want to come.

18 Do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: At trial, again, if you went to trial, you
21 would have the right to testify if you wanted to, but you would
22 also have the right not to testify, and if you chose not to
23 testify, that could not be used against you in any way. So no
24 inference or suggestion of guilt would be made from the fact
25 that you chose not to testify.

1 Do you understand that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: All right. At trial and at every stage
4 your case, you would be entitled to be represented by an
5 attorney. And if you could not afford an attorney one would be
6 appointed at public expense, meaning free of cost, to represent
7 you?

8 Do you understand that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: If you are convicted at trial, you would
11 have the right to appeal that verdict to a higher court.

12 Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: As I said before, you have the right to
15 plead not guilty. So even as you sit here right now for
16 purposes of entering a guilty plea, you have the right to
17 change your mind and to go to trial. But if you do plead
18 guilty and I accept your plea, there will be no trial, and you
19 will be giving up the rights that I just described.

20 If you plead guilty, all that will remain to be done
21 is for me to impose sentence at the appropriate time. I will
22 enter a judgment of guilty and sentence you on that basis after
23 considering whatever submissions I get from you, from your
24 lawyer, the government, as well as a presentence report
25 prepared by the probation department. But there will be no

1 appeal with respect to whether the government could use the
2 evidence it has against you or with respect to whether you did
3 or did not commit the crime.

4 Do you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: If you plead guilty, you will also have to
7 give up your right not to incriminate yourself, because I am
8 going to ask you certain questions here in court today in order
9 to satisfy myself that you are in fact guilty as charged.

10 Do you understand that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Okay. So I understand that you seek to
13 plead guilty to Counts One through Four of the superseding
14 information and admit to the forfeiture allegation.

15 I am going ask the government to please state the
16 elements of the offenses in question.

17 MR. ROOS: Yes, your Honor.

18 Counts One and Two of the information charge the
19 defendant respectively with conspiracy to commit wire fraud and
20 wire fraud.

21 The elements of the first count, conspiracy to commit
22 wire fraud are:

23 First, the existence of a conspiracy to commit wire
24 fraud; and

25 Second, that the defendant knowingly and willfully

1 became a member of and joined in the conspiracy.

2 The elements of wire fraud itself, which is the object
3 of Count One and the substantive crime of Count Two, are:

4 First, that there was a scheme or artifice to defraud
5 or to obtain money or property by materially false or
6 fraudulent pretenses, representations, or promises;

7 Second, that the defendant knowingly participated in
8 the scheme or artifice to defraud with knowledge of its
9 fraudulent nature and with the specific intent to defraud or
10 that he knowingly and intentionally aided and abetted others in
11 the scheme; and

12 Third, that in the execution of that scheme, the
13 defendant used or caused the use of interstate or foreign
14 wires.

15 Counts Three and Four of the indictment both charge
16 the defendant with a violation of Title 18, United States Code,
17 Section 371.

18 Count Three is a conspiracy to commit commodities
19 fraud.

20 Count Four is a conspiracy to commit securities fraud.

21 The conspiracy under Section 371 has three elements:

22 First, that two or more persons entered into an
23 unlawful agreement charged in the specific count;

24 Second, that the defendant knowingly and willfully
25 became a member of that alleged conspiracy; and

1 Third, that one of the members of the conspiracy
2 knowingly committed at least one overt act in furtherance of
3 the conspiracy.

4 So for Count Three the object of the conspiracy is a
5 conspiracy to commit commodities fraud, in violation of Title
6 7, United States Code, Section 9(1)(13)(a)(5) and Title 17 Code
7 of Federal Regulations 180.1.

8 There are three elements to this crime:

9 First, in connection with any swap or contract of sale
10 of any commodity in interstate commerce or contracts for future
11 delivery on or subject the rules of any registered entity;

12 Second, the defendant or any of his coconspirators did
13 any one or more of the following:

14 (a) employed, attempted, to use or employ a
15 manipulative device, scheme, or artifice to defraud;

16 (b) made or attempted to make an untrue or misleading
17 statement of a material fact or omitted to state a material
18 fact necessary in order to make statements not untrue or
19 misleading; or

20 (c) engaged or attempted to engage in an act,
21 practice, or course of business that operated or would operate
22 as a fraud or deceit upon a person; and

23 Third, that defendant acted knowingly, willfully, and
24 with the intent to defraud.

25 Finally, for Count Four, the object of the 371

1 conspiracy is a violation of Title 15, United States Code,
2 Section 78j(b) and 78ff and Title 17, Code of Federal
3 Regulations, Section 240.10b-5. That's securities fraud.

4 There are three elements of securities fraud:

5 First, that in connection with the purchase or sale of
6 a security the proposed defendant:

7 (1) Employed a defendant scheme or artifice to
8 defraud;

9 (2) Made an untrue statement of material fact or
10 omitted to state a material fact, which made what was said
11 under the circumstances misleading; or

12 (3) Engaged in an act, practice, or course of business
13 that operated or would operate as a fraud or deceit upon a
14 purchaser or seller.

15 Second, the defendant acted knowingly, willfully, and
16 with intent to defraud; and

17 Third, that the defendant knowingly used or caused to
18 be used any means or instrument of transportation or
19 communication in the interstate commerce or the use of the
20 mails in furtherance of the fraudulent conduct.

21 And, finally, the government would have to prove by a
22 preponderance of the evidence venue.

23 THE COURT: All right. Thank you.

24 So, Mr. Wang, I want to make sure you understand that
25 if you were to go to trial on these charges the government

1 would need to prove each of the elements that were mentioned
2 beyond a reasonable doubt in addition to proving venue, but
3 that is a lower legal standard.

4 Do you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: So now I am going to discuss the maximum
7 penalties for this crime or these crimes. The maximum penalty
8 means the most that could possibly be imposed. It doesn't
9 necessarily mean it's the sentence you will receive. But you
10 have to understand that by pleading guilty you are exposing
11 yourself to the possibility of receiving any combination of
12 punishments up to the maximums that I am just about to
13 describe.

14 So with respect to Counts One and Two, the maximum
15 terms of imprisonment for each of those crimes is 20 years in
16 prison.

17 Do you understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Any term of imprisonment you do receive
20 may be followed by a term of supervised release of three years
21 on each count. Supervised release means that if you are
22 sentenced to prison, after you are released from prison, you
23 will be subject to the supervision of the probation department.
24 You will be required to obey certain rules, and if you violate
25 those rules, you can be returned to prison without a jury trial

1 to serve additional time even beyond your original sentence.

2 Do you understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: You should also understand that there's no
5 parole in the federal system. If you're sentenced to prison,
6 you will not be released early on parole, although there is a
7 limited opportunity to earn credit for good behavior.

8 Do you understand that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: In addition to these restrictions on your
11 liberty, the punishment for these crimes includes certain
12 financial penalties.

13 The maximum allowable fine for each count -- again,
14 we are talking about Counts One and Two -- is \$250,000, twice
15 the gross pecuniary gain derived from the offense or twice the
16 gross pecuniary loss to persons other than yourself resulting
17 from the offense.

18 Do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: There's also a mandatory special
21 assessment, or fee, of \$100 for each of these crimes.

22 Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: In addition, I must order restitution to
25 any persons or entities injured as a result of your criminal

1 conduct, and I can order you to forfeit all property derived
2 from the offense or used to facilitate the offense.

3 Do you understand that as well?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: So now I am going to turn to Counts Three
6 and Four.

7 With respect to your liberty on each of those counts,
8 the maximum term of imprisonment for each count is five years.
9 Any term of imprisonment may be followed by a term of three
10 years of supervised release. The maximum allowable fine is
11 again \$250,000 on each count, twice the gross pecuniary gain
12 derived from the offense, twice the gross pecuniary loss to
13 persons other than yourself resulting from the offense,
14 whichever is higher.

15 Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: I am also, again, required to impose a
18 mandatory special assessment, or fee, of \$100 on each of those
19 counts.

20 And, again, I must order restitution to any persons or
21 entities injured as a result of your criminal conduct and can
22 order you to forfeit all property derived from these offenses
23 or used to facilitate these offenses.

24 Do you understand that these are the maximum penalties
25 for Counts Three and Four?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: All right. Do you understand in addition
3 that the total maximum sentence of incarceration on Counts One,
4 Two, Three, and Four of this information is 50 years in prison?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Is Mr. Wang now being prosecuted elsewhere
7 that we know of?

8 MR. ROOS: No, your Honor.

9 THE COURT: All right. So, Mr. Wang, you should be
10 aware that the punishments that I have just described are those
11 that may be part of a sentence, but being convicted of a felony
12 may have other consequences.

13 Are you a United States citizen?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: All right. Then you should understand
16 that, as a result of your guilty plea, you may lose certain
17 valuable civil rights to the extent that you have them now,
18 such as the right to vote, the right to hold public office, the
19 right to serve on a jury and the right to possess any kind of
20 firearm.

21 Do you understand that?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Now, I am going to talk about the
24 sentencing guidelines. In imposing sentence, federal judges
25 are required to consider the recommendations of the federal

1 sentencing guidelines.

2 The guidelines are a complicated set of rules for
3 determining an appropriate sentence. At one time they were
4 mandatory; judges were bound to follow them. They are no
5 longer mandatory, but judges must nonetheless consider the
6 guidelines in determining an appropriate sentence, although
7 ultimately I am going to look to the factors set forth in a
8 provision of the law, 18 United States Code, Section 3553(a),
9 and impose a sentence that I believe best satisfies the
10 purposes of the criminal law as set forth in that statute, even
11 if it's higher or lower than the guidelines recommendation.

12 Do you understand all of that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Did you discuss the sentencing guidelines
15 with your attorneys?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Do you understand that the guidelines are
18 only recommendations to the court?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Okay. Now, I understand that you have
21 entered into a written plea agreement with the government. I
22 have what appears to be an original copy of that agreement.
23 It's dated December 18, and addressed to your attorneys,
24 Mr. Graff and Mr. Miller, and signed by various representatives
25 on behalf of the government.

1 I am marking it as Court Exhibit No. 1.

2 I am going to ask my law clerk, Mr. Fields, to show it
3 to you.

4 Is that your signature on the last page?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Before signing this agreement, did you
7 read it? Did you read the entire agreement?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Did you discuss it with your attorneys?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: I recognize that it's a somewhat lengthy
12 document and it contains some technical and legal language, but
13 after discussing it with your attorneys, do you understand all
14 the terms of the agreement?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Okay. I am going to ask the government to
17 summarize the primary terms of the agreement, please.

18 MR. ROOS: Yes, your Honor.

19 So the first page through the second page of the
20 document describe the charges in the information, the
21 penalties, and the understanding that the defendant will be
22 pleading guilty to those. Also on the second page are the
23 provisions relating to admitting the forfeiture allegations and
24 agreeing to pay restitution. There is a requirement on page 2
25 relating to the defendant's agreement to cooperate with the

1 government.

2 There is on page 3 a discussion of what the defendant
3 will not be further prosecuted for, which includes a
4 description of the counts in the information as well as some
5 additional relevant conduct.

6 And then there are a series of additional provisions
7 through the remainder of the agreement that describe the
8 defendant's rights and certain rights that he is giving up by
9 pleading guilty. As one of those I would just highlight, there
10 is a waiver of venue which appears actually on the second page
11 of the agreement.

12 THE COURT: Okay.

13 Is all of that consistent, Mr. Wang, with your
14 understanding of this agreement?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Do you have any questions about the
17 agreement?

18 THE DEFENDANT: No, your Honor.

19 THE COURT: Okay. All right.

20 I am just going to follow up on one or two terms.

21 I want to make sure that you understand it is up to
22 the government and not to me, not to the Court, to decide
23 whether any cooperation you provide has been productive enough
24 for the government to file what we call the 5K1 motion and
25 recommend a sentence below the sentence recommended by the

1 sentencing guidelines.

2 Do you understand that?

3 That is up to the government.

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: But even if the government decides to make
6 such a motion, it's going to be up to me to decide whether to
7 give you credit for that cooperation and, if so, how much and
8 how it should affect the sentence.

9 Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Okay. Did you willingly sign this plea
12 agreement?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: And are you willingly pleading guilty?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Has anyone threatened, bribed, or forced
17 you to sign the plea agreement or to plead guilty?

18 THE DEFENDANT: No, your Honor.

19 THE COURT: Other than what's in this agreement, has
20 anyone offered you any inducement to plead guilty?

21 THE DEFENDANT: No, your Honor.

22 THE COURT: Has anyone made any promise as to what
23 your sentence will be?

24 THE DEFENDANT: No, your Honor.

25 THE COURT: I ask that because I want to make sure you

1 understand that if anyone attempts to predict or has attempted
2 to predict what your sentence will be, that that prediction
3 could be wrong.

4 I say that because no one in this courtroom, not the
5 government, not your attorney, not even I know what your
6 sentence will be. That won't be determined until a later date
7 after the probation department has drafted a presentence report
8 and I've done my own independent calculation of the guidelines
9 and I have reviewed whatever submissions I get from you and
10 your lawyer and the government as well as the presentence
11 report.

12 So I just want to make sure you understand that even
13 if your sentence is different from what you had hoped for or
14 expected you won't be allowed to withdraw your plea on that
15 basis.

16 Do you understand that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Okay. You have not submitted a consent
19 order of forfeiture to date.

20 Is that correct?

21 MR. ROOS: That's correct, your Honor.

22 THE COURT: Okay. I just wanted to make sure. I
23 don't have that before me.

24 Okay. So now that you have been advised, Mr. Wang, of
25 the charges against you and the possible pents you face and the

1 rights that you are giving up, is it still your intention to
2 plead guilty to these four charges?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: So now I am going ask you the official
5 question with respect to each count which is how do you plead,
6 guilty or not guilty?

7 So first with respect to Count One of the superseding
8 indictment, which is a conspiracy to commit wire fraud on
9 customers, how do you plead?

10 THE DEFENDANT: Guilty, your Honor.

11 THE COURT: Now, with respect to Count Two, wire fraud
12 on customers, how do you plead?

13 THE DEFENDANT: Guilty, your Honor.

14 THE COURT: With respect to Count Three, conspiracy to
15 commit commodities fraud, how do you plead?

16 THE DEFENDANT: Guilty, your Honor.

17 THE COURT: And with respect to Count Four, conspiracy
18 to commit securities fraud, how do you plead?

19 THE DEFENDANT: Guilty, your Honor.

20 THE COURT: And do you admit to the forfeiture
21 allegation that's in this information?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Okay.

24 So now tell me in your own words what you did that
25 makes you believe that you are guilty of these crimes.

1 THE DEFENDANT: Between 2019 and 2022 --

2 THE COURT: I am going to ask you to just speak very
3 slowly and very loudly. It can be difficult to hear in this
4 courtroom because of the high ceilings.

5 Thank you.

6 THE DEFENDANT: Between 2019 and 2022, as part of my
7 employment at FTX, I was directed to and agreed to make certain
8 changes to the platform's code. I executed those changes,
9 which I knew would Alameda Research special privileges on the
10 FTX platform.

11 I did so knowing that others were representing to
12 investors and customers that Alameda had no such special
13 privileges and people were likely investing in and using FTX
14 based in part on those misrepresentations.

15 I knew what I was doing was wrong. I also knew that
16 the misrepresentations were being made by telephone and
17 internet, among other means, and that assets traded on FTX
18 included some assets that the U.S. regulators regard as
19 securities and commodities.

20 THE COURT: When you did this, did you know that what
21 you were doing was wrong and was illegal?

22 THE DEFENDANT: Yes.

23 THE COURT: Would the government like to ask any
24 additional questions?

25 MR. ROOS: No additional questions, your Honor.

1 The government would just proffer that there is a
2 basis for venue. In addition to the waiver, there's wires that
3 go through the Southern District of New York, investors located
4 in the Southern District of New York.

5 THE COURT: All right.

6 And, Mr. Graff, any objection to that?

7 I understand that you are waiving venue.

8 Is that correct?

9 MR. GRAFF: That's correct, your Honor.

10 No objection.

11 THE COURT: Okay.

12 Could the government please summarize what its
13 evidence would be if you were to go to trial against Mr. Wang.

14 MR. ROOS: Certainly, your Honor.

15 It would consist of witness statements, Signal
16 communications and Slack communications, financial records, and
17 records from FTX in the form of code and database, among other
18 things.

19 THE COURT: All right.

20 Do the government and defense counsel agree that there
21 is a sufficient factual predicate for the guilty plea?

22 MR. ROOS: Yes, your Honor.

23 MR. GRAFF: Yes, your Honor.

24 THE COURT: Mr. Wang, because you acknowledge that you
25 are in fact guilty as charged in the information, and because

1 I'm satisfied is that you are aware of your rights, including
2 your right to go to trial, and that you are aware of the
3 consequences of your plea, including the sentence which may be
4 imposed, I find that you are knowingly and voluntarily pleading
5 guilty. I accept your guilty plea to Counts One, Two, Three,
6 and Four of the information.

7 I know we need to talk about bail and a few other
8 things, but should we set a control date for sentencing at this
9 time?

10 MR. ROOS: Yes, your Honor. We would suggest a date
11 fairly significantly far out, but I think a control date is
12 fine.

13 THE COURT: What would you propose? Nine months? A
14 year?

15 MR. ROOS: A year probably.

16 THE COURT: All right.

17 Mr. Fields, can you just look on the calendar. And
18 just look at December 19 of next year and see if it is a
19 weekday, please. Why don't we set a control date for December
20 19, 2023.

21 Now we have to talk about bail. I understand that the
22 pretrial services does not have a written pretrial services
23 report, but would like to report that orally. That is
24 something as a matter of course that is kept confidential. So
25 my question is how would you like to present that to the Court

1 in light of the fact that that is normally a document that is
2 not publicly disclosed?

3 MS. ALVAYERO: Your Honor, pretrial requests that the
4 report be done orally in chambers.

5 THE COURT: Okay. Is there any objection to that?

6 MR. GRAFF: None from the defense, your Honor.

7 MR. ROOS: That is fine, your Honor.

8 THE COURT: Again, because this is a document that is
9 as a matter of course kept confidential and not publicly
10 disclosed, I think that is appropriate, but we are not going to
11 discuss anything else. So why don't we go into my robing room
12 and the parties, Mr. Wang, his attorneys, and the government,
13 can all come as well. That will be done orally on the record
14 with the court reporter.

15 Okay. That will be sealed from the transcript. I
16 understand we have another sealing issue down the line, but why
17 don't we deal with this one first.

18 MR. ROOS: Your Honor, just two other matters?

19 THE COURT: Sure.

20 MR. ROOS: One is I think, since he waived indictment
21 and the information was therefore entered today, he technically
22 needs to be arraigned. Your Honor already reviewed the
23 substance of the information, so we would just ask on the
24 record that the defendant waive the public reading, if he
25 chooses, of the information.

1 THE COURT: Okay. Sure.

2 So, Mr. Wang, I asked you at the beginning if you had
3 reviewed the information and discussed it with your attorney.

4 Do you waive its public reading?

5 Just so you know, you have a right to have me read it
6 oud loud in court. Do you waive, or give up, that right such
7 that I won't read it publicly in court?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Okay.

10 Do you want to have this oral report with respect to
11 the pretrial services report and then come back into court, or
12 do you want to talk about sealing and then I will make my bail
13 determination. I think I have to make my bail determination in
14 open court, so I intend to do that. I could also do it in
15 written fashion. It can be sealed, but it needs to be public,
16 and then I need to justify the sealing.

17 So do you have a suggestion for the order of events?

18 MR. ROOS: I think your Honor was inclined to go back
19 now. That's fine with us. My colleague just pointed out that
20 I think your Honor maybe has something right after this.

21 THE COURT: I have something at 12:20. I have a hard
22 stop, but I am available until 12:15 really. So I am available
23 for the next half hour.

24 MR. ROOS: I guess, like, in the interest of maybe
25 just doing everything in the courtroom now, and then we can

1 conclude with whatever in chambers, although if your Honor
2 would prefer another way, that's fine.

3 THE COURT: That is fine. But either way we either
4 have to come back in, or you have to submit a letter to me with
5 the bail conditions.

6 MR. ROOS: Right. We can come back out then.

7 I think that's fine.

8 THE COURT: All right. Why don't we go in my robing
9 room. Then we will come back, and if there are any, I
10 understand that there's consent on bail, but if anyone would
11 like to say anything on the record with respect to bail, they
12 will do so at that time.

13 All right.

14 (Pages 29 to 32 sealed)

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1 THE COURT: Everyone can be seated.

2 So the pretrial services report has been read to me
3 orally as well as to the parties. I understand from the
4 agreement that the parties have reached an agreement and would
5 like to make that proposal.

6 Do you want to just do so orally now?

7 MR. ROOS: May I just confer with defense counsel?

8 THE COURT: Sure.

9 MR. ROOS: So, your Honor.

10 THE COURT: On page 4 of the agreement.

11 MR. ROOS: Correct. On page 4 is the parties'
12 agreement, \$250,000 personal recognizance bond.

13 So, combined, one financially responsible person,
14 travel restricted to the continental United States, the
15 defendant to surrender all travel documents and refrain from
16 making any new applications supervision as directed by pretrial
17 services, and adherence to all other standard conditions of
18 release, which I think are largely the conditions of pretrial
19 services.

20 There's one that I just discussed with defense
21 counsel, which is a proposal of no contact with codefendants or
22 other witnesses. I think we are fine with the codefendant, no
23 contact with codefendant. I think for, just based on some of
24 the people in the defendant's life, I think it will be
25 impractical to impose the condition of no contact with other

1 witnesses, so we would ask just that that condition be no
2 contact with codefendants.

3 THE COURT: Okay. All right.

4 Again, Mr. Graff, you are all right with adding that
5 condition?

6 MR. GRAFF: Yes, your Honor.

7 THE COURT: With respect to codefendants?

8 MR. GRAFF: Yes, your Honor.

9 THE COURT: All right.

10 That application is granted.

11 I think, as noted, it's consistent with what was
12 recommended by pretrial services.

13 Among other things, Mr. Wang has strong ties in the
14 community and no criminal history, among other things. So I am
15 going to grant that request.

16 Now, Mr. Wang, you should understand that if you don't
17 appear for any court proceedings that you are ordered to appear
18 for or for sentencing you could be charged with a separate
19 crime of bail jumping and subject to an additional prison
20 sentence or fine in addition to whatever sentence you do
21 receive.

22 Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Okay. You should also understand that if
25 you violate any condition of your release, a warrant for your

1 arrest may be issued. The will lead to revocation of your bail
2 with forfeiture of the bond, the \$250,000 bond that is being
3 executed on your behalf, as well as to your being detained and
4 that you could be prosecuted for contempt of Court.

5 Do you understand that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: All right. You should also understand
8 that if you commit any crime while on release, that may lead to
9 a more severe punishment than you would get for committing the
10 same crime and additional time -- at a different time I should
11 say. In addition, you would be violating the agreement that
12 you signed with the government.

13 Do you understand that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: All right.

16 Finally, I will just note that it is a crime to try
17 and influence any juror or witness or any person who may have
18 information about the case or to retaliate against anyone who
19 may have provided information or otherwise attempt to obstruct
20 justice.

21 Do you understand that as well?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: All right. Thank you.

24 How long does Mr. Wang have to get the cosigner to
25 sign the bond?

1 MR. ROOS: Two weeks.

2 THE COURT: Okay. That's fine.

3 Thank you. All right.

4 So we have discussed bail. I understand that there is
5 an application to seal today's transcript as well as to delay
6 docketing of the various documents as well as the transcript.

7 MR. ROOS: That's correct, your Honor. We submitted a
8 two-page letter dated today to your Honor. We provided a copy
9 to defense counsel.

10 It asks for the sealing and delayed docketing for
11 today's proceeding until the later of either tomorrow at noon
12 or the presentment of codefendant Samuel Bankman-Fried,
13 whichever is later.

14 THE COURT: Okay. All right.

15 MR. ROOS: At that time it these would all become
16 unsealed.

17 THE COURT: That application is granted.

18 I will note that there are legitimate law enforcement
19 interests that support an order directing that these filings
20 and docket entries in this case be made under seal for that
21 period of time. Exposure of any possible cooperation could
22 hinder law enforcement's ability to conduct and continue the
23 ongoing investigation as well as to further law enforcement's
24 other interests in connection with this prosecution.

25 Although there is a qualified right of public access

1 to court documents, the Second Circuit has recognized that
2 documents may be filed under seal to protect, among other
3 things, ongoing law enforcement efforts. *See United States v.*
4 *Cojab and Haller.*

5 The Second Circuit has also recognized that even
6 docketing the applications to seal can be prejudicial, and in
7 such cases the applications themselves and related notes to the
8 docket could be sealed. *See United States v. Alcantara.*

9 I am going to ask you to reach out to my chambers as
10 soon as these documents can be unsealed by way of letter, and
11 we will do so promptly.

12 Are there any other applications at this time?

13 MR. ROOS: Not from the government, your Honor.

14 MR. GRAFF: Nor from the defense. Thank you, Judge.

15 THE COURT: Thank you. We are adjourned.

16 (Adjourned)

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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 UNITED STATES OF AMERICA,

4 v.

22 Cr. 673 (LAK)

5 NISHAD SINGH,

Plea

6 Defendant.

7 -----x

8 New York, N.Y.
9 February 28, 2023
10 11:20 a.m.

11 Before:

12 HON. LEWIS A. KAPLAN,

13 District Judge

14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
Southern District of New York

17 DANIELLE SASSOON

NICOLAS ROOS

18 ANDREW ROHRBACH

SAMUEL RAYMOND

19 Assistant United States Attorneys

20 COOLEY LLP

Attorneys for Defendant

21 BY: ANDREW GOLDSTEIN

RUSSELL CAPONE

22 Also Present:

23 KRISTIN ALLAIN, FBI

24 LUKE BOOTH, FBI

1 (Case called; appearances noted)

2 THE COURT: Good morning. I understand that your
3 client wishes to waive indictment and enter a plea; is that
4 right?

5 MR. GOLDSTEIN: That's correct, Judge Kaplan.

6 THE COURT: Okay. Andy, please swear the defendant.

7 (Defendant sworn)

8 THE COURT: Mr. Singh, I understand you want to enter
9 a plea of guilty; is that correct?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Before I accept your plea, I'm going to
12 ask you some questions to establish to my satisfaction that you
13 are pleading guilty because you are guilty and not for some
14 other reason. If you don't understand anything I ask or you
15 have a desire, at any point, to talk to your attorney, just let
16 me know, and we will take care of whatever the problem is. All
17 right?

18 THE DEFENDANT: Understood.

19 THE COURT: OK. I take it you were born in the United
20 States, and that English is your first language; is that right?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: OK. Do you understand that you are now
23 under oath, and that if you answer any of my questions falsely,
24 your answers later could be used against you in a further
25 prosecution for perjury or making a false statement?

1 THE DEFENDANT: Yes.

2 THE COURT: How old are you?

3 THE DEFENDANT: Old, you said?

4 THE COURT: Yes.

5 THE DEFENDANT: 27 years old.

6 THE COURT: How far did you go in school?

7 THE DEFENDANT: I got a bachelor's degree.

8 THE COURT: Are you under the care of a doctor or a
9 mental health professional at this point?

10 THE DEFENDANT: Yes.

11 THE COURT: Let me narrow it then.

12 Are you under the care of a mental health
13 professional?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: And what sort of a mental health
16 professional?

17 THE DEFENDANT: A psychiatrist.

18 THE COURT: And for what malady?

19 THE DEFENDANT: Anxiety and depression.

20 THE COURT: All right. Have you been hospitalized in
21 the past for mental illness?

22 THE DEFENDANT: No.

23 THE COURT: Have you had any medicine, pills,
24 narcotics, or alcohol in the last 24 hours?

25 THE DEFENDANT: I've had anxiety and depression

1 medication.

2 THE COURT: And what have you had in the last 24
3 hours?

4 THE DEFENDANT: Clonopin and Lexapro for anxiety and
5 depression.

6 THE COURT: And do either of those drugs or the
7 combination of those drugs interfere with your ability to
8 engage in rational thought?

9 THE DEFENDANT: No, they do not.

10 THE COURT: Is your mind clear this morning?

11 THE DEFENDANT: Yes.

12 THE COURT: Do either counsel have any doubt as to the
13 defendant's competence to plead.

14 Ms. Sassoon?

15 MS. SASSOON: Government does not, your Honor.

16 THE COURT: Sir?

17 MR. GOLDSTEIN: We do not, your Honor.

18 THE COURT: On the basis of Mr. Singh's responses to
19 my questions, I find that he is fully capable to enter an
20 informed plea.

21 Now, Mr. Singh, do you understand that you are
22 entitled under the constitution to be charged with a federal
23 crime of this nature only on the basis of an indictment
24 returned by a grand jury, but that you waived that right and
25 agreed to be charged on the basis only of an information signed

1 by the United States Attorney?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: You should find before you a document
4 marked as Court Exhibit A, which I understand to be the waiver
5 of indictment.

6 Did you sign that document?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Did you read it before you signed it?

9 THE DEFENDANT: Yes.

10 THE COURT: Did you discuss its implications fully
11 with your attorneys?

12 THE DEFENDANT: Yes.

13 THE COURT: Did you knowingly and voluntarily waive
14 your right to be prosecuted only on the basis of a grand jury
15 inditement?

16 THE DEFENDANT: Yes.

17 THE COURT: Have you had an adequate opportunity to
18 discuss the case with your lawyers?

19 THE DEFENDANT: Yes.

20 THE COURT: And are you satisfied with your lawyers
21 and their representation of you?

22 THE DEFENDANT: Yes.

23 THE COURT: I'm now going to describe your rights
24 under the constitution and laws. Please listen carefully, I'm
25 going to ask at the end whether you understood everything I

1 said.

2 You're entitled to a speedy and public trial by jury
3 on the charges contained in the information against you. If
4 there were a trial, you would be presumed innocent and the
5 government would be obliged to prove you guilty by competent
6 evidence and beyond a reasonable doubt before you could be
7 found guilty. You would not have to prove that you're
8 innocent. You would be entitled to be represented by a lawyer
9 at every stage of your case. If you couldn't afford a lawyer,
10 a lawyer would be provided for you at public expense. The
11 government would have to bring its witnesses into court to
12 testify in your presence. Your lawyer could cross examine the
13 government's witnesses. Your lawyer could object to evidence
14 offered by the government, and your lawyer also could offer
15 evidence in your defense. You would have the right to the
16 issuance of subpoenas, which are a form of compulsory process
17 issued by the Court to compel the attendance of witnesses to
18 testify in your defense. You would have the right to testify,
19 if you chose to do so. You would also have the right not to
20 testify. And if you elected not to testify no inference of
21 guilt could be drawn from that fact.

22 You have the right to enter a plea of not guilty even
23 now. But if you plead guilty, and I accept the plea, there
24 will be no further trial of any kind. You will waive your
25 right to a trial and all the other rights that I just

1 mentioned. I'll enter a judgment of guilty and sentence you on
2 the basis of your guilty plea after I consider a presentence
3 report.

4 You'll also have to waive your right not to
5 incriminate yourself because I'm going to ask you questions
6 about what you did in order to satisfy myself that you are
7 guilty as charged.

8 Do you understand what I said so far?

9 THE DEFENDANT: Yes, your Honor, I understand.

10 THE COURT: Have you received a copy of the
11 information that contains the written charges against you?

12 THE DEFENDANT: Yes.

13 THE COURT: Have you discussed it fully with your
14 attorneys?

15 THE DEFENDANT: Yes.

16 THE COURT: Have you discussed the charges in the
17 information to which you intend to plead guilty with your
18 counsel?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you understand that you are charged in
21 Count One of the information with conspiracy to commit wire
22 fraud on customers of FTX in violation of 18 U.S. Code 1349.

23 Do you understand that's the charge in Count One?

24 THE DEFENDANT: Yes.

25 THE COURT: Ms. Sassoon, please state the elements of

1 the charge.

2 MS. SASSOON: Yes, your Honor.

3 Count One charges the defendant with conspiracy to
4 commit wire fraud, as you noted, in violation of 18 U.S.C.
5 Section 1349. There are two elements:

6 First, the existence of the conspiracy to commit wire
7 fraud;

8 And, second, that the defendant knowingly and
9 willfully became a member of and joined in the conspiracy.

10 The crime of wire fraud, which is both the object of
11 Count One and the offense charged in Count Two, which is
12 substantive wire fraud under 18 U.S.C. Section 1343, has three
13 elements, which I can describe now.

14 THE COURT: Please.

15 MS. SASSOON: First, there is a scheme or artifice to
16 defraud or to obtain money or property by materially false and
17 fraudulent pretenses, representations or promises;

18 Second, that the defendant knowingly participated in
19 the scheme or artifice to defraud with knowledge of its
20 fraudulent nature and with specific intent to defraud, or that
21 he knowingly and intentionally aided and abetted others in the
22 scheme.

23 And, third, that the execution of that scheme the
24 defendant used or caused the use of interstate or international
25 wires. "Wires" referring to the use of telephone, text

1 message, emails and also refers to wire transfer of funds.

2 With respect to that count and all others in the
3 information, if the case proceeded to trial, the government
4 would also have to prove venue by a preponderance of the
5 evidence. Although, any defense based on venue is based in the
6 plea agreement here.

7 THE COURT: Thank you.

8 Mr. Singh, do you understand that in order to convict
9 you on Count One, the government would have to prove the two
10 elements that Ms. Sassoon described to you beyond a reasonable
11 doubt, and but for your waiver of venue would have had to prove
12 the propriety of that count being brought in this court by a
13 preponderance of the evidence.

14 Do you understand those elements?

15 THE DEFENDANT: I understand.

16 THE COURT: And do you understand the government's
17 burden of proof, as I just described it to you, with respect to
18 those elements?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you understand that the maximum
21 possible penalty for Count One is 20 years' imprisonment. The
22 greater of a fine of \$250,000, or twice the gross gain, or
23 twice the gross loss, plus an order of restitution, a mandatory
24 special assessment of \$100, a term of supervised release of
25 three years. And if you were released on supervised release,

1 and found to have violated the terms thereof, you could be
2 sentenced to an additional prison term of two years without
3 credit for any time served on release.

4 Do you understand that?

5 THE DEFENDANT: I understand.

6 THE COURT: Ms. Sassoon, I accurately stated the
7 consequences of a violation of supervised release, did I?

8 MS. SASSOON: Yes, your Honor.

9 THE COURT: Thank you.

10 Now, do you understand that you are charged in
11 Count Two of the information with the substantive crime of wire
12 fraud on customers of FTX and aiding and abetting the same in
13 violation of 18 U.S. Code 1343 and 2. And I point out this is
14 the substantive crime of wire fraud as opposed to a conspiracy
15 to commit wire fraud; that is the subject of Count One.

16 Do you understand that's the charge in Count Two?

17 THE DEFENDANT: Yes.

18 THE COURT: Ms. Sassoon already stated the three
19 elements of the substantive crime of wire fraud.

20 Do you understand the elements of that charge as
21 stated a moment ago by the government?

22 THE DEFENDANT: I do.

23 THE COURT: And once again, as on all of the counts of
24 this indictment, do you understand that to convict you on
25 Count Two, the government would have to prove those three

1 elements beyond a reasonable doubt?

2 THE DEFENDANT: Yes.

3 THE COURT: And do you understand that the maximum
4 possible penalty for the substantive crime of wire fraud is
5 exactly the same as that on Count One?

6 THE DEFENDANT: Yes, your Honor, I understand.

7 THE COURT: Do you understand that you are charged in
8 Count Three with conspiracy to commit commodities fraud?

9 THE DEFENDANT: Yes.

10 THE COURT: At this time, I'll ask Ms. Sassoon to
11 state the elements of conspiracy to commit wire fraud.

12 MS. SASSOON: Thank you, your Honor. And I appreciate
13 this has been broken up because it's a lot of elements.

14 THE COURT: Yes.

15 MS. SASSOON: So Count Three charges the defendant
16 with participating in an illegal conspiracy in violation of
17 18 U.S.C. Section 371. And I'll note that Counts Four and Six
18 likewise charge conspiracies under that statute, although with
19 different objects. Conspiracy under the offense clause 371 has
20 three elements:

21 First, that two or more persons entered the unlawful
22 agreement charged in the specific count of the information;

23 Second, that the defendant knowingly and willfully
24 became a member of that alleged conspiracy;

25 And, third, that one of the members of the conspiracy

1 knowingly committed at least one overt act in furtherance of
2 the conspiracy.

3 The object of the conspiracy charged in Count Three,
4 as your Honor noted, is commodities fraud. In violation of
5 Title 7, United States Code, Sections 9, 1, and 13(a)(5) and
6 Title 17 CFR section 180.1.

7 There are three elements to this crime:

8 First, in connection with any swap or contract of sale
9 of any commodity or interstate commerce or contract for future
10 delivery to on or subject the rules of any registered entity.

11 And, second, the defendant or any of his
12 coconspirators did anyone or more of the following:

13 A, employed or attempted to use or employ a
14 manipulative, device, scheme or artifice to defraud.

15 B, made or attempted to make an untrue or misleading
16 statement of a material fact or omitted to state a material
17 fact necessary to make the statements made not untrue or
18 misleading;

19 Or C, engaged or attempted to engage in an act,
20 practice, or course of business that operated or would operate
21 as a fraud or deceit upon any person;

22 And, third, that the defendant acted knowingly,
23 willfully and with the intent to defraud.

24 THE COURT: Thank you.

25 Do you understand, Mr. Singh, the elements of the

1 charge of conspiracy to commit commodities fraud as
2 distinguished from the substantive offense of commodities
3 fraud?

4 THE DEFENDANT: I do.

5 THE COURT: And do you understand that to convict you
6 on this charge, the government would have to prove the elements
7 of conspiracy to commit wire fraud beyond a reasonable doubt?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Do you understand that the maximum
10 possible penalty in the event of conviction on Count Three
11 would be five years' imprisonment, plus a fine, restitution, a
12 mandatory special assessment, and a term of supervised release,
13 all identical to those on Count One?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that you are charged in
16 Count Four of the information with conspiracy to commit
17 securities fraud?

18 THE DEFENDANT: Yes.

19 THE COURT: I'll ask Ms. Sassoon to state the elements
20 of that crime.

21 MS. SASSOON: Yes. So I already noted the elements of
22 a conspiracy under Section 371. So I'll now turn to the object
23 of the conspiracy charge in Count Four, which is securities
24 fraud in violation of Title 15, United States Code, Section
25 78j(b) and 78ff, and Title 17 CFR, Section 240.10b-5. There

1 are three elements of securities fraud:

2 First, is that in connection with the purchase or sale
3 of securities, the defendant either employed a device, scheme,
4 or artifice to defraud, or made an untrue statement of a
5 material fact or omitted to state a material fact which made
6 what was said under the circumstances misleading, or engaged in
7 an act, practice, or course of business that operated or would
8 operate as a fraud or deceit upon a purchaser or seller;

9 Second, that the defendant acted knowingly, willfully,
10 and with intent to defraud.

11 And, third, that the defendant knowingly used or
12 caused to be used any means or instruments of transportation or
13 communication in interstate commerce or the use of the mails in
14 furtherance of the fraudulent conduct.

15 THE COURT: Thank you.

16 Mr. Singh, do you understand the elements of the
17 charge of conspiracy to commit wire fraud?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: And do you understand that to convict you
20 on that count, the government would have to prove each of those
21 elements beyond a reasonable doubt?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you understand that the maximum
24 possible penalty in the event of conviction on Count Four is
25 exactly the same as on Count Three?

1 THE DEFENDANT: Yes, I do.

2 THE COURT: Do you understand that you are charged in
3 Count Five with conspiracy to commit money laundering?

4 THE DEFENDANT: Yes.

5 THE COURT: Ms. Sassoon?

6 MS. SASSOON: Count Five charges the defendant, as
7 your Honor noted, with conspiracy to commit money laundering in
8 violation of 18 U.S.C. Section 1956(h) money laundering
9 conspiracy are:

10 First, that two or more people entered into an
11 unlawful agreement to commit money laundering;

12 And, second, that the defendant knowingly and
13 willfully entered into the agreement.

14 Count Five charges that there were two objects of the
15 conspiracy:

16 One, concealment of money laundering;

17 And, two, spending money laundering;

18 For the first object, concealment money laundering,
19 there are three elements:

20 First, that the defendant conducted or attempted to
21 conduct a financial transaction which must, in some way or
22 degree, have affected interstate or foreign commerce;

23 Second, that the financial transaction at issue
24 involved the proceeds of specified unlawful activity, which
25 here is the proceeds of the wire fraud scheme charged in Count

1 Two;

2 Third, that the defendant knew that the financial
3 transaction involved the proceeds of some form of unlawful
4 activity, and that the defendant knew that the transaction was
5 designed in or in part either to disguise the nature and
6 location, source, ownership, or control of the proceeds of the
7 unlawful activity. So I think that's actually four elements,
8 your Honor.

9 The second object of Count Five is engaging in a
10 monetary transaction of over \$10,000 in property derived from
11 specified unlawful activity. The elements of this object are:

12 First, that the defendant engaged in a monetary
13 transaction in or affecting interstate commerce;

14 Second, that the monetary transaction involved
15 criminally derived profit of a value greater than \$10,000.

16 And, third, that the property was derived from
17 specified unlawful activity; again, here, wire fraud proceeds
18 from the scheme alleged in Count Two.

19 Finally, that the defendant acted knowing that the
20 transaction involved proceeds of the criminal offense, and that
21 the transaction took place in the United States.

22 THE COURT: Thank you.

23 Did you understand, Mr. Singh, the elements of this
24 charge as stated by the government?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: Do you understand that to convict you on
2 this charge, the government would have to prove each of those
3 elements beyond a reasonable doubt? Subject to this caveat, to
4 the extent that there is a charge of conspiracy, the government
5 would have to prove beyond a reasonable doubt only one of the
6 alleged objects of the conspiracy rather than all.

7 Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand that the maximum
10 possible penalty of this crime is the same as on Count One?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you understand that you are charged in
13 Count Six with conspiracy to defraud the United States and
14 willfully violate the Federal Election Campaign Act?

15 THE DEFENDANT: Yes.

16 THE COURT: Ms. Sassoon?

17 MS. SASSOON: Yes. Thank you, your Honor.

18 And I believe just with respect to Count Five the fine
19 provision is slightly different than for the other charge as
20 noted in the plea agreement.

21 THE COURT: OK. Please enlighten us.

22 MS. SASSOON: A maximum fine pursuant to 18 U.S.C.
23 Section 1956(a)(1)(B), the greatest of \$500,000, or twice the
24 value of the property involved in the transaction.

25 THE COURT: Thank you. I stand corrected.

1 Mr. Singh, did you understand that what was just said?

2 THE DEFENDANT: I understand.

3 THE COURT: All right.

4 MS. SASSOON: Turning now to Count Six of the
5 information, it charges the defendant with another conspiracy
6 under 18 U.S.C. Section 371, whose elements I previously
7 delineated. The object of this conspiracy is conspiring to
8 violate the Federal Election Campaign Act and to defraud the
9 Federal Election Commission. So I'll walk through those
10 objects now.

11 The first object is the object of making a political
12 contribution in the name of another person in violation of
13 Section 30122 of Title 15 of the United States Code. The
14 elements of that offense are:

15 One, making one or more contributions;

16 Two, in the name or names of one or more persons other
17 than the true source of the funds.

18 Three, with the aggregate amount of such contribution
19 being \$25,000 or more in a calendar year;

20 And, four, doing so knowingly and willfully.

21 The second object of the conspiracy is making a
22 political contribution from a corporation. Under the federal
23 election laws, corporations are prohibited from making direct
24 contributions to political candidates. It is unlawful for any
25 corporation to make such a contribution in violation of

1 Section 30118 of Title 15 of the United States Code. The
2 elements of this object are:

3 One, making one or more contributions to candidates.

4 Two, via corporation.

5 Three, with the aggregate amount of such contribution
6 being \$25,000 or more in a calendar year.

7 And, four, that it was done knowingly and willfully.

8 The final object is a conspiracy to defraud the
9 Federal Election Commission. The elements are 12 or more
10 persons agreed to impair, impede, obstruct or defeat by
11 fraudulent or dishonest means the lawful, regulatory and/or
12 enforcement function of an agency.

13 And, two, the defendant knowingly became a member of
14 that conspiracy.

15 And, three, an overt act in furtherance of that
16 conspiracy was committed.

17 THE COURT: Thank you.

18 Mr. Singh, do you understand the elements of the
19 charges just stated by the government?

20 THE DEFENDANT: I do.

21 THE COURT: Do you understand that to convict you on
22 this count, the government would have to prove each of those
23 essential elements beyond a reasonable doubt, but subject also
24 to the same qualification I indicated to you with respect to
25 the previous count, namely, that they need to prove only one of

1 the several alleged objects of the alleged conspiracy?

2 THE DEFENDANT: Yes, understood.

3 THE COURT: Do you understand that the maximum
4 possible penalty for Count Six is the same as on Count Three?

5 THE DEFENDANT: Yes, understood.

6 THE COURT: Do you understand that you will be
7 sentenced on each of these six counts?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand that the sentences could
10 be imposed either concurrently or consecutively, and that if
11 you were sentenced to the statutory maximum on each of the six
12 counts, the term of imprisonment would be the total of the
13 terms imposed on each of the six counts?

14 THE DEFENDANT: Yes, I understand.

15 THE COURT: So that if the sentences were imposed
16 consecutively and the sentences were the maximum term of
17 imprisonment, you could actually be imprisoned under a sentence
18 calling for 75 years in jail?

19 THE DEFENDANT: I understand.

20 THE COURT: Do you understand that if you enter a plea
21 of guilty, you've agreed to forfeit to the United States any
22 money or property you received or gained as a result of the
23 offenses charged in the indictment or that were used to commit
24 the offenses?

25 THE DEFENDANT: Yes, I understand.

1 THE COURT: The forfeiture order has been signed, has
2 it?

3 MS. SASSOON: Yes, your Honor.

4 THE COURT: All right. Andy, do we have that marked?

5 THE DEPUTY CLERK: I did not mark it.

6 THE COURT: You did not mark it?

7 THE DEPUTY CLERK: I believe it's up there.

8 THE COURT: Let's mark one of them as Court Exhibit C.

9 THE DEPUTY CLERK: Should this go before the
10 defendant?

11 THE COURT: Yes, please.

12 Mr. Singh, the clerk has placed before you a document
13 marked Court Exhibit C.

14 Is that your signature on the last page?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Did you read it before you signed it?

17 THE DEFENDANT: Yes.

18 THE COURT: Did you have the advice of counsel before
19 you signed it?

20 THE DEFENDANT: Yes.

21 THE COURT: And are you satisfied with the advice you
22 received from your counsel?

23 THE DEFENDANT: Yes.

24 THE COURT: And did you sign it voluntarily and
25 knowingly?

1 THE DEFENDANT: I did.

2 THE COURT: Do you know its terms?

3 THE DEFENDANT: Yes.

4 THE COURT: Ms. Sassoon, do you have any need to go
5 any farther with that?

6 MS. SASSOON: No. Thank you, your Honor.

7 THE COURT: OK. I'm now going to describe the
8 sentencing process, Mr. Singh. I'm sure that Mr. Capone and
9 Mr. Goldstein have done that already, but it's my job to do it
10 as well.

11 The law requires that you be sentenced in accord with
12 the Sentencing Reform Act and that I take into account the
13 United States Sentencing Guidelines. The sentencing guides, in
14 turn, require that I take into account the actual conduct in
15 which you've engaged, which may be more extensive than what's
16 charged in the information, that I consider the victim or
17 victims of your offense, if there were any, the role that you
18 played, whether you engaged in any obstruction of justice, and
19 whether you've accepted responsibility for your actions, and
20 your criminal history, if you have one. The guidelines provide
21 for the computation of a range of a minimum and a maximum
22 months of imprisonment. You may be sentenced within that
23 guideline range. The Court must consider the guideline range
24 and various other factors enumerated in the guidelines and in
25 the Sentencing Reform Act as well as factors articulated in

1 Section 3553 of Title 18 of the U.S Code. But the Court is not
2 obliged to follow the sentencing guidelines. The only thing
3 you can be sure of about the sentence in your case is that I
4 can't sentence you to something more severe than the statutory
5 maximum that I just explained to you a few minutes ago.

6 Do you understand that?

7 THE DEFENDANT: I understand, your Honor.

8 THE COURT: The probation department will be preparing
9 a written report setting forth the results of an investigation
10 that will conduct into your background and into the offenses to
11 which you are pleading guilty. It's only after it does that
12 that the probation office will state its view as to what they
13 think the applicable sentencing guideline range should be. The
14 Court isn't bound by the probation department's view either.

15 Now, I understand you entered into a plea agreement.
16 And we're going to discuss that in a little more detail in a
17 minute.

18 Do you have it in front of you? It's marked as Court
19 Exhibit B?

20 THE DEFENDANT: Oh, I do have it in front of me.

21 THE COURT: And does it bear your signature?

22 THE DEFENDANT: Yes, it does, your Honor.

23 THE COURT: And did you read it carefully before you
24 signed it?

25 THE DEFENDANT: Yes.

1 THE COURT: Did you discuss it fully with your
2 attorneys before you signed it?

3 THE DEFENDANT: I did.

4 THE COURT: Do you have any unanswered questions about
5 it?

6 THE DEFENDANT: I do not.

7 THE COURT: For all the reasons I just articulated to
8 you, it's impossible to say for certain what your guideline
9 range will be or what sentence will be imposed. If anyone has
10 tried to predict either one of those things to you, whatever
11 prediction you heard may be wrong. Whoever made the prediction
12 may not have all the information that the Court will have when
13 you are sentenced. The only thing, just to repeat, that you
14 can be sure of is that the sentence can't be more than the
15 statutory maximum.

16 I know you stated earlier that you were a born in the
17 United States and therefore are a citizen. I'm obliged it
18 advise you that if you are not a U.S. citizen, a finding that
19 you are guilty of a felony may have a negative impact on your
20 immigration status and any application you may have in the
21 future for permission to remain in the United States or become
22 a citizen. You may be subject to an order of deportation or
23 removal as a result of this guilty plea if are you not a U.S.
24 citizen.

25 Do you understand that?

1 THE DEFENDANT: Yes, your Honor. I understand.

2 THE COURT: OK. It's important that you understand
3 also that you won't be able to withdraw your guilty plea on the
4 ground that any prediction you may have heard about the
5 guideline range or the sentence turns out to be incorrect.

6 Do you understand that?

7 THE DEFENDANT: I understand.

8 THE COURT: Do you understand anything -- everything I
9 said?

10 THE DEFENDANT: Yes.

11 THE COURT: Maybe I should ask whether you understood
12 anything I said.

13 THE DEFENDANT: Yes, to both.

14 THE COURT: But I have no doubt in your case that you
15 understood every word of it.

16 Has anyone offered you any inducements or threatened
17 you or anyone else or forced you in way to plead guilty?

18 THE DEFENDANT: No.

19 THE COURT: Now, we already talked about the plea
20 agreement. Has anyone made any promises to you other than what
21 whatever is set forth in that document that induced you to
22 plead guilty?

23 THE DEFENDANT: No, your Honor.

24 THE COURT: Has anyone made any promises or assurances
25 to you as to what your sentence will be?

1 THE DEFENDANT: No, your Honor.

2 THE COURT: OK. Now, there are a couple of other
3 technicalities that need to be complied with. Before we go on
4 to the next part of this proceeding, I direct the prosecution,
5 once again, to comply with its obligations under *Brady v.*
6 *Maryland* and its progeny to disclose to the defense all
7 information, whether admissible or not, that is favorable to
8 the defendant, material either to guilt or to punishment and
9 known to the prosecution. Possible consequences of
10 noncompliance may include dismissal of individual charges, or
11 the entire case, exclusion of evidence, and professional
12 discipline, or court sanctions on the attorneys responsible. I
13 will be preparing another written order, once again, describing
14 all of this and the possible consequences of failing to meet
15 it. And, once again, I direct the prosecution to review and
16 comply with that order.

17 Does the prosecution, again, confirm that it
18 understands its obligations and will comply with them?

19 MS. SASSOON: Yes, your Honor. The government
20 understood its obligation.

21 I would just note on the bottom of page 5 into page 6
22 of the agreement is a paragraph of about the defendant choosing
23 not to request discovery material and understanding that if he
24 had not entered a plea of the guilty, the government would be
25 required to produce Rule 16 material and further be required to

1 produce material pursuant to *Brady* and Rule 5(f) and, if the
2 defendant proceeded to trial, impeachment material under
3 *Giglio*.

4 THE COURT: Do you understand what counsel just read
5 to you?

6 THE DEFENDANT: Yes, I understand.

7 THE COURT: Thank you. And you understood it when you
8 signed the plea agreement?

9 THE DEFENDANT: Yes, I did.

10 THE COURT: OK. Now, we need to go through the
11 charges.

12 Did you, as charged in Count One of the information,
13 conspire with one or more other persons to commit wire fraud on
14 customers of FTX?

15 THE DEFENDANT: Yes.

16 THE COURT: Please tell me, in your own words, what
17 you did, that in your mind, makes you guilty of that offense.

18 MR. GOLDSTEIN: Your Honor, Mr. Singh prepared an
19 allocution that groups the facts of Counts One through Four
20 together and then Counts Five and Six together. Could he
21 proceed in that way?

22 THE COURT: We could do it that way. Just let me
23 cover the other three counts.

24 Did you, as charged in Count Two of the information,
25 commit the substantive crime of wire fraud on customers of FTX

1 or aid and abet in doing so?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Did, you as charged in Count Three of the
4 information, conspire to commit commodities fraud?

5 THE DEFENDANT: Yes.

6 THE COURT: Did you, as charged in Count Four of the
7 information, conspire to commit securities fraud?

8 THE DEFENDANT: Yes.

9 THE COURT: All right. Now, tell me what you did
10 that, in your mind, makes you guilty of all four offenses those
11 charged in Counts One through Four.

12 THE DEFENDANT: In 2017, I began working at Alameda
13 Research as an engineer. In 2019, at the request of Sam
14 Bankman-Fried and Gary Wang, I moved from Alameda to FTX and
15 similarly began working as an engineer. Eventually, I became
16 the head of engineering at FTX, where I was responsible for
17 coding, other aspects of FTX's platform, and managing junior
18 members of the engineering team.

19 By mid-2022, I understood that Alameda was borrowing
20 funds from FTX that belonged to other customers. I understood
21 that customers were not aware of this, and had not consented to
22 such borrowing.

23 In June of 2022, I participated in an effort to more
24 precisely track the amount of customer money that Alameda had
25 borrowed from FTX and confirmed that it was several billion

1 dollars' worth.

2 By early September 2022, I came to understand that
3 Alameda could not repay what it owed. I knew that Sam
4 Bankman-Fried then tried to raise additional funds from
5 investors, and I understood that investors would not have been
6 told the full truth about FTX's financial condition.

7 In addition, despite understanding at that point, that
8 Alameda was in substantial debt to FTX customers, in my role as
9 a member of the leadership team, I agreed to certain
10 expenditures that originated with Alameda funds, and were,
11 therefore effectively coming from FTX customer money. This
12 involved electronic messages and other wire communications.

13 In addition, at Sam Bankman-Fried's direction, I took
14 actions to make it appear that FTX's revenues were higher than
15 what they were.

16 In 2022, I provided that misleading information to
17 auditors. I understood that that information would be used by
18 Sam Bankman-Fried and others in attempting to raise or in
19 raising funds from investors.

20 I knew at that time that I participated in each of
21 these events that my conduct was wrong.

22 THE COURT: All right. I have a couple of questions.

23 You said a few moments ago that in 2022 you came to
24 understand that investors would not have been told various
25 things in connection with the raising of additional capital.

1 Did I understand you correctly?

2 THE DEFENDANT: That's correct.

3 THE COURT: How did you come to understand that?

4 THE DEFENDANT: I -- can I have one movement to --

5 (Defendant conferred with counsel)

6 THE COURT: Please.

7 THE DEFENDANT: Your Honor, I knew that Sam was
8 attempting to raise from investors. I knew that affirmatively.
9 I had the strong belief that he would not share FTX's full
10 financial condition with them.

11 THE COURT: Well, how did you come to have that
12 belief?

13 THE DEFENDANT: From discussions with Sam.

14 THE COURT: So is that something he told you?

15 THE DEFENDANT: Not explicitly, your Honor. But I
16 understood it implicitly that he would not share FTX's full
17 financial condition.

18 THE COURT: All right.

19 And near the end of your prepared statement, you
20 indicated and possibly you can read it, again, it must have
21 been the last paragraph.

22 THE DEFENDANT: Sure, your Honor.

23 At Sam Bankman-Fried's direction, I took actions to
24 make it appear that FTX's revenues were higher than they were.
25 In 2022, I provided that misleading information to auditors. I

1 understood that the information would be used by Sam
2 Bankman-Fried and others in raising or attempting to raise
3 funds from investors.

4 THE COURT: OK. How did you come to have that
5 understanding.

6 THE DEFENDANT: I understood this information made its
7 way into the financials like, the formal GAAP audited
8 financials. And that those were part of what was provided to
9 prospective investors.

10 THE COURT: And how did you know they were provided to
11 investors?

12 THE DEFENDANT: I think I had that general
13 understanding from overhearing conversations at FTX about what
14 information was provided to investors.

15 THE COURT: Conversations with whom?

16 THE DEFENDANT: With Sam Bankman-Fried and others.

17 THE COURT: All right. Is the allocution on those
18 counts satisfactory to the government?

19 MS. SASSOON: Yes, your Honor, if I may, I will
20 provide a proffer on some jurisdictional --

21 THE COURT: I was going to ask you that next.

22 MS. SASSOON: There was mention of wire
23 communications, but I just wanted to proffer that for Counts
24 One and Two, which were the wire fraud counts, wires in the
25 form of Slack communications, customer wire transfer deposits

1 and other bank wires went through the Southern District of New
2 York in connection with these crimes. For Count Three,
3 commodities fraud, the government would prove that FTX.com
4 permitted trading of crypto derivatives, such as future
5 contracts, which would constitute commodities under the
6 statute. And for Count Four, securities fraud, the government
7 would prove that equity investors in FTX would receive stock,
8 which constitute a security under the relevant statute.

9 THE COURT: Thank you.

10 Mr. Singh, do you agree with what Ms. Sassoon said?

11 THE DEFENDANT: I do.

12 THE COURT: OK. Now, let's go to Count Five.

13 THE DEFENDANT: This is the campaign finance charge.

14 THE COURT: Well, you're getting ahead of me. I'm
15 sure you are a smart fellow, but let me get there first.

16 Did you, as charged in Count Five, conspire to commit
17 money laundering?

18 THE DEFENDANT: Yes.

19 THE COURT: All right. What did you do that, in your
20 mind makes you guilty of money laundering conspiracy?

21 MR. GOLDSTEIN: Just, again, your Honor, his
22 allocution --

23 THE COURT: You want to take both counts together?

24 MR. GOLDSTEIN: Yes.

25 THE COURT: Did you, as charged in Count Six, conspire

1 to defraud the United States and willfully to violate the
2 Federal Election Campaign Act?

3 THE DEFENDANT: Yes.

4 THE COURT: Please tell me, in your own words, what it
5 is you did that, in your mind, makes you guilty of the crimes
6 charged in Counts Five and Six.

7 THE DEFENDANT: In 2022, I agreed with others at FTX
8 and Alameda to make political donations in my name that were
9 funded in part by transfers from Alameda. Although I agreed
10 politically with many of the donations, I did not select the
11 candidates and the political action committees who received the
12 donations. And I understood that the donations were in part
13 for the benefit of Sam Bankman-Fried and FTX and their ability
14 to be politically influential.

15 I also understood that any reporting of the donations
16 would conceal that the money came from Alameda. And I knew at
17 that time that Alameda money had to be coming, effectively,
18 from FTX customer funds.

19 I knew that this misleading information about the
20 campaign donations, that said that I made the donations, would
21 be reported by the government. And at the time I was not sure
22 whether my conduct was unlawful because I wasn't familiar with
23 the campaign finance rules, but I knew my conduct was wrong.
24 And I chose not to ask questions that would have made it clear
25 that facilitating these donations was unlawful.

1 THE COURT: Did you understand that there was a
2 substantial risk that what you did was prohibited by law?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: And did you consciously act to avoid
5 learning whether, in fact, it violated the law or not?

6 THE DEFENDANT: May I have one moment to discuss with
7 counsel?

8 THE COURT: Please.

9 (Defendant conferred with counsel)

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Is the allocution satisfactory to the
12 government?

13 MS. SASSOON: Yes, your Honor.

14 And with respect to Count Five, the money laundering
15 charge, the government would prove that wire transfers occurred
16 within the Southern District of New York.

17 THE COURT: Thank you.

18 Do you agree with what Ms. Sassoon just said?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: OK. How do you now plead to the charges
21 in Counts One through Six, guilty or not guilty?

22 THE DEFENDANT: I plead guilty.

23 And, your Honor, I'm unbelievably sorry for my role in
24 all of this and the harm that it's caused. I'm hoping that in
25 accepting responsibility, assisting the government, and

1 forfeiting assets, I can begin to make it right.

2 THE COURT: Thank you.

3 Are you pleading guilty because you, in fact, are
4 guilty of those crimes.

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: OK. You may be seated.

7 I will accept the plea of guilty. A judgment of
8 guilty will enter. The defendant acknowledges that he is, in
9 fact, guilty as charged in the information. He knows that he
10 has a right to a trial. He knows what the maximum possible
11 sentence is. And he has an understanding of the applicable
12 sentencing guidelines. I find that the plea is voluntary and
13 supported by an independent basis in fact containing each of
14 the essential elements of the offense.

15 Now, Mr. Singh, as I told you, the probation
16 department will prepare a presentence report to assist in
17 sentencing you. You're going to be interviewed by the
18 probation officer who does that. It's important that you be
19 truthful and accurate with the probation officer. The report
20 may well be quite important in my decision as to what to
21 sentence you to. You and your lawyers will have the right to
22 examine and comment on the report and to speak on your behalf
23 before you are sentenced.

24 Any written submissions on behalf of the defendant
25 must be submitted to chambers not later than three weeks before

1 the sentencing date.

2 Do we have a control date for sentencing?

3 MS. SASSOON: The parties would propose a date
4 approximately 18 months from now.

5 THE COURT: Andy.

6 THE DEPUTY CLERK: Sure, Judge.

7 Judge, 18 months from now, how about November 13,
8 2024, Judge?

9 THE COURT: Sentencing is set for November 13, 2024,
10 at 10:00 a.m.

11 Now, it's premature, I'm sure, to set a date for the
12 submission of the prosecution case summary, yes?

13 MS. SASSOON: Yes, your Honor.

14 THE COURT: What do you propose? Do you want to say
15 September of 2024?

16 MS. SASSOON: Yes, your Honor. Thank you.

17 THE COURT: The prosecution case summary will be
18 submitted to probation no later than September 1st, 2024. And
19 leave it to probation and the defense to work out an interview
20 date, unless somebody has a better idea. Now --

21 MS. SASSOON: Yes, your Honor. And we have a trial
22 date in this matter for Samuel Bankman-Fried, and after that
23 trial date we can circle back with the Court about setting
24 other deadlines related to Mr. Singh's sentencing.

25 THE COURT: Now, there's an application with respect

1 to the filing of redacted copies of the superseding
2 information. And the forfeiture preliminary order of
3 forfeiture.

4 Any objection to any of that? Have you all agreed on
5 that?

6 MS. SASSOON: Yes, your Honor. And there's a related
7 redaction to the plea agreement that I know doesn't get filed
8 on the docket, but to the extent there is a public version made
9 available to interested parties, we would redact identical
10 language from the employment.

11 THE COURT: Well, it's not the Court's practice to
12 make them available.

13 MS. SASSOON: I know that our office sometimes
14 provides it given that it's a court exhibit.

15 THE COURT: OK.

16 MS. SASSOON: And I would just note that the
17 redactions, we would provide unredacted copies in the course of
18 executing the forfeiture. So to the extent that we need to
19 coordinate the forfeiture of shares and the like, we would
20 provide the unredacted copy to parties that we would need to
21 coordinate with for purposes of executing forfeiture.

22 THE COURT: Mr. Capone, anything on that?

23 MR. GOLDSTEIN: Mr. Goldstein. No, your Honor, no
24 objection.

25 THE COURT: Oh, excuse me. I should know better.

1 OK. Now, let's take a bail. Who's going to handle
2 that for the government?

3 MS. SASSOON: The government has a proposed bail
4 package for your Honor's consideration set forth in the plea
5 agreement on page 5. And the proposed conditions are a
6 \$250,000 personal recognizance bond signed by one financially
7 responsible person, travel restricted to the Continental United
8 States, surrender of travel documents, with no new
9 applications, supervision as directed by pretrial services, and
10 other standard conditions of supervision. And I think relevant
11 context here is that this defendant voluntarily traveled back
12 to the United States from the Bahamas shortly after the
13 implosion of FTX, in part for the purpose of beginning meetings
14 with the government. And so, principally, for that reason,
15 along with his cooperation, we don't have concerns that these
16 conditions will not be sufficient.

17 THE COURT: All right. I find that the conditions are
18 sufficient.

19 And does the government want to submit a bail order,
20 or do you trust your luck with Andy?

21 MS. SASSOON: I always trust Andy, Your Honor.

22 THE COURT: OK. Mr. Singh, you understand what the
23 bail conditions are?

24 THE DEFENDANT: I do, your Honor.

25 THE COURT: You understand you absolutely have to

1 comply with them, yes.

2 THE DEFENDANT: Yes.

3 THE COURT: And you understand if you don't show up as
4 required for sentencing, you could be prosecuted for escape?

5 THE DEFENDANT: I missed a word from that, your Honor.
6 Sorry. If I don't show up at what for sentencing?

7 THE COURT: If you don't show up, as directed, for
8 sentencing, you could be prosecuted for escape and subject to
9 another prison term?

10 THE DEFENDANT: I understand your Honor.

11 THE COURT: OK. Anything else this morning?

12 MS. SASSOON: May I have one moment, your Honor?

13 THE COURT: Please.

14 MS. SASSOON: Nothing from the government. Thank you,
15 your Honor.

16 MR. GOLDSTEIN: Your Honor, we understand that
17 Mr. Singh will sign the bond and be released today.

18 THE COURT: Say again, please?

19 MR. GOLDSTEIN: We understand that Mr. Singh will be
20 able to sign the bond and be released on those conditions
21 today.

22 THE COURT: OK.

23 MS. SASSOON: Yes, your Honor.

24 THE COURT: Fine. OK. I thank you all. And we'll
25 sort out all the paper here in due course. * * *

CREDIT SUISSE FIRST BOSTON
PORTFOLIO SWAPS (STANDARD TERMS) ANNEX

Credit Suisse First Boston (Europe) Limited ("CSFB") and Tiger Asia Fund, L.P. (the "Counterparty") have entered into 1992 ISDA Master Agreement, with related schedules (the "Master Agreement"). This Annex (the "Standard Terms") supplements and forms part of the Master Agreement and is intended to govern the parties' relationship when entering into Swap Agreements on Securities ("Securities Swaps"). Each Contract shall be deemed a "Transaction" for the purposes of the Master Agreement.

In order to enter into a Securities Swap, the Counterparty must notify (by telephone or as otherwise agreed between the parties) CSFB of its request for an offer, specifying the name of the relevant Security and the proposed quantity, and whether the Counterparty wishes to act as Synthetic Buyer or Synthetic Seller. If CSFB agrees to provide such offer it must then notify (by telephone or as otherwise agreed between the parties) the Counterparty of the proposed Opening Price. Should the Counterparty wish to accept this offer, it must immediately notify CSFB (by telephone or as otherwise agreed between the parties) of its acceptance. This acceptance gives rise to a binding Contract between the parties. An offer by CSFB that is not immediately accepted shall be deemed to lapse unless CSFB specifically states that it shall remain open.

A Confirmation will be prepared and posted by CSFB on its client access website within one Business Day of the Transaction being entered into between the parties. The Counterparty shall be deemed to have accepted the terms of the Confirmation if it does not dispute its terms within 24 hours (one Business Day) of such posting. Failure to dispute the terms within one Business Day shall constitute Counterparty's full acceptance of the Contract upon the terms, and subject to the conditions, as set out in the Confirmation and within these Standard Terms. In the event of any inconsistency between the provisions of the Standard Terms and any Confirmation, the Confirmation shall prevail. In the event of any inconsistency between the provisions of the Standard Terms and the Master Agreement, the Standard Terms shall prevail for the purposes of the relevant Transaction.

1. DEFINITIONS

- 1.1. **Additional Payments** is defined in Section 5.1.
- Appendix** is the document substantially in the form attached hereto. The Appendix referred to in the Standard Terms is distinct from all other schedules incorporated into the Master Agreement.
- Applicable Cycle Date** is as defined in the Appendix.
- Applicable Interest Rate** is the rate for the Contract Currency as defined in the Appendix for the Applicable Interest Rate Cycle on the Applicable Cycle Date.
- Applicable Interest Rate Cycle** is as defined in the Appendix or as otherwise specified in the Confirmation.
- Bond** is a bond or other debt instrument.
- Bond Pricing Factor** is as set forth in the Confirmation.
- Breakage Amount** is as defined in Section 9.4.
- Business Day** is, for each Contract, a day on which the Security is traded on the relevant Exchange or, for non-Exchange traded Securities, each day quotations are available to CSFB.
- CEA** means the U.S. Commodity Exchange Act, as amended.
- Close of Business** is the time of the official close of trading (without regard to any "after hours" trading) on the Exchange on which the Security is traded as specified in the Confirmation or if the Security is not traded on an Exchange as reasonably determined by CSFB.
- Closing Date** is the earliest of:
- (i) the Original Closing Date;
 - (ii) the date determined in accordance with Section 7, Section 8 or Section 11; and
 - (iii) the Business Day on which the Counterparty accepts the Closing Price quoted by CSFB and gives notice that it wishes to

(ii) a distribution or dividend to existing holders of a Security of additional shares of the Security, other share capital or securities granting the right to payment of dividends and/or the proceeds of liquidation of the issuer equally or proportionately with such payments to holders of the Security or other types of securities, rights or warrants or other assets, in any case for payment (cash or other) at less than the prevailing market price as determined by CSFB;

(iii) a call by the issuer in respect of shares of a Security that are not fully paid;

(iv) a repurchase by the issuer of a Security, whether out of profits or capital and whether the consideration for such repurchase is cash, securities or otherwise; or

(v) any other similar event that may have a diluting or concentrative effect on the value of a Security.

Reference Price

is in relation to the valuation of any Security on any date:

(i) shall be either the closing auction price or the last regular way trade on the Exchange for that Security as of the Close of Business (without regard to any "after hours" trading) on the date of such valuation;

(ii) if the Security is a bond, or if for any reason such quotation is unavailable, or if CSFB has reasonably concluded that such last regular way trade price is not a fair reflection of market value, the price shall be reasonably determined by CSFB as at Close of Business on the date of such valuation taking into account, in the case of Bonds, any accrued interest; or

(iii) if specified as a non-exchange traded Security then as reasonably determined by CSFB.

(iv) if for any reason no such quotation is available (or if CSFB reasonably concludes that the last regular way trade price is not a fair reflection of the market value), the price as

	reasonably determined by CSFB at the Close of Business on the date of such valuation.
Related Exchange	is the principal exchange(s) on which futures or options related to the Security are traded.
Scheduled Closing Date	is the date (if any) identified as such in the Confirmation in relation to a Contract.
Security	is the security specified in the Confirmation. In the case of any Security that is a Bond, each Security will represent a nominal amount of such Security equal to the Bond Pricing Factor of such Security specified in the Confirmation.
Security Balance	shall be an amount determined in accordance with Section 3.1.
Security Cycle Date	is the settlement period mandated by the relevant Exchange, and specified in the Appendix.
Security Payment	is a payment required to be made pursuant to Section 3.3.
Security Payment Date	is each date specified in the Appendix and the Termination Date.
Spread	is the percentage specified in the Confirmation.
Swap Fee Amount	is the amount represented in basis points, as agreed between the parties as, specified in the Confirmation.
Swap Fee	is as defined in Section 3.5.
Synthetic Buyer	is the party specified as such in the Confirmation.
Synthetic Seller	is the party specified as such in the Confirmation.
Termination Date	is the number of Business Days following the Closing Date as specified in the Appendix for the relevant Exchange or as otherwise agreed between parties.
Trade Date	is, for each Contract, the date specified as such in the Confirmation.

Valuation Date

is, for each Contract, each successive Business Day from but excluding the Trade Date up to and including the Closing Date.

2. CONTRACT TERMS

2.1. The purpose of each Contract is to allow the Counterparty synthetically to gain exposure to fluctuations in the price of the relevant Security. Accordingly, CSFB and the Counterparty agree that it is an express term of the Contract that:

- (i) neither party acquires any interest in or right to acquire or dispose of any Security or any right to vote or give any consent with respect to any Security by virtue of any Contract; and
- (ii) neither party is obliged to sell, purchase, hold, deliver or receive any Security by virtue of any Contract.

3. SECURITY AND CALCULATION OF INTEREST

3.1. For each Contract, the Opening Security Balance adjusted as provided in 3.3 is referred to as the Security Balance. On the Trade Date the Opening Security Balance shall be zero. For the avoidance of doubt a Security Balance may be positive or negative.

3.2. On each Valuation Date for a Contract, CSFB shall determine the Reference Price.

3.3. On each Security Payment Date (up to but excluding any Closing Date) for a Contract, a Security Payment shall be made to take into account any change in the Reference Price of the Security. Security Payments shall adjust the Security Balance. The Security Payment shall be an amount equal to $Q \times (P_2 - P_1)$, where:

$Q =$ the Contract Quantity;

$P_1 =$ the Reference Price on the immediately prior Security Cycle Date or in respect of the first Security Payment Date, the Opening Price; and

$P_2 =$ the Reference Price on the most recent Security Cycle Date.

If P_2 is greater than P_1 , then the Synthetic Seller shall make the Security Payment to the Synthetic Buyer and the Security Balance shall be increased by an equal amount; or

If P_2 is less than P_1 , then the Synthetic Buyer shall make the Security Payment to the Synthetic Seller and the Security Balance shall be reduced by an equal amount and may be reduced below zero.

3.4. On each Interest Payment Date for a Contract, the Synthetic Buyer shall pay to the Synthetic Seller an amount equal to the Interest Payment. The Interest Payment shall be the aggregate amount of Interest accrued daily from, and including, the immediately preceding Interest Payment Date (or the Effective Date in the case of the first payment made under this Section 3.4) to, but excluding, the next Interest Payment Date (or Closing Date as the case may be).

Each day's Interest shall be calculated as $((Q \times P_0) + N) \times (R + C) \times (1/F)$, where:

- Q** = the Contract Quantity;
- P₀** = the Opening Price;
- N** = the Security Balance on the previous Interest Payment Date;
- R** = the Applicable Interest Rate on such day;
- C** = the Spread, which may be positive or negative, and may depend on whether Counterparty is Synthetic Buyer or Synthetic Seller, as set out in the Appendix; and
- F** = the Day Count Fraction.

- 3.5. On the first Security Payment Date only, the Counterparty shall pay an amount equal to the Swap Fee to CSFB. The Swap Fee is calculated as $Q \times P_0 \times Z$, where:

- Q** = the Contract Quantity;
- P₀** = the Opening Price; and
- Z** = Swap Fee Amount

4. PAYMENTS NETTING

- 4.1. If, on any Payment Date the same amounts would otherwise be payable by each party to the other (under any provision of a Security Swap with respect to any Contract), then on such date, each party's obligation to make such payment shall be netted against each other, and automatically satisfied and discharged. If the aggregate amount otherwise payable by one party exceeds the aggregate amount payable by the other, then the party with the larger aggregate amount shall be obligated to pay the difference on the Payment Date.

5. ADDITIONAL PAYMENTS AND ADJUSTMENTS

- 5.1. additional payments shall be made by the Synthetic Seller if, during the period from but not including the Trade Date to and including the Termination Date, any of the following circumstances shall occur(each being an "Additional Payment"):
- (i) If the issuer of a Security pays a dividend or makes another distribution in respect of such Security, the payment to be made by the Synthetic Seller shall be equal to the gross amount of the cash dividend or distribution per share (excluding for the avoidance of doubt any tax credits), as the case may be, multiplied by the Dividend Percentage, multiplied by the Contract Quantity, and in respect of a Security which is a Bond, an amount equal to the coupon amount payable to persons who would be holders of record of the Security multiplied by the Contract Quantity.

- (ii) If the issuer of a Security shall, by way of preferential rights, offer, grant or issue to the holders of such Security generally such additional shares of the Security or any other securities, which by their terms of issue are convertible into or exchangeable for or carry rights to subscribe for or otherwise acquire such additional shares of the Security or any options, warrants or rights to subscribe for or otherwise acquire such additional shares of the Security or any such convertible or exchangeable securities, the payment to be made by the Synthetic Seller shall be equal to the aggregate value of the rights as determined by CSFB in its reasonable discretion on the Business Day on which the rights are first traded.
- (iii) If the issuer of a Security shall distribute to holders of such Security generally any of its assets (including cash or portfolio securities) out of its reserves (but excluding cash dividends payable out of distributable reserves), the payment to be made by the Synthetic Seller shall be equal to the value of the cash or securities obtained by way of distribution as determined by CSFB in its reasonable discretion on the Business Day on which the Security is marked ex the distribution.

- 5.2 If CSFB reasonably determines that there has been, within the term of a Contract or the 12 months following the date of a distribution, a change in any applicable law or regulation (or a change in the interpretation or application by any court, governmental or other authority of such law or regulation) which would have had the effect of reducing or increasing the amount of the ordinary cash dividend per Security actually due to the holder of the Security in the Counterparty's jurisdiction, CSFB may adjust the Dividend Percentage with immediate effect by notice in writing to the Counterparty. If any such change is to take effect prior to the date upon which CSFB gives such notice, CSFB may make such adjustments to the payment obligations of the parties in respect of any Contract to which it considers such change applicable. In the event that the Contract shall have been previously closed, the Counterparty shall indemnify CSFB in respect of any such change on a full indemnity basis.

All Additional Payments made under this Section shall be payable on the date of the relevant distribution to holders of the relevant Security, or as otherwise reasonably determined by CSFB.

6. POTENTIAL ADJUSTMENT EVENTS

- 6.1. In case of a Potential Adjustment Event affecting a Security, CSFB shall determine (in its own discretion) the appropriate adjustment, if any, to be made to the Security's Reference Price (or Opening Price as the case may be) and/or to its Contract Quantity. CSFB shall consider the diluting or concentrating effect of the Potential Adjustment Event, and attempt to preserve the economic equivalent of the rights and obligations of the parties as in effect immediately prior to the Potential Adjustment Event. CSFB shall also determine the date of adjustment.
- 6.2. In determining whether an adjustment should be made as a result of a Potential Adjustment Event, CSFB may have regard to, but shall not be bound by, any adjustment to the terms of the relevant options contracts made and announced by a Related Exchange.

- 8.3. If at any time prior to the Termination Date, the issuer of a Security shall have entered into insolvency or liquidation proceedings (whether following suspension or otherwise), then the Termination Date shall be deemed to be the date on which the liquidator or official receiver gives notice of the final distribution to the holders of shares in the insolvent issuer. If no such distribution is declared, the Termination Date shall be deemed to be the date of the final declaration of dividends to the unsecured creditors of the insolvent issuer. The Closing Price of the Security for the purposes of Section 9 shall be equal to the amount receivable through the distribution to each such holder of each share held by it or, if none, zero.

9. CONTRACT CLOSING AND MATURITY

- 9.1. On any Business Day when CSFB or the Counterparty wishes to close any Contract (whether in whole or in part), it shall give notice of that fact to the other party (by telephone or as otherwise agreed between the parties) specifying the Security and the proportion of such Contract it wishes to close.
- 9.2. CSFB shall then calculate and notify the Counterparty of the Closing Price (by telephone or as otherwise agreed between the parties), which shall be binding upon the Counterparty. CSFB shall then settle the portion of the Contract to be closed in accordance with Section 9.3, and such date shall be deemed the Closing Date. In the event that a Contract is closed only in part, CSFB shall make any necessary adjustments to the Contract Quantity.
- 9.3. On the Closing Date (be it the Termination Date or otherwise), CSFB shall calculate the Contract Price Difference as an amount equal to: $(Q \times (P_3 - P_0))$, where:

$Q =$ the amount of the Contract Quantity to be closed;

$P_0 =$ the Opening Price; and

$P_3 =$ the Closing Price.

If P_3 is greater than P_0 , then the Synthetic Seller shall pay the Synthetic Buyer an amount equal to the Contract Price Difference.

If P_3 is less than P_0 , then the Synthetic Buyer shall pay such amount to the Synthetic Seller an amount equal to the absolute value of the Contract Price Difference.

Additionally, if Security Balance is (i) positive then that amount shall be paid by the Synthetic Buyer to Synthetic Seller; (ii) negative then that amount shall be paid by Synthetic Seller to the Synthetic Buyer.

- 9.4. In addition, if the Counterparty has elected to close the Contract, in whole or in part, before the Scheduled Closing Date, then CSFB (on the Closing Date) shall calculate the Breakage Amount, which shall be due from the Counterparty to CSFB.

The Breakage Amount shall be an amount equal to $(Q \times Z \times P_3)$, where:

$Q =$ the amount of the Contract Quantity being closed;

Z = the Swap Fee Amount; and

P₃ = the Closing Price.

9.5. All payments due under 9.3 (Contract Price Difference), 9.4 (Breakage Amount) and the final Interest Payment under 3.4 shall be netted against each other, and the balance shall be due on the Termination Date. However, where agreed between the parties the balance, together with interest calculated at a rate agreed between the parties from time to time, may be paid on the following Security Payment Date according to the Appendix (as if such Contract had not terminated).

9.6. If CSFB or the Counterparty gives notice to close only a portion of the Contract Quantity, then the provisions of this Section shall apply only to that portion. The remainder of the Contract Quantity shall continue to be governed by these Standard Terms.

10. CALCULATION AND SETTLEMENT OF PAYMENTS

10.1. All payments made under a Contract shall be made in accordance with the account details specified in the relevant Confirmation.

10.2. All payments shall be in the Contract Currency.

11. ADJUSTMENT AND TERMINATION

11.1. Should CSFB wish to borrow, buy, sell or lend a Security and either is at any time unable to do so, or if CSFB's ability to do so becomes, in the reasonable opinion of CSFB, materially impaired or restricted at any time for whatever reason including, without limitation, for reasons of material increase in the cost of borrowing, then CSFB shall notify the Counterparty. On the Counterparty's request, CSFB shall provide reasonable evidence of such circumstances. However, CSFB's determination of impairment shall be conclusive.

11.2. At any time following a notification under Section 11.1, CSFB may, at its election, close any Contract affected by the operation of Section 11.1, in whole or in part CSFB shall immediately give the Counterparty notice of its action, including the Closing Price and, if relevant, the date of notice shall serve as the Closing Date. Sections 9.3 and 9.4 shall apply. Counterparty shall have the option to avoid the close of any Contract pursuant to this Section due to a material increase in the generally prevailing cost of borrowing by agreeing to adjust the Spread by an amount reflecting the increase in the cost of borrowing as reasonably determined by CSFB.

11.3. Where a Contract references Convertibles such Contract shall terminate automatically upon the effective date of a conversion (however described in the terms of such Convertible) and such date shall be deemed to be the Termination Date in respect of such Contract.

12. ADDITIONAL REPRESENTATIONS AND AGREEMENTS

12.1. Each party represents to the other party:

**Appendix to Portfolio Swaps (Standard Terms)
 Dated February 4, 2005 which supplements the Master Agreement
 dated as of February 4, 2005 between
 Credit Suisse First Boston (Europe) Limited
 and
 Tiger Fund Asia, L.P. ("Counterparty")**

Spreads:

Counterparty is Synthetic Buyer As determined in the relevant Confirmation.
 Counterparty is Synthetic Seller As determined in the relevant Confirmation.

Dividend Percentages:

Counterparty is Synthetic Buyer As determined in the relevant Confirmation.
 Counterparty is Synthetic Seller As determined in the relevant Confirmation.

Applicable Interest Rate: The London Interbank Offered Rate as set forth in the relevant Confirmation and as specified on Reuters pages LIBOR01 and LIBOR02, as applicable.

Applicable Cycle Date: [Daily]

Applicable Interest Rate Cycle: [1 week]

Security Payment Date: Last Business Day in each calendar month

Interest Payment Date: each Security Payment Date

Business Day Convention: In the event any relevant date falls on a day that is not a Business Day, such date shall be the first following day which is a Business Day unless that day falls in the next calendar month in which that date will be the first preceding day that is a Business Day.

Day Count Fraction: Corresponding to the Contract Currency specified as such in the relevant Confirmation as listed below:

Contract Currency:	GBP	USD	AUD	BRL	CAD	CZK	DKK	EUR	GRD	HKD	ISK	INR	JPY
Day Count Fraction:	365	360	365	360	360	360	360	360	360	360	360	360	360

Contract Currency:	KPW	KRW	MYR	MXN	NZD	PLN	SGD	ZAR	SEK	CHF	TWD	THB
Day Count Fraction:	360	360	360	360	360	360	360	360	360	360	360	360

Contract Currency:	TRL	USD
Day Count Fraction:	360	360

Security Cycle Date:

Unless specified otherwise in the Confirmation, number of Business Days before the Security Payment Date as specified in the table below for the Exchange as specified in the Confirmation:

Exchange:	London Stock Exchange	NASDAQ	New York Stock Exchange	Athens Stock Exchange	Amsterdam Stock Exchange	Australian Stock Exchange	Bolsa de Madrid
Business Days:	3	3	3	3	3	3	3

Exchange:	Bombay Stock Exchange	Borsa Italiana S.p.A	Copenhagen Stock Exchange	EASDAQ	Euronext Belgium	Icelandic Stock Exchange	Irish Stock Exchange
Business Days:	5	3	3	3	3	1	3

Exchange:	KOSDAQ	Kuala Lumpur Stock Exchange	Bolsa Mexicana de Valores	New Zealand Stock Exchange	Sao Paulo Stock Exchange	Johannesburg Stock Exchange
Business Days:	2	4 – buy 5 – sell	3	3	3	As specified in the Confirmation

Exchange:	Stock Exchange of Hong Kong	Stock Exchange of Singapore	Stock Exchange of Thailand	Stockholmborsen	SWX	Taiwan Stock Exchange
Business Days:	2	3	3	3	3	1

Exchange:	Tokyo Stock Exchange	Wiener Borse AG	Warsaw Stock Exchange	Euronext Paris S.A.	Prague Stock Exchange
Business Days:	3	3	3	3	5

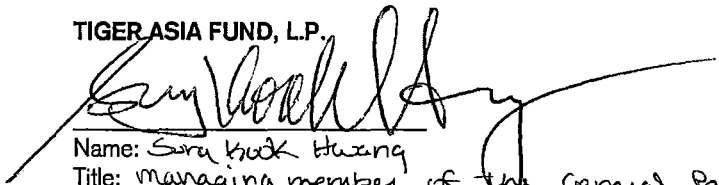
Exchange:	Xetra	Borsa de Valores de Lisboa e Porto
Business Days:	2	3

CREDIT SUISSE FIRST BOSTON (EUROPE) LIMITED

Name
Title:

Name
Title:

TIGER ASIA FUND, L.P.



Name: Sara Kwok Hwang
Title: Managing member of the General Partner

Name:
Title:

CREDIT SUISSE
PORTFOLIO SWAPS (STANDARD TERMS) ANNEX

Credit Suisse International (“CS”) and Archegos Fund, LP (the “Counterparty”) have entered into a 1992 ISDA Master Agreement dated as of December 15 2020, including the Schedule and any annexes thereto (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Master Agreement”). This Portfolio Swaps (Standard Terms) Annex, including the Schedule attached hereto and made a part hereof (the “Standard Terms”), supplements and forms part of the Master Agreement and is intended to govern the parties’ relationship when entering into an equity swap transaction through “Primeview” (or successor system) that the parties agree to be governed by the Standard Terms in relation to a single Share, a basket of Shares treated together (a “Custom Basket”) a single Index or a basket of Indices treated together (a “Custom Index Basket”) (each, an “Equity Swap Transaction”). Each Equity Swap Transaction shall be deemed a “Transaction” for the purposes of the Master Agreement.

The definitions and provisions contained in the 2006 ISDA Definitions (the “Swap Definitions”) and in the 2002 ISDA Equity Derivatives Definitions (the “Equity Definitions,” and together with the Swap Definitions, the “Definitions”), in each case as published by the International Swaps and Derivatives Association, Inc., as amended and supplemented from time to time, are incorporated into these Standard Terms. In the event of any inconsistency between the Swap Definitions and the Equity Definitions, the Equity Definitions will govern. In the event of any inconsistency between either set of Definitions and the Standard Terms, the Standard Terms shall prevail. The confirmation applicable to each Transaction, which shall constitute a “Confirmation” for the purposes of, and will supplement, form a part of, and be subject to, the Master Agreement, shall consist of the Standard Terms (including the Schedule hereto), as supplemented by the trade details applicable to such Transaction as set forth in the Confirmation for that Transaction.

In order to enter into a Transaction, the Counterparty must notify (by telephone or as otherwise agreed between the parties) CS of its request for an offer, specifying the name of the relevant Shares, Custom Basket, Index or Custom Index Basket, and the proposed Number of Shares or the proposed Number of Units, as applicable, and whether the Counterparty wishes to act as **Equity Amount Receiver/Synthetic Buyer** or **Equity Amount Payer/Synthetic Seller**. If CS agrees to provide such offer, it must then notify (by telephone or as otherwise agreed between the parties) the Counterparty of the proposed Initial Price or formula for determining the Initial Price. Should the Counterparty wish to accept this offer, it must immediately notify CS (by telephone or as otherwise agreed between the parties) of its acceptance. This acceptance gives rise to a binding Transaction between the parties. An offer by CS that is not immediately accepted shall be deemed to lapse unless CS specifically states that it shall remain open.

A Confirmation will be prepared and either (i) posted by CS on its client access website or (ii) delivered by CS to the Counterparty by other electronic means, in each case, within one Business Day of the Transaction being entered into between the parties. The Counterparty shall be deemed to have accepted the terms of the Confirmation if it does not dispute its terms within one Business Day of such posting or delivery, as the case may be. Failure to dispute the terms within one Business Day shall constitute the Counterparty’s full acceptance of the Transaction upon the terms, absent manifest error, and subject to the conditions, as set out in the Confirmation and within these Standard Terms. In the event of any inconsistency between the

Exchange Business Day: Any Scheduled Trading Day on which each Exchange and Related Exchange, if any, are open for trading during their respective regular trading sessions, notwithstanding such Exchange or Related Exchange, if any, closing prior to its Scheduled Closing Time; *provided* that (i) for non-Exchange traded Shares, each day on which price quotations are available to (or provided by) CS in respect of such Shares, (ii) for an Index Swap Transaction or an Index Basket Transaction, it shall also mean each day the Index Sponsor(s) publishes the level of the Index or Indices and (iii) for a Share Basket Swap Transaction or Index Basket Swap Transaction, Exchange Business Day shall be determined on a per Share or per Index, as applicable, basis.

Settlement Currency: As specified in the Confirmation.

Calculation Agent: Notwithstanding any provision of the Master Agreement, CS shall be the sole Calculation Agent.

Depository Receipt Election: Applicable with respect to any of the Shares that are depository shares or receipts, unless otherwise specified in the Confirmation.

In the event that Depository Receipt Election is Applicable, the 2002 Definitions shall be supplemented by the 2007 Partial Lookthrough Depository Receipt Supplement to the Equity Definitions or the 2007 Full Lookthrough Depository Receipt Supplement to the Equity Definitions, as specified in the Confirmation.

2. Equity Amounts

Equity Amount Receiver: The party specified as the Synthetic Buyer in the Confirmation.

Equity Amount Payer: The party specified as the Synthetic Seller in the Confirmation.

Equity Amount Payment Date: Unless otherwise specified in the Confirmation, in respect of each Valuation

provisions of Section 6.1 of the Equity Definitions.

In respect of an Index Swap Transaction or an Index Basket Swap Transaction, Not Applicable.

3. Floating Amounts:

Floating Amount Payer:

The Equity Amount Receiver.

Floating Amount Receiver:

The Equity Amount Payer.

Calculation Amount:

Equity Notional Amount:

Floating Amount Payment Dates:

Each date specified in the Schedule and the Final Settlement Date; subject to adjustment in accordance with the Business Day Convention.

Business Day Convention:

As specified in the Confirmation.

Floating Rate Option:

As specified in the Confirmation.

Business Day:

As appropriate, based on the jurisdiction related to the specified Floating Rate Option and the jurisdiction related to the Settlement Currency.

Designated Maturity:

As specified in the Schedule or as otherwise specified in the Confirmation.

Spread:

The percentage specified in the Confirmation as such rate may be adjusted in accordance with the Equity Definitions or the terms hereof following the occurrence of a Potential Adjustment Event or Extraordinary Event (including, for the avoidance of doubt, any Increased Cost of Hedging).

Floating Rate Day Count Fraction:

As specified in Section 6.2(g) of the 2006 Definitions in respect of the relevant Floating Rate Option, unless otherwise specified in the Confirmation.

Reset Dates (Interest):

As specified in the Schedule.

Compounding:

Not Applicable, unless otherwise specified in the Confirmation.

Compounding Dates:

If Applicable, each day in the Calculation Period.

4. Swap Fees:

(a) On the first Equity Amount Payment Date only, the Counterparty shall pay an amount equal to the Initial Swap Fee to CS. The Initial Swap Fee is calculated as $Q \times P_0 \times Z$, where:

$Q =$ In respect of a Share Swap Transaction, the Number of Shares; in respect of a Share Basket Swap Transaction, an Index Swap Transaction or an Index Basket Swap Transaction, the Number of Units;

$P_0 =$ the Initial Price;

$Z =$ Initial Swap Fee Percentage; and

Initial Swap Fee Percentage = a percentage, represented in basis points, as agreed between the parties and as specified in the Confirmation.

(b) On the Termination Date, the Counterparty shall pay an amount equal to the Final Swap Fee, to CS. The Final Swap Fee is calculated as $Q \times P_3 \times Z$, where:

$Q =$ In respect of a Share Swap Transaction, the Number of Shares; in respect of a Share Basket Swap Transaction, an Index Swap Transaction or an Index Basket Swap Transaction, the Number of Units, or, if such Transaction is terminated in part, then the Number of Shares or Number of Units, as applicable, being terminated;

$P_3 =$ the Final Price;

$Z =$ Final Swap Fee Percentage; and

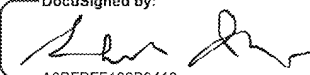
Final Swap Fee Percentage = a percentage, represented in basis points, as agreed between the parties and as specified in the Confirmation.

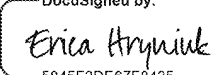
(c) If the Transaction is terminated, in whole or in part, before the scheduled Termination Date by the Counterparty, and the Breakage Option is Applicable, then CS (on the Termination Date) shall calculate the Breakage Amount, which shall be due from the Counterparty to CS. The Breakage Amount is an amount equal to the Floating Amount for the Calculation Period beginning on and including the last Reset Date to and excluding the next scheduled Reset Date; *provided* that the Calculation Amount for such calculation is the Equity Notional Amount in respect of the Number of Shares for a Share Swap Transaction or the Number of Units for a Share Basket Swap Transaction, an Index Swap Transaction or an Index Swap Transaction being closed.

11. Optional Termination and Maturity

- (i) Unless otherwise specified in the Confirmation for a particular Transaction, on any Exchange Business Day when CS or the Counterparty wishes to terminate any Transaction (whether in whole or in part), it shall give one (1) Exchange Business Day's notice of that fact to the other party (by telephone or as otherwise agreed between the parties) specifying the proportion of such Transaction it wishes to terminate; subject to Section 10 hereto.
- (ii) In respect of a Share Swap Transaction or a Share Basket Swap Transaction, if the Shares or any Shares included in the Custom Basket are registered pursuant to Section 12 of the U.S. Securities Exchange Act of 1934, as amended (the "Exchange Act") or convertible into securities registered pursuant to the Exchange Act and, if at any time the aggregate number of such Shares beneficially owned by CS and its affiliates (the "Transaction Equity") exceeds or could exceed 8% of the number of outstanding, voting Shares of an Issuer at such time (such event, the "Partial Termination Event"), CS may notify the Counterparty of its desire to effect an early settlement with respect to a portion of the Transactions on such Shares or Custom Basket including such Shares, as determined by CS subject to the conditions set forth below, so that, after completion of the unwind related to the Partial Termination Event, the Transaction Equity would not exceed 8% of the number of outstanding Shares of such Issuer.
- (iii) Upon sending or receiving notice on any date as discussed in (i) or (ii) above, CS shall then calculate the Final Price on such date to the extent practicable and commercially reasonable, or the next Exchange Business Day, as determined by CS (the "Optional Termination Date") and notify the Counterparty of the Final Price (by telephone or as otherwise agreed between the parties), which shall be binding upon the Counterparty. CS shall then settle the portion of the Transaction to be terminated in accordance with these Standard Terms on the Final Settlement Date with respect to such portion.
- (iv) All payments due on the Final Settlement Date shall be netted against each other, and the balance shall be due on the Final Settlement Date, unless otherwise agreed between the parties.
- (v) If CS or the Counterparty gives notice to terminate only a portion of the Number of Shares in respect of a Share Swap Transaction or the Number of Units in respect of an Index Swap Transaction or an Index Basket Swap Transaction, then the provisions of this Section shall apply only to that portion of the relevant Transaction. In the event that a Transaction is terminated only in part, CS shall make any necessary adjustments to the Number of Shares in respect of a Share Swap Transaction or the Number of Units in respect of a Share Basket Swap Transaction, an Index Swap Transaction or an Index Basket Swap Transaction. The remainder of the Transaction shall continue to be governed by these Standard Terms.

CREDIT SUISSE INTERNATIONAL

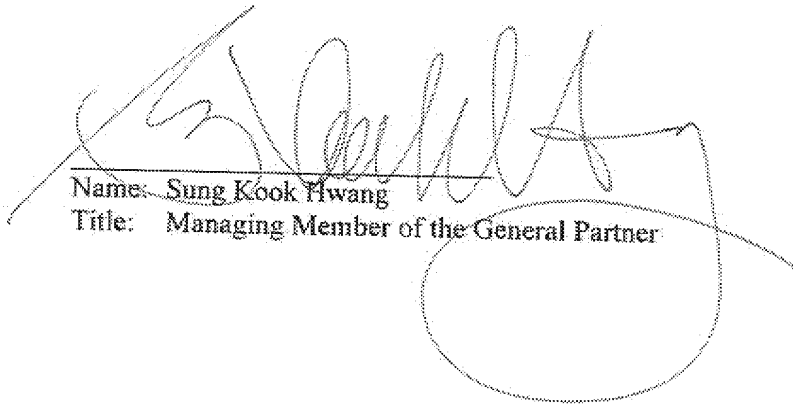
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A08F8EE122B9419
Name Steven J Reis
Title: Authorized Signatory
December 16, 2020

DocuSigned by:

5845F2DF67F843E
Name Erica Hryniuk
Title: Authorized Signatory
December 16, 2020

Portfolio Swaps (Standard Terms) Annex
Signature Page

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ARHEGOS FUND, LP



Name: Sung Kook Hwang
Title: Managing Member of the General Partner

CSI / Archegos Fund, LP
Portfolio Swaps Annex



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Tiger Asia Fund L.P.

**MASTER CONFIRMATION FOR
EQUITY SWAP TRANSACTIONS**

This MASTER CONFIRMATION FOR EQUITY SWAP TRANSACTIONS (this "Master Confirmation") effective as of November 20, 2003, is intended to supplement the terms and provisions of transactions (each, a "Transaction") entered into from time to time between Deutsche Bank AG London ("Deutsche") and Tiger Asia Fund L.P. (the "Fund" or "Counterparty") and Tiger Asset Management, LLC, a corporation organised under the laws of Delaware, acting as Investment Advisor on behalf of the Fund (the "Agent") as evidenced by a side letter in the form attached hereto as Annex B (the "Side Letter"). This Master Confirmation, taken alone, is neither a commitment by either party to enter into any Transaction nor evidence of a Transaction.

Transactions are also referred to as "Portfolio Swap Transactions", the terms of which shall be reflected for each Transaction on a Supplemental Confirmation for Portfolio Swap Transactions, as illustrated in Exhibit A-2 or such other forms as Deutsche may prescribe; a group of Portfolio Swap Transactions sharing common terms is referred to as a "Portfolio", and the common terms for a Portfolio are referred to as "General Portfolio Terms", which terms shall be reflected on a Supplemental Confirmation for particular Portfolios, as illustrated in Exhibit A-1 or such other forms as Deutsche may prescribe. Each Portfolio Swap Transaction will relate to a single Share or Index and not to a Basket. "Supplemental Confirmation" shall refer to the Supplemental Confirmations for the General Portfolio Terms and the Portfolio Swap Transactions in a particular Portfolio. A Supplemental Confirmation confirming General Portfolio Terms, taken alone, is neither a commitment by either party to enter into any Portfolio Swap Transaction nor evidence of a Portfolio Swap Transaction.

This Master Confirmation together with both of the Supplemental Confirmations for a particular Portfolio Swap Transaction shall constitute a "Confirmation" as referred to in, and supplement and form a part of and be subject to, the ISDA Master Agreement, including the Credit Support Annex, if any, dated as of _____, as amended and supplemented from time to time (the "Agreement"), between Deutsche Bank AG and Counterparty. All provisions contained in the Agreement govern this Master Confirmation and each Supplemental Confirmation except as expressly modified below.

DEUTSCHE BANK AG IS NOT REGISTERED AS A BROKER OR DEALER UNDER THE U.S. SECURITIES EXCHANGE ACT OF 1934. DEUTSCHE BANK SECURITIES INC. ("DBSI") HAS ACTED SOLELY AS AGENT IN CONNECTION WITH THE TRANSACTIONS GOVERNED BY THIS MASTER CONFIRMATION AND HAS NO OBLIGATION, BY WAY OF ISSUANCE, ENDORSEMENT, GUARANTEE OR OTHERWISE WITH RESPECT TO THE PERFORMANCE OF EITHER PARTY

Chairman of the Supervisory Board: Rolf-E Breuer
Board of Managing Directors: Clemens Borsig, Hermann-Josef Lamberti,
Josef Ackermann, Tessen von Heydebreck

Deutsche Bank AG is regulated by the FSA for the conduct of designated investment business in the UK, is a member of the London Stock Exchange and is a limited liability company incorporated in the Federal Republic of Germany HRB No. 30 000 District Court of Frankfurt am Main; Branch Registration No. in England and Wales BR000005, Registered address: Winchester House, 1 Great Winchester Street, London EC2N 2DB.

UNDER SUCH TRANSACTIONS. DEUTSCHE BANK AG, LONDON IS NOT A MEMBER OF THE SECURITIES INVESTOR PROTECTION CORPORATION (SIPC).

The definitions and provisions contained in the 2000 ISDA Definitions (the “**Swap Definitions**”), and in the 2002 ISDA Equity Derivatives Definitions (the “**Equity Definitions**” and, together with the Swap Definitions, the “**Definitions**”), in each case as published by the International Swaps and Derivatives Association, Inc. are incorporated into this Master Confirmation. In the event of any inconsistency between the Swap Definitions and the Equity Definitions, the Equity Definitions will govern. In the event of any inconsistency between either set of Definitions and this Master Confirmation, this Master Confirmation will govern. In the event of any inconsistency between this Master Confirmation and any Supplemental Confirmation, the Supplemental Confirmation will govern for purposes of the relevant Transaction. In the event of any inconsistency between a Supplemental Confirmation confirming General Portfolio Terms and any Supplemental Confirmation confirming Portfolio Swap Transaction terms thereunder, the Supplemental Confirmation confirming Portfolio Swap Transaction terms will govern for purposes of the relevant Transaction. References herein to a “Transaction” shall be deemed to be references to a “Swap Transaction” for purposes of the Swap Definitions.

“*Loss*” payment measure and “*Second Method*” payment method shall apply to all Transactions governed by this Master Confirmation.

Set forth below are the terms and conditions which, together with the terms and conditions set forth in each Supplemental Confirmation in respect of each relevant Transaction, shall govern all Transactions which are Equity Swap Transactions (for which the term “other security”, as used in Article 1 of the Equity Definitions, shall be deemed to include **bonds and other debt securities (“Bonds”), options and over-the-counter derivative transactions**).

1. Transaction Initiation:

Counterparty may from time to time request (verbally, electronically or otherwise) Deutsche to enter into a Portfolio Swap Transaction, specifying such information as Deutsche may from time to time require. Deutsche shall promptly notify Counterparty whether Deutsche, in its sole discretion, accepts such request, in part or in whole. The parties specifically agree that time shall be of the essence in resolving any disputed material Transaction terms. If Counterparty has not, within 1 Local Business Day following Deutsche’s Effective Delivery (as defined below) of a Supplemental Confirmation to Counterparty, in good faith objected in writing to Deutsche with respect to any material term in (or purportedly omitted from) the relevant Supplemental Confirmation, Counterparty shall be deemed to have agreed that the terms set forth in such Supplemental Confirmation accurately evidence the terms agreed by the parties.

“**Effective Delivery**” means where the Supplemental Confirmation is (i) delivered in person by courier, the date it is delivered, (ii) sent by facsimile transmission, the date the transmission is sent by Deutsche to the designated Counterparty-specified Contact Name (or other Counterparty responsible party) via the facsimile number provided by Counterparty, as evidenced by a transmission report generated by sender’s facsimile machine, or (iii) sent via the Deutsche Bank Global Equities Web-site, the date such information is posted by Deutsche to Counterparty’s designated area of such Web-site.

2. General Transaction Terms:

a. General Terms:

Business Days for Reset Dates and Payment Dates:

Shall mean a day on which commercial banks and foreign exchange markets settle payments in the jurisdictions selected by the Calculation Agent in good faith.

Calculation Agent:

Deutsche

is appropriate, the Calculation Agent shall perform such conversion in good faith using commercially reasonable procedures.

Shares: **The term "Shares" shall also be deemed to include "Bonds"** if bonds are listed in the relevant Supplemental Confirmation, or "Options" if options are listed in the relevant Supplemental Confirmation or "OTC Transactions" if over-the-counter derivative transactions are listed in the relevant Supplemental Confirmation (in which case the transaction terms for a particular OTC Transaction shall be attached to the Supplemental Confirmation).

Termination Date: The final (or only) Cash Settlement Payment Date, which is expected to be the date specified in the relevant Supplemental Confirmation.

Trade Action Indicator: As specified in the Supplemental Confirmation, where "New" means the Supplemental Confirmation evidences a new Transaction and "Cancelled" means the Supplemental Confirmation evidences the cancellation of a previously documented Transaction.

Unlisted Shares: In the case of a Share Swap Transaction, each Share in respect of which "Not Applicable" is specified opposite the caption "Exchange" in the relevant Supplemental Confirmation.

b. Equity Amount Terms:

(i) Price Terms:

Final Price: The Equity Definitions will apply, except:

- (a) With respect to any primary U.S. Exchange (other than the NASDAQ Stock Market), or any successor exchange thereto, the closing price as quoted by such Exchange as of the Valuation Time on the relevant Valuation Date; or
- (b) with respect to the **NASDAQ Stock Market**, or any successor quotation system thereto, the official NASDAQ closing price per Share as of the Valuation Time on the relevant Valuation Date as reported in the official price determination mechanism for the Exchange; or
- (c) with respect to any Transaction where the Exchange is specified as "Not Applicable", the price per Share, including accrued interest, if any **(in the case of Bonds)** as determined by the Calculation Agent, based on the best available firm commitment "bid price", in the case where Deutsche is the Equity Amount Payer, and "offer price", in the case where Counterparty is the Equity Amount Payer, respecting the full Number of Shares, as provided by the Reference Dealers;

Valuation Time shall mean the Scheduled Closing Time on such Exchange;

(b) **NASDAQ Stock Market**, or any successor quotation system thereto, then the Valuation Time shall mean 4:00 p.m. (local time) in New York;

(c) **Not Applicable**, then the Valuation Time shall mean 4:00 p.m. (local time) in the jurisdiction selected by the Calculation Agent in good faith, unless the Shares underlying the Transaction are an OTC Transaction, in which case Valuation Time shall mean the time specified in the transaction terms for such OTC Transaction;

(d) any other Exchange, then as specified in the Supplemental Confirmation.

(ii) Ordinary Dividend Terms:

Subject to the "Dividend Disruption Event" provisions below, the Equity Amount Payer shall pay the relevant Dividend Amount on each Dividend Payment Date pursuant to the following provisions. The following provisions shall not apply to Futures Price Valuation Transactions, Extraordinary Dividends or OTC Transactions. As used in the Definitions, "gross cash dividends" shall include, without limitation, in the **case of Bonds**, all interest payable by the Issuer of the Bond. "Dividend Receipt Date" means the date of receipt of a dividend by holders of record. "Record Date" means each relevant date of determination of holder of record status.

In the case of a Share Swap Transaction where the Record Date for the Shares is after the ex-dividend date (i.e. in a jurisdiction where stock ownership is determined as of settlement date) for such Shares, the following provisions shall apply:

Dividend Amount:

The Dividend Percentage (as specified in the Supplemental Confirmation) *multiplied by* the Record Amount *multiplied by* Number of Shares.

Dividend Period:

The period commencing on and including the Clearance System Business Day that is one Settlement Cycle following the Trade Date and ending on but excluding the final Cash Settlement Payment Date.

In the case of a Share Swap Transaction where the Record Date for the Shares is prior to the ex-dividend date (i.e. in a jurisdiction where stock ownership is determined as of trade date rather than settlement date) for such Shares, the following provisions shall apply:

Dividend Amount:

The Dividend Percentage (as specified in the Supplemental Confirmation) *multiplied by* the Record Amount *multiplied by* Number of Shares.

Share Dividend Elections:

In the event that an actual dividend is payable in either cash or property or a combination thereof at the election of a person who would be a holder of record of such Shares and Deutsche is the Equity Amount Payer, the Dividend Amount shall be determined as if no election were made pursuant to the election default provision as set forth in the documents relating to the payment of dividends on the Shares. If Counterparty is the Equity Amount Payer, the Dividend Amount shall be determined by the Calculation Agent with respect to the Shares. The Calculation Agent shall notify the Counterparty of such determination at least 3 Scheduled Trading Days prior to the last date the election may be made.

c. Floating Amount Terms:

Floating Rate for the initial Calculation Period:

As specified in the General Portfolio Terms, where (i) "Historic Rate" means the Floating Rate as of the most recent Reset Date, (ii) "New Rate" means the Floating Rate (without Linear Interpolation) as of the Effective Date, and (iii) "Daily Rate" means the Overnight Rate (as specified in the General Portfolio Terms) reset each day during the initial Calculation Period (non-compounded).

d. Settlement Terms for Share Swap Transactions:

Cash Settlement:

Applicable

e. Optional Early Termination of Portfolio Swap Transactions:

Optional Early Termination of Portfolio Swap Transactions:

Notwithstanding any other termination provision contained in this Master Confirmation or the Agreement and so long as no Termination Event or Event of Default (as such terms are defined in the Agreement) shall have occurred and then be continuing with respect to the party making the election hereunder, either party may upon three (3) Scheduled Trading Days' prior notice to the other party terminate a Transaction in a Portfolio prior to the relevant Termination Date by designating an earlier Scheduled Trading Day as the "Optional Early Termination Valuation Date", subject to the following: (1) the relevant Optional Early Termination Valuation Date shall be deemed to be the final Valuation Date (subject to Disrupted Day provisions, if applicable), (2) the Optional Early Termination Payment Date (as defined below) shall be deemed to be the final Cash Settlement Payment Date and Floating Amount or Fixed Amount Payment Date, as applicable, (3) the Final Price for the relevant Share or Index shall be based on an objective measure (either the current market price for the applicable number of shares or the closing price) as agreed by the parties (except (i) if the parties are unable to agree or (ii) the shares underlying the Transaction are Unlisted Shares, an objective measure determined by the Calculation Agent), with the Final Price determined by the

Consequences of Merger Events:

- (a) Share-for-Share: Modified Calculation Agent Adjustment
- (b) Share-for-Other: Modified Calculation Agent Adjustment
- (c) Share-for-Combined: Modified Calculation Agent Adjustment]

Determining Party: Deutsche

Tender Offer: Applicable

Consequences of Tender Offers:

- (a) Share-for-Share: Modified Calculation Agent Adjustment.
- (b) Share-for-Other: Modified Calculation Agent Adjustment.
- (c) Share-for-Combined: Modified Calculation Agent Adjustment.

Determining Party: Deutsche

Composition of Combined Consideration: Inapplicable (for both Merger Events and Tender Offers)

Bonds and OTC Transactions:

Where the shares underlying a **Share Swap Transaction** are either **Bonds** or an **OTC Transaction**, the Calculation Agent shall have the right to terminate or make necessary adjustments to the Share Swap Transaction upon the occurrence of a Dividend Amount being paid on the **Bonds or Shares** underlying the OTC Transaction or any event affecting the **Bonds or shares underlying** the OTC Transaction which is analogous to a Potential Adjustment Event, Merger Event, Tender Offer, Nationalization, Insolvency, Delisting, Additional Disruption Event (each as defined in the transaction terms for such OTC Transaction, or if none are provided, as defined herein) or other similar event.

Nationalisation, Insolvency or Delisting:

Cancellation and Payment. In the case of a Futures Price Valuation Transaction, Delisting shall not apply except if Section 6.8(e) of the Equity Definitions applies and a Delisting occurs with respect to the Exchange for purposes of such provision.

Determining Party:

Deutsche

Section 12.2(e) and 12.3(d) of the Equity Definitions are amended by replacing “options exchange” with “options or futures exchange” and “options” with “options or futures” each time such terms appear therein.

Agreements and Acknowledgments
Regarding Hedging Activities: Applicable

Additional Acknowledgments: Applicable

b. Mutual Representations and Agreements. Each of Deutsche and Counterparty represents and warrants to and agrees with the other party (which representations, warranties and agreements shall be deemed to be repeated by each party on each date on which the parties enter into a Transaction) that:

- (i) the purpose of each Transaction is to gain exposure synthetically to fluctuations in the price of Shares or Indexes and by so doing to attain a profit or avoid a loss;
- (ii) neither party acquires any interest (beneficial or otherwise) in or right to acquire any Share or Index by virtue of any Transaction;
- (iii) neither party is obliged to sell, purchase, hold, deliver or receive any Share or Index, nor does either party acquire a security interest in any Share, by virtue of any Transaction;
- (iv) neither party acquires any voting rights, or other consent or similar rights, with respect to any Share or Index by virtue of any Transaction;
- (v) the primary right and obligation of each party under any Transaction is to make or receive the respective payments referred to in the relevant Supplemental Confirmation; and
- (vi) notwithstanding anything provided herein or in the Agreement, and notwithstanding any express or implied claims of exclusivity or proprietary rights, the parties (and each of their employees, representatives or other agents) are authorized to disclose to any and all persons, beginning immediately upon commencement of their discussions and without limitation of any kind, the tax treatment and tax structure of any Transaction, and all materials of any kind (including opinions or other tax analyses) that are provided by either party to the other relating to such tax treatment and tax structure.
- (vii) **Commodity Exchange Act.** It is an "eligible contract participant" within the meaning of Section 1a(12) of the U.S. Commodity Exchange Act, as amended (the "CEA"), each Transaction has been subject to individual negotiation by the parties, and no Transaction has been executed or traded on a "trading facility" as defined in Section 1a(33) of the CEA. It has entered into such Transaction with the expectation and intent that such Transaction shall be performed to its termination date. Each Transaction hereunder that is designated a Swap Transaction or Equity Swap Transaction constitutes a "swap agreement" as defined in Section 206A of the Gramm-Leach-Bliley Act, as amended (the "GLB Act").
- (viii) **Securities Act.** It is a "qualified institutional buyer" as defined in Rule 144A under the U.S. Securities Act of 1933, as amended (the "Securities Act"), or an "accredited investor" as defined under the Securities Act.
- (ix) **Investment Company Act.** It is a "qualified purchaser" as defined under the Investment Company Act of 1940.
- (x) **ERISA.** It is not subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and the assets used in each Transaction (1) are not assets of any "plan" (as such term is defined in Section 4975 of the Internal Revenue Code (the "Code")) subject to Section 4975 of the Code or any "employee benefit plan" (as such term is defined in Section 3(3) of ERISA) subject to Title I of ERISA, and (2) do not constitute "plan assets" within the meaning of Department of Labor Regulation 2510.3-101, 29 CFR Sec. 2510-3-101.

Deutsche is regulated by the Financial Services Authority.

Agreed and accepted by the parties as of the date of this Master Confirmation.

Regards,

DEUTSCHE BANK AG LONDON

By: *Robert Maypin*

Name:

Title:

By: *[Signature]*

Name:

Title:

DEUTSCHE BANK SECURITIES INC.

acting solely as Agent in connection with this Master Confirmation and the Transactions governed hereby

By: *Robert Maypin*

Name:

Title:

By: *[Signature]*

Name:

Title:

Confirmed and Acknowledged as of the date first above written:

TIGER ASIA FUND, L.P.

By: *[Signature]*

Name:

Title:

Sina Kook Hwang
Managing member of the
General Partner



For the avoidance of doubt, this Master Confirmation Agreement does not govern any transaction that where the Exchange or Related Exchange is located outside of the United States of America or Canada

**GOLDMAN SACHS MASTER CONFIRMATION AGREEMENT
FOR SYNTHETIC EQUITY PRODUCTS**

This agreement (“**Master Confirmation Agreement**” or “**MCA**”) is dated as of 25 November, 2020 between each **Goldman Entity** and **Archegos Fund, LP** (“**Counterparty**”). This Master Confirmation Agreement supplements, forms a part of, and is subject to the relevant ISDA Master Agreement between Counterparty and Goldman Entity, dated as of December 6, 2013, as may be supplemented, amended, or amended and restated from time to time (the “**Master Agreement**”).

For the purposes of this MCA, “**Goldman Entity**” means Goldman Sachs & Co. LLC (“**GS&Co.**”), Goldman Sachs International (“**GSI**”) and/or Goldman Sachs Bank USA (“**GS Bank**”); *provided* that this MCA shall be effective with respect to a particular Goldman Entity and Counterparty only to the extent both of the following conditions have been satisfied: (i) such Goldman Entity and Counterparty have executed this MCA and at least one PCA (as defined below); and (ii) such Goldman Entity and Counterparty have executed a Master Agreement (as defined below), and such Master Agreement remains in effect. Upon satisfaction of both conditions (whether or not contemporaneously), this MCA shall automatically be effective with respect to such Goldman Entity and Counterparty.

It is understood and agreed that no Goldman Entity shall have any liability for the obligations of any other Goldman Entity. With respect to each Goldman Entity, (i) only Transactions between such Goldman Entity and Counterparty shall be part of the Master Agreement (as defined below) with such Goldman Entity and Counterparty and (ii) any references in this MCA to the “Agreement” or “Master Agreement” shall be deemed to refer to the Master Agreement between such Goldman Entity and Counterparty. References herein to “GS” shall be deemed to refer to the applicable Goldman Entity.

The parties wish to facilitate the process of entering into and confirming the transactions and accordingly agree as follows:

1. **ISDA Definitions.** This MCA, the GT (as defined below), each PCA and each TS hereby incorporate by reference the definitions and provisions of the 2006 ISDA Definitions (the “**2006 Definitions**”) and the definitions and provisions of the 2002 ISDA Equity Derivatives Definitions (the “**Equity Definitions**”, and together with the 2006 Definitions, the “**Definitions**”), in each case as published by the International Swaps and Derivatives Association, Inc. (“**ISDA**”). Any capitalized term not otherwise defined herein, in the MCA, the GT, each PCA and each TS shall have the meaning assigned to such term in the Definitions.

2. **Coverage.** Unless the parties agree otherwise at the time of trading, if as of the Trade Date a Transaction is a Share Swap Transaction, Share Basket Swap Transaction, Index Swap Transaction or an Index Basket Swap Transaction with an Exchange in a Specified Country (a “**Covered Transaction**”), then that Covered Transaction is subject to the terms of this Master Confirmation Agreement.

“**Specified Country**” means Canada or the United States of America.

3. **Confirmation Process.** The parties intend to enter into separate transactions (each a “**Transaction**”) set out in a TS substantially in the form specified in Exhibit I to the PCA (each, a “**Transaction Supplement**” or a “**TS**”). The confirmation applicable to each Transaction, which shall constitute a “**Confirmation**” for the purposes of, and will supplement, form a part of, and be subject to the Master Agreement, shall consist of this MCA and PCA applicable to such Transaction executed by the parties hereto referencing this MCA (the “**Product Customization Agreement**” or “**PCA**” for such Transaction), in each case as supplemented by the trade details applicable to such Transaction as set forth in the TS for that Transaction.

For any Transaction, in the event of inconsistency between the MCA, (including the GT) and the PCA for such Transaction, the PCA shall govern for purposes of such Transaction. For any Transaction, in the event of inconsistency between the MCA (including the GT and the PCA) and the Equity Definitions, the MCA shall govern for purposes of such Transaction, and in the event of inconsistency between the MCA (including the GT and the PCA) or the Equity Definitions, on the one hand, and the TS, on the other hand, the TS shall govern for the purpose of the relevant Transaction. The TS shall set forth, at a minimum, all of the information set out in the form of the TS in Exhibit I to the PCA.

4. **Non-Exclusive.** The parties acknowledge and agree that the execution of this MCA and any PCA does not require them to document Transactions in accordance with this MCA or PCA, as the case may be.

Global Synthetic April 2018

5. Preparation of TSs. Unless otherwise agreed between the parties, the preparation of a TS shall be the responsibility of GS. Failure by GS to send a TS with respect to a Transaction shall not affect the validity of such Transaction. In respect of all Transactions entered into the TS will (in the absence of manifest or proven error) be conclusive as to the terms of each Transaction referred to therein, notwithstanding that the TS may not be signed by either party.

6. Incorporation of General Terms. The General Terms set forth on Annex I hereto (the “**General Terms**” or “**GT**”) are hereby incorporated herein by this reference and made a part of this MCA to the same extent as if the GT were set forth in full herein.

7. Acknowledgement and Agreement Regarding Synthetic Exposure. Each party acknowledges and agrees that each Transaction is a derivative transaction providing synthetic exposure to an underlying asset. Neither party intends that any Transaction will be settled by taking delivery of any shares or other securities, or that a Transaction will confer on either party any right, title, voting rights or interest in any shares or other securities, or entitle or oblige either party to acquire, receive, hold, deliver or dispose of any particular shares or other securities.

8. Undertaking Regarding Disclosure. Counterparty undertakes to GS that it will make or provide any disclosure reasonably required by GS or its Affiliates in connection with its entry into each Transaction pursuant to the applicable securities laws or applicable regulations in the jurisdiction of the relevant Share or the rules of the relevant Exchange, notwithstanding any duty of confidentiality owed by GS. Counterparty acknowledges and agrees that GS may make such disclosure to any legal or regulatory body or authority as GS or its Affiliates shall reasonably consider necessary or appropriate regarding the Transaction .

9. Notice Regarding Tax Treatment of Short Bullet Transactions. The tax treatment of a bullet contracts for differences Transaction or bullet swap Transaction where Counterparty is the Equity Amount Payer (a “**Short Bullet Transaction**”) is uncertain. GS does not provide tax advice and has made no representations, express or implied, as to the possible tax consequences of investing in a Short Bullet Transaction. Counterparty should consult its own tax advisor regarding the tax consequences to it of entering into this position, including, if relevant, Counterparty’s holding period. For the avoidance of doubt, this notice is not applicable to Transactions other than Short Bullet Transactions.

10. No Material Non-Public Information. In addition to the representations, warranties and covenants in the Master Agreement, Counterparty represents, warrants and covenants to GS (and any Affiliate of GS) that on each date that a Transaction is entered into and on each date that Counterparty elects to close a Transaction, it is not entering into or closing, as applicable, such Transaction “on the basis of” (as such term is defined in Rule 10b5-1 under the Securities Exchange Act of 1934 (the “**Exchange Act**”) or other applicable securities law) in respect of any U.S. Component Underlier any material, non-public information concerning the relevant Issuer or the Shares, or in respect of an Index Transaction where the Index is not a Broad-based Index, any Issuer of the shares comprising the relevant Index, which would result in a violation by it of applicable law or regulation, including for these purposes, a violation of applicable law or regulation if Counterparty were to actually purchase or sell the securities of the Issuer or the securities comprising the Index, as the case may be.

“**Broad-based Index**” means an Index that is widely published, broadly based, a wide range of sectors, comprised of 100 or more securities, and with no single underlier comprising more than 10% of the index's weighting.

“**U.S. Component Underlier**” means any Shares or shares comprising a Basket or Index, as the case may be, for which the Exchange (or primary exchange for any Component Underlier in respect of an Index Transaction) is located in the United States.

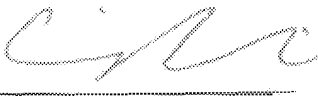
11. Additional Representation Regarding MOC/MOO Execution. In respect of a Share Transaction or a Share Basket Transaction where (i) the Exchange is located in the United States or Canada, or where the Share is Margin Stock, and (ii) the Initial Price and/or Final Price is determined based on the market-on-close (“**MOC**”) or market-on-open price (“**MOO**”) (as applicable), Counterparty represents that it will not, directly or indirectly, in connection with entering into, or terminating (at scheduled termination or otherwise), any Transaction, submit to any broker or dealer or electronic execution venue a sell or buy order, as the case may be, for any of the shares underlying (or any of the shares underlying the basket in the case of a Share Basket Transaction), for execution at the market-on-close or market-on-open price (as applicable) on any relevant Trade Date and/or Valuation Date (as applicable).

12. Acknowledgement and Representation Regarding Security-Based Swaps. Each party acknowledges that the offer and sale of each Transaction to it is intended to be exempt from registration under the Securities Act of 1933, as amended (the “**Securities Act**”), by virtue of Section 4(a)(2) thereof and the provisions of Regulation D thereunder (“**Regulation D**”). Accordingly, each party represents and warrants to the other that (a) it has the financial ability to bear the economic risk of its investment in the Transaction and is able to bear a total loss of its investment, (b) it is an “accredited investor” as that term is defined under Regulation D, (c) it will purchase the Transaction for investment and not with a view to the distribution or resale thereof, and (d) the disposition of the Transaction is restricted under this MCA, the Securities Act and state securities laws.

13. Amendment to Master Agreement. The parties agree that, notwithstanding anything to the contrary in the Master Agreement, no breach by Counterparty of any of the representations, covenants or warranties set forth in Paragraphs 10 and 11 of this Master Confirmation Agreement shall constitute an Event of Default or Potential Event of Default under

IN WITNESS WHEREOF, the parties have executed this document with effect from the date specified on the first page of this document.

GOLDMAN SACHS INTERNATIONAL

By: 

Name: Craig Donadio
Vice President

Title:

GOLDMAN SACHS BANK USA

By: _____

Name:

Title:

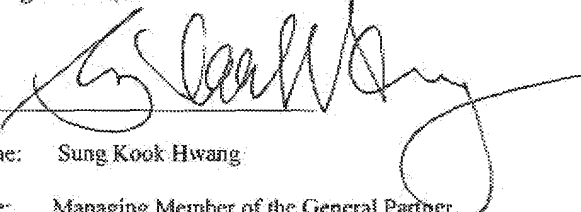
GOLDMAN SACHS & CO. LLC

By: _____

Name:

Title:

Archegos Fund, LP

By: 

Name: Sung Kook Hwang

Title: Managing Member of the General Partner

Goldman Sachs / Archegos Fund, LP
MCA for Synthetic Equity Products

General Terms

The purpose of these General Terms is to set forth certain general terms and conditions of any Share Swap Transaction, Share CFD Transaction, Share Basket Swap Transaction, Share Basket CFD Transaction, Index Swap Transaction, Index CFD Transaction, Index Basket Swap Transaction and Index Basket CFD Transaction entered into between GS and Counterparty under the Master Confirmation Agreement for **Synthetic Equity Products** that these General Terms are annexed to (the “MCA”).

A Transaction (including any contracts for differences transactions, each a “**CFD Transaction**”) that references a single Share, two or more Shares, a single Index, or two or more Indices will constitute, respectively, a Share Swap Transaction, a Share Basket Swap Transaction, an Index Swap Transaction, and an Index Basket Swap Transaction for the purposes of the Equity Definitions and will be referred to herein, respectively, as a Share Transaction, a Share Basket Transaction, an Index Transaction, or an Index Basket Transaction.

The general terms of each Transaction to which these General Terms relates are as follows, as supplemented by the PCA and the TS relating to such Transaction:

General Terms:

Trade Date:	As specified in the TS.
Effective Date:	As specified in the TS.
Shares/Index/Basket:	As specified in the TS.
Exchange(s):	As specified in the TS.
Related Exchange(s):	As specified in the TS.
Termination Date:	The final Cash Settlement Payment Date.

Equity Amounts:

Equity Amount Payer:	As specified in the TS.
Number of Shares/Units/Baskets:	As specified in the TS.
Equity Notional Reset:	Not Applicable if such Transaction has one Valuation Date; Applicable if such Transaction has more than one Valuation Date.
Type of Return:	(i) In respect of a Share Transaction and a Share Basket Transaction, Total Return. (ii) In respect of an Index Transaction, (a) where the Calculation Agent determines the Index is a total return index, Price Return; otherwise, (b) Total Return.
Equity Notional Amount:	(i) In respect of a Share Transaction, the product of the Number of Shares and the Initial Price. (ii) In respect of a Share Basket Transaction, the sum of the values for each Share in the Basket as the product of the Initial Price of each Share and the relevant Number of Shares comprised in the Basket, multiplied by the Number of Baskets. (iii) In respect of an Index Transaction, the product of the Number of Units and the Initial Price. (iv) In respect of an Index Basket Transaction, the sum of the values for each Index in the Basket as the product of the Initial Price of each Index and the relevant Number of Units comprised in the Basket, multiplied by the Number of Baskets.
Initial Price:	Except as set forth in the PCA, as specified in the TS.
Final Price:	Except as set forth in the PCA, the Final Price or the Relevant Price (in respect of a Share Basket Transaction or an Index Basket Transaction), as the case may be, shall be determined: (i) in respect of any interim Valuation Date(s) (if applicable to such Transaction) as provided in Section 5.9 of the Equity Definitions, unless NASDAQ is the Exchange, in which case the NASDAQ Official Closing

Agents shall be deemed to be the price or rate. For all calculations, valuations and any other matters, the consensus determination of at least two (2) of the three (3) Substitute Calculation Agents shall be deemed to be the final determination, and if no consensus is reached by at least two (2) Substitute Calculation Agents within two (2) Scheduled Trading Days, then the provisions in this "Calculation Agent" provision relating to the appointment of and making of determinations by Substitute Calculation Agents shall cease to apply to that determination. Unless there is a clear error, the prices, rates and other determinations of the Substitute Calculation Agents shall be binding and conclusive, but only with respect to the relevant Transaction and such calculation or determination will be without prejudice to any other Transactions between GS and Counterparty. Such determinations of the Substitute Calculation Agents shall also be kept confidential by GS and Counterparty as well as by the Substitute Calculation Agents. Counterparty and GS shall pay equally any costs of the Substitute Calculation Agents. Each of Counterparty and GS waives any claim that it might otherwise have against the Substitute Calculation Agents for errors or omissions made in good faith in making any calculation or determination in connection with a Transaction."

"**Independent Dealer**" means a leading dealer in the relevant market that (i) is not an Affiliate of either of the parties or any other appointed Independent Dealer and (ii) does not have any trades with GS and/or Counterparty, the settlement of which requires or involves the relevant disputed determination or calculation.

Payment Instructions: As separately notified.

Credit Provisions: Any Transaction entered into under this MCA shall be governed by the Credit Support Annex between GS and Counterparty. The "Independent Amount" with respect to the Counterparty for any such Transaction shall be the percentage specified in the related TS *multiplied by* the Equity Notional Amount.

- (a) **Optional Early Closing Right:** Provided that no Event of Default, Potential Event of Default or Termination Event has occurred and is continuing with respect to a party, and subject to the additional terms set forth in the PCA, such party may on any Exchange Business Day ("**Early Unwind Date**") close any Transaction, in whole or in part by giving notice to (i) in the case of Counterparty, at least (1) one Exchange Business Day prior to the Early Unwind Date and (ii) in the case of GS, giving notice to Counterparty at least (5) five Exchange Business Days prior to the Early Unwind Date. Such notice shall specify the Number of Shares, Number of Units, or Number of Baskets (as applicable) to be terminated ("**Early Unwind Amount**"). The final Valuation Date shall, subject to the other terms of this MCA, be deemed to be the Early Unwind Date for that Early Unwind Amount and the Calculation Agent shall determine the amount payable with respect to the termination of such transaction. Any other amounts or obligations that are expressed to survive any closing of such Transaction shall survive the closing of the Transaction. If a party gives notice to close only part of a Transaction, then the above provisions shall apply *mutatis mutandis* and the Equity Notional Amount, Initial Price, the Number of Baskets or the Number of Shares or Number of Units (as applicable) of such Transaction shall be adjusted accordingly. If GS elects to close a Transaction in whole or in part, all amounts payable in respect of such Early Unwind Amount shall be payable the date which is the number of days specified under Valuation Date(s), Cash Settlement Payment Date(s) or Settlement Period (as applicable) after the Early Unwind Date.
- (c) **Additional Provisions Regarding Financial Securities:** Notwithstanding anything to the contrary herein, the occurrence of any final Valuation Date of a Transaction (a) where GS is the Equity Amount Payer and (b) the underlier of which is the common stock (or the equivalent thereof) of a "financial institution" or a "financial sector entity" (as such terms are defined below), or an index/basket, or security that contains the common stock (or the equivalent thereof) of a "financial institution" or "financial sector entity", shall be delayed, in whole or in part, to the extent necessary, as determined by GS in good faith and a commercially reasonable manner, treating Counterparty comparably to similarly situated swap or contracts for differences customers, to allow GS (or its Affiliates) to unwind any hedge it may have to a Transaction; *provided* that, (i) such delay is necessary, as determined in GS's reasonable discretion, for appropriately hedging exposure to a "financial institution" or "financial sector entity" in compliance with Basel III capital rules, and (ii) on any scheduled final Valuation Date, GS will use all commercially reasonable efforts to unwind any relevant hedge in light of then-prevailing market conditions. As used herein:

"**Financial institution**" shall have the meaning defined in "Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Risk-weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches

Product Customization Agreement – Swap Transactions

The purpose of this Product Customization Agreement, or “PCA”, is to set forth product-specific terms and conditions, in addition to the GT, of Share Swap Transactions, Share Basket Swap Transactions, Index Swap Transactions and Index Basket Swap Transactions entered into between GS and Counterparty under the Master Confirmation Agreement for **Synthetic Equity Products** that this PCA is annexed to (the “MCA”).

1. Any Transaction that is designated a “Swap Transaction” in the relevant TS shall be governed by, and be subject to, this PCA. All provisions contained in the Master Agreement and the MCA (including the GT) govern each Transaction to which this PCA relates, except as expressly modified below. Terms used but not defined herein shall have the meaning set out in the MCA or the GT.
2. Notwithstanding anything to the contrary in the Master Agreement or the MCA, an agreement (whether oral or in the form of a writing evidenced by a facsimile transmission or email) to amend or modify any term or provision of this PCA will be effective at the time of such agreement, and following such agreement GS shall deliver a written notice of such agreement to Counterparty (a “PCA Amendment Notice”), which shall be conclusive as to the scope and terms of such amendment, notwithstanding that the PCA Amendment Notice may not be signed by either party. Failure by GS to send a PCA Amendment Notice shall not affect the validity of such agreement.
3. The general terms of each Transaction to which this PCA relates are as follows, as supplemented by the TS related to such Transaction:

Equity Amounts:

Valuation Date(s):	The final Valuation Date as specified in the TS.
Initial Price:	As specified in the TS, being the Gross Initial Price adjusted by the relevant Commission, converted using the FX Rate.
Gross Initial Price:	As specified in the TS.
Commission:	As agreed between the parties and as specified in the TS.
FX Rate:	As specified in the TS.
Final Price	The Gross Final Price adjusted by the relevant Commission, converted using the FX Rate.
Gross Final Price:	Final Price as specified in the GT in respect of the relevant Valuation Date.

Floating Amounts:

Floating Amount:	Floating Amount will be an amount equal to the sum of (i) the Floating Amount as defined in the GT (the “ Basic Floating Amount ”) and (ii) all Compounding Amounts in respect of each Reset Date in the Calculation Period.
Spread Notional Amount:	(i) For the initial Spread Notional Reset Date, the Equity Notional Amount; and (ii) For each subsequent Spread Notional Reset Date: <ol style="list-style-type: none"> (A) In respect of a Share Transaction, the Reset Final Price <i>multiplied by</i> the Number of Shares. (B) In respect of a Share Basket Transaction, the sum of the product of the Reset Final Price of each Share and the relevant Number of Shares comprised in the Basket, <i>multiplied by</i> the Number of Baskets. (C) In respect of an Index Transaction the Reset Final Price <i>multiplied by</i> the Number of Units. (D) In respect of an Index Basket Transaction, the sum of the product of the Reset Final Price of each Index and the relevant Number of Units comprised in the Basket, <i>multiplied by</i> the Number of Baskets.
Spread Notional Valuation Date(s):	(i) Where Designated Maturity is specified in the TS as “1D”, daily from the Effective Date; <i>provided</i> that such date shall be treated as a Valuation Date.



**SHARE SWAP AND SHARE BASKET SWAP
MASTER CONFIRMATION AGREEMENT (BULLET; BULLET)**

November 16, 2017

Archehos Fund, L.P.
620 Eighth Avenue, 44th Floor
New York, NY 10018
Attention: Patrick Halligan, Chief Financial Officer

Dear Sir or Madam:

The purpose of this Share Swap and Share Basket Swap Master Confirmation Agreement (Bullet; Bullet) (this “**Master Confirmation Agreement**”) is to confirm certain general terms and conditions of Share Swap and/or Share Basket Swap Transactions (each, a “**Transaction**”) to be entered into between **Jefferies Financial Products, LLC (“Party A”)** and **Archehos Fund, L.P. (“Party B”)** from time to time and to facilitate the process of entering into and confirming such Transactions. The parties intend that each Transaction shall be a separate Transaction for purposes of the ISDA Master Agreement referred to below. The confirmation applicable to each Transaction, which shall constitute a “Confirmation” for purposes of the ISDA Master Agreement, shall consist of this Master Confirmation Agreement as supplemented by the trade details applicable to such Transaction as set forth in a Transaction Supplement which may be in the form of Annex I (for Share Basket Swaps) or Annex II (for Share Swaps) attached hereto or a different form to which the parties agree, or any amendment to any of the foregoing or any related termination statement (each, a “**Transaction Supplement**”). All provisions contained in this Master Confirmation Agreement govern each Confirmation except as expressly modified in a Transaction Supplement. Notwithstanding the foregoing, the parties acknowledge and agree that the execution of this Master Confirmation Agreement does not require them to document Transactions in accordance with this Master Confirmation Agreement. **Party A is not a member of the Securities Investor Protection Corporation (“SIPC”). Obligations of Party A hereunder are not protected by SIPC or any other organization or authority.**

This Master Confirmation Agreement, together with any Transaction Supplements, supplements, forms a part of, and is subject to, the ISDA Master Agreement dated as of November 16, 2017, as amended and supplemented from time to time (the “**Agreement**”), between Party A and Party B. All provisions contained in the Agreement govern this Master Confirmation Agreement except as expressly modified below.

The definitions and provisions contained in the 2002 ISDA Equity Derivatives Definitions (the “**Equity Definitions**”) and the 2006 ISDA Definitions (the “**2006 Definitions**”), each as published by the International Swaps and Derivatives Association, Inc. (“**ISDA**”), are incorporated into this Confirmation. If in relation to any Transaction there is any inconsistency in terms or definitions, the following will prevail for purposes of such Transaction in the order of precedence indicated: (i) the Transaction Supplement; (ii) this Master Confirmation Agreement; (iii) the 2007 Partial Lookthrough Depository Receipt Supplement to the Equity Definitions; (iv) the Equity Definitions; (v) the 2006 Definitions; and (vi) the Agreement.

Unless otherwise agreed by the parties, the preparation of a Transaction Supplement shall be the responsibility of Party A. Party A shall submit such Transaction Supplement to Party B as soon as possible after the parties have agreed to enter into a Transaction. Failure by Party A to send a Transaction Supplement with respect to a Transaction shall not affect the validity of such Transaction. Upon receipt thereof, Party B shall examine the terms of each Transaction Supplement sent by Party A, and unless Party B objects to the terms within one Local Business Day following receipt of that Transaction Supplement, those terms shall be deemed accepted and, absent manifest error, Party B shall be deemed to have agreed that the terms contained in the relevant Transaction Supplements correctly set forth the terms agreed by the parties with respect to the relevant Transaction, in which case that Transaction Supplement will be sufficient to form a binding supplement to the Agreement, and the terms of such

establish, re-establish, substitute, maintain
unwind or dispose of any Hedge Positions,

where, for the purposes of the foregoing, “**foreign qualified investor**” means Qualified Foreign Institutional Investor or Renminbi Qualified Foreign Institutional Investor, as applicable.

2. **Calculation Agent:** As specified in the Agreement.

3. **Credit Support Document; Independent Amount:** The Credit Support Annex executed between Party A and Party B. For these purposes, the “Independent Amount” with respect to Party B in relation to each Transaction shall be an amount equal to the IA Rate, determined by Party A from time to time in a commercially reasonable manner, multiplied by the Equity Notional Amount. The IA Rate shall be, initially, as set forth in the relevant Transaction Supplement, and thereafter, as notified by Party A and Party B upon one (1) Local Business Day’s prior notice to Party B.

4. **Mutual Early Termination Right:**

(a) Either party may, with at least one Scheduled Trading Day’s notice, elect to early terminate a Transaction in whole or in part (and, for a Share Basket Swap Transaction, any partial early termination shall be for a pro rata portion of the relevant Basket), in its sole discretion, by specifying in such notice a Scheduled Trading Day occurring prior to the scheduled Valuation Date (or, if Averaging is applicable, prior to the initial Averaging Date in respect of the scheduled Valuation Date) as the “**Optional Early Termination Date**” and the number of Shares (or portion of the Basket) in respect of which it is terminating the Transaction early (the “**Terminated Number of Shares/Basket**”).

(b) Subject to (c) and (d) below, the Equity Amount, the Floating Amount and the Dividend Amount shall be determined as provided in accordance with the terms set forth herein but on the basis that references to the “Number of Shares” (or, for a Share Basket Swap Transaction, the relevant pro rata portion of the Basket) are deemed to be references to the Terminated Number of Shares/Basket. If Averaging or ADTV Limitation is not applicable, the Valuation Date with respect to the portion of that Transaction being terminated early shall be accelerated to the Optional Early Termination Date. If Averaging or ADTV Limitation is applicable, the Averaging Dates in respect of the Valuation Date with respect to the portion of that Transaction being terminated early shall be accelerated to consecutive Scheduled Trading Days commencing on the Optional Early Termination Date (each, an “**Accelerated Averaging Date**”) and the latest occurring Accelerated Averaging Date shall be deemed to be the Valuation Date for purposes of the portion of the Transaction being terminated early. The Cash Settlement Payment Date and Period End Date for the portion of the Transaction that is terminated early shall be the date that is one Settlement Cycle following such accelerated Valuation Date.

(c) If the portion of the Transaction being terminated early is less than 100%, the remainder of the Transaction shall continue in accordance with its terms.


(d) **Break Funding Recovery:** The Floating Amount shall be adjusted to account for any break funding costs incurred by the Hedging Party in connection with the early termination of any portion of the Transaction, as determined by the Calculation Agent.

5. **Payment of Unpaid Local Taxes or Excess Local Taxes:**

If the amount of Local Taxes or the basis on which it is to be determined is not confirmed before the relevant day on which a Dividend Amount or the Final Price, as the case may be, is being determined and/or is subject to change in the future, and (i) if any amount of Local Taxes (“**Unpaid Local Taxes**”) that should have been taken into account was not taken into account in the determination of the Dividend Amount or the Final Price, as the case may be, the Non-Hedging Party shall pay to the Hedging Party an amount equal to such Unpaid Local Taxes within 10 Currency Business Days following notification from the Hedging Party; or (ii) if any excess amount of Local Taxes (“**Excess Local Taxes**”) that should not have been taken into account was taken into account in the determination of

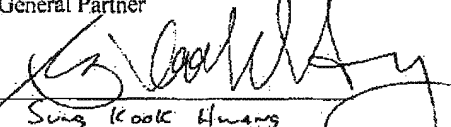
Please confirm that the foregoing correctly sets forth the terms of our agreement by executing a copy of this Master Confirmation Agreement and returning it to us at SF_CONFIRM@jefferies.com.

JEFFERIES FINANCIAL PRODUCTS, LLC

By: 
Name: Bradley Katinas
Title: Managing Director

ARHEGOS FUND, L.P.

By: Archegos Capital Partners, LLC,
its General Partner

By: 
Name: Sing Kook Hwang
Title: Managing Member



Date: November 16, 2017

Dear Sirs,

This notice is directed to the undersigned (hereinafter referred to as “**you**” and the terms “**your**” and “**yourself**” are to be construed accordingly) in connection with and in consideration of all transactions which you may enter into or have entered into, from time to time, with Jefferies Financial Products, LLC (“**Jefferies**”) or any of its affiliates (each an “**Issuer**”, and together the “**Issuers**”) that is **linked to the performance of shares, bonds, warrants or other securities traded and listed on a stock exchange in the People’s Republic of China** (for these purposes, excluding the Hong Kong Special Administrative Region, the Macao Special Administrative Region and the Taiwan area, the “**PRC**”), securities investment funds quoted in Renminbi or any other financial instruments, in each case, eligible for investment under the PRC Qualified Foreign Institutional Investor scheme, the PRC Renminbi Qualified Foreign Institutional Investor scheme or the Shanghai-Hong Kong Stock Connect programme, the Shenzhen-Hong Kong Stock or any other stock connect programme separately notified to you by Jefferies (in each case, “**PRC Securities**”), or indices relating to PRC Securities (each a “**Relevant Transaction**”), whether in the form of:

- (i) over-the-counter derivatives transactions; and/or
- (ii) notes, certificates, warrants or any other structured products or instruments by whatever name they are called.

For the purposes of this notice, the term “Relevant Transaction” refers to any future or currently outstanding Relevant Transaction(s) as of the date of this notice as well as any previous transaction which has been transferred, terminated, matured, redeemed or otherwise unwound prior to the date of this notice.

Notwithstanding any agreements between the Issuer and/or its associates/affiliates and you or any regulatory rules applicable to the Issuer or the Issuer’s associates/affiliates or you, in respect of the Relevant Transactions entered into by you, you hereby agree, undertake and acknowledge to each Issuer that:

1. Investor status

1.1 In relation to each Relevant Transaction linked to the performance of PRC Securities which are eligible for investment under the PRC Qualified Foreign Institutional Investor scheme or the PRC Renminbi Qualified Foreign Institutional Investor scheme:

1.1.1 you are not (1) a person holding a resident identification card of the PRC (a “**PRC Citizen**”) resident in the PRC, (2) a PRC Citizen resident outside the PRC who is not a permanent resident of another country or permanent resident of Hong Kong, Macau or Taiwan, or (3) an entity incorporated or organized in the PRC (a “**Legal Person Registered in the PRC**”) (each a “**Domestic Investor**”); and

1.1.2 to the best of your knowledge and belief after enquiries that you reasonably deem necessary, all amounts paid or to be paid by you under such Relevant Transaction did not and will not involve moneys financed by or sourced from any Domestic Investor in contravention of the laws and regulations of the PRC.

1.2 In relation to each Relevant Transaction linked to the performance of PRC Securities which are eligible for investment under the Shanghai-Hong Kong Stock Connect programme, the Shenzhen-Hong Kong Stock or any other stock connect programme separately notified to you by Jefferies, you are not (1) a natural person holding a resident identification card or other equivalent government issued identification of the PRC who is not a permanent resident of another jurisdiction or permanent resident of Hong Kong, Macau or Taiwan or (2) a Legal Person Registered in the PRC, or if you are such a person or legal entity, then your entry into the Transaction does not violate the laws and regulations of the PRC including those in relation to foreign exchange control and reporting.

AMENDMENT dated as of May 18, 2004
to the ISDA Master Agreement
dated as of November 8, 2001 between

MORGAN STANLEY & CO. INTERNATIONAL LIMITED ("Party A") and
TIGER ASIA FUND LP ("Party B" or "Counterparty")

This Amendment Agreement supplements, forms part of, and is subject in all respects to, that certain ISDA Master Agreement including the Schedule and Credit Support Annex thereto (if any), dated as of November 8, 2001 by and between Party A and Party B (collectively, the "Agreement"). Capitalized terms used herein, unless otherwise defined, have the meanings specified in the Agreement.

1. Party A and Party B hereby agree that the Agreement is amended as of the date hereof by adding the Automated Transactions Supplement attached hereto.

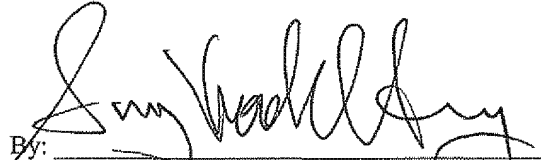
2. Each of the signatories below represents and warrants that he or she is duly authorized to sign this Amendment Agreement on behalf of the party set forth above his or her signature. Each of the parties represents and warrants that (a) its execution and delivery of this Amendment Agreement have been duly authorized by all requisite action by such party and do not and will not (i) violate its relevant organizational documents or (ii) result in a breach of, constitute a default under, or give any party the right to modify, amend, cancel, terminate or otherwise affect any contract, agreement, indenture, lease, license or other instrument to which it is a party or by which it or any of its assets is bound, and (b) this Amendment Agreement has been duly executed by it and is enforceable against it.

3. The Amendment Agreement may be signed in two or more counterparts. Each counterpart will constitute an original but all the counterparts together will constitute one and the same instrument.

4. This Amendment Agreement will be governed by the governing law of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Amendment Agreement by their duly authorized officers as of the date hereof.

TIGER ASIA FUND LP

By: 
Name: Song Kook Hwang
Title: Managing member of
the General Partner

MORGAN STANLEY & CO. INTERNATIONAL
LIMITED

By: _____
Name:
Title:

Transaction Request);

- (v) the Valuation Date(s), Termination Date, Settlement Currency, Dividend Ratio, Floating Rate Option, Designated Maturity, Floating Rate Day Count Fraction and Fee Adjustment are each as determined with respect to the initial ATS Transaction(s) of the relevant ATS Series by Party A acting in a commercially reasonable manner;
 - (vi) the Number of Shares is initially the number specified in the relevant ATS Transaction Request as the same may be reduced by Party A pursuant to paragraph 5(c) of this Supplement; and
 - (vii) the other terms are as provided for in Schedule 2 (in the case of the initial ATS Transaction(s) of any ATS Series) or Schedule 3 (in any other case) to this Supplement.
- (f) **Confirmation of initial ATS Transactions of an ATS Series:** Where Party A accepts an ATS Transaction Request which is the first request in relation to an ATS Series, Party A shall prepare and deliver to Party B, and Party B shall promptly execute and deliver by way of exchange to Party A, a Confirmation with respect thereto in or substantially in the form set out in Schedule 2 to this Supplement with such modifications as Party A shall determine to be appropriate in the circumstances.
- (g) **Deemed confirmation of other ATS Transactions:** Where Party A accepts an ATS Transaction Request (other than the first such request in relation to an ATS Series), the parties shall be deemed to have executed and exchanged a Confirmation with respect to the ATS Transaction thereby constituted on the terms set out in Schedule 3 to this Supplement.
- (h) **Acceptance of ATS Unwind Request:** Acceptance by Party A of an ATS Unwind Request shall constitute an agreement between the parties to adjust the relevant ATS Transaction(s) by reducing the Number of Shares by the number specified by Party B in such request (as the same may be reduced pursuant to paragraph 5(d) of this Supplement) (the "Unwind Number of Shares") and on the basis of the further adjustments and payments provided for in paragraph 6 of this Supplement.

6. ATS Transaction Unwind

- (a) **Unwind Adjustment:** Where an ATS Unwind Request is accepted by Party A, the terms of the relevant ATS Transaction(s) shall be adjusted by (i) reducing the Number of Shares by the relevant Unwind Number of Shares and (ii) reducing each of the Equity Notional Amount and Notional Amount, by multiplying each such amount by (x) one *minus* (y) the quotient of the Unwind Number of Shares and the Number of Shares immediately prior to such adjustment.
- (b) **Order of ATS Transactions to be unwound:** If an ATS Unwind Request relates to a particular Share in respect of which more than one ATS Transaction within the relevant ATS Series is outstanding, then the adjustments required by paragraph 6(a) of this Supplement shall be applied to such ATS

Schedule 3

Form of Deemed Confirmation

This Confirmation confirms the terms and conditions of the transaction entered into between **Morgan Stanley & Co. International Limited ("Party A")** and **Tiger Asia Fund LP ("Party B" and, together with Party A, the "Parties")** on the Trade Date specified below (the "Transaction") and constitutes a "Confirmation " as referred to in the ISDA Master Agreement specified below.

The definitions and provisions contained in the 2000 ISDA Definitions (other than Articles 10 through 17) (the "Swap Definitions") and in the 1996 ISDA Equity Derivatives Definitions as amended by the 1998 ISDA Euro Definitions (the "Equity Definitions", and together with the Swap Definitions, the "Definitions"), in each case as published by the International Swaps and Derivatives Association, Inc. ("ISDA"), are incorporated into this Confirmation subject as specified herein. In the event of any inconsistency between the Swap Definitions and the Equity Definitions, the Equity Definitions will govern. In the event of any inconsistency between either set of Definitions and this Confirmation, this Confirmation will govern. Any reference to a currency shall have the meaning contained in the 1998 ISDA FX and Currency Option Definitions, as published by ISDA.

This Confirmation supplements, forms part of, and is subject to, the ISDA Master Agreement dated as of November 8, 2001 as amended and supplemented from time to time (the "Agreement") between the Parties including any Supplement thereto referencing ATS Transactions (the "Supplement"). All provisions in the Agreement (excluding the Equity Option Annex (if any) thereto) govern this Confirmation subject to any express modification below. Terms defined in the Supplement have the same meanings herein and shall prevail in the event of any inconsistency with the Definitions.

As used herein, the "relevant ATS Transaction Request" means the ATS Transaction Request specifying proposed terms for the Transaction and "Initial Confirmation" means the Confirmation with respect to the initial ATS Transaction(s) of the ATS Series having the ATS Series Reference specified in the relevant ATS Transaction Request.

General Terms:

ATS Series Reference:	As specified in the relevant ATS Transaction Request.
Trade Date:	The date of Party A's acceptance of the relevant ATS Transaction Request.
Equity Amount Payer:	As specified in the Initial Confirmation.
Effective Date:	The date determined as such by Party A with respect to the Transaction.
Termination Date:	The date specified as such in the Initial Confirmation

AMENDED AND RESTATED SYNTHETIC PRIME BROKERAGE MASTER CONFIRMATION

This Amended and Restated Synthetic Prime Brokerage Master Confirmation (this "SPBMC") is dated as of March 18, 2016. It sets out the terms and conditions on which Nomura International plc ("Nomura") agrees to provide synthetic prime brokerage services to Archegos Fund, LP ("Counterparty" and, together with Nomura, each a "Party" and collectively the "Parties").

The Parties previously entered into a Synthetic Prime Brokerage Master Confirmation dated March 22, 2006, as amended and supplemented from time to time (the "Original SPBMC"). The Parties hereby agree to amend and restate the Original SPBMC in its entirety as follows and to have this SPBMC govern the terms of all existing and future SPB Transactions and SPB Transaction Unwinds.

1. Definitions and Interpretation.

- 1.1 The definitions and provisions contained in the 2006 ISDA Definitions (the "Swap Definitions") and in the 2002 ISDA Equity Derivatives Definitions (the "Equity Definitions", and together with the Swap Definitions, the "Definitions"), in each case as published by the International Swaps and Derivatives Association, Inc. ("ISDA"), are incorporated into this SPBMC and the documents comprising the Confirmation (as hereinafter defined) with respect to each SPB Transaction entered into hereunder subject as specified herein. Any capitalized term not otherwise defined herein (including in Schedule 1 hereto) shall have the meaning assigned to such term in the Definitions.
- 1.2 In the event of any inconsistency between any of the Swap Definitions, the Equity Definitions, this SPBMC, the SPB General Terms Supplement, an SPB Product Supplement, an SPB Transaction Supplement or the Jurisdiction Supplement (if applicable), the following documents will prevail in relation to the relevant Transaction in the following order of precedence: the SPB Transaction Supplement, the Jurisdiction Supplement (if applicable), the applicable SPB Product Supplement, the SPB General Terms Supplement, this SPBMC, the Equity Definitions and the Swap Definitions.
- 1.3 Any reference to a currency shall have the meaning contained in the 1998 ISDA FX and Currency Option Definitions, as published by ISDA.
- 1.4 This SPBMC supplements, forms part of, and is subject to, the ISDA Master Agreement (including the Schedule and Credit Support Annex) entered into between the Parties and dated as of March 22, 2006, as amended and supplemented from time to time (the "Agreement"). All provisions in the Agreement govern this SPBMC, except as expressly modified below.
- 1.5 For the purposes of the Definitions and for the Agreement:

- (a) each SPB Transaction (subject to full or partial termination from time to time pursuant to any SPB Transaction Unwind) shall be a "Transaction" for the purposes of the Agreement and an Equity Swap Transaction for the purposes of the Equity Definitions; and
- (b) the "Confirmation" with respect to each such SPB Transaction shall comprise this SPBMC, the SPB General Terms Supplement, the applicable SPB Product Supplement, the SPB Transaction Supplement relating to that SPB Transaction and, if applicable, the Jurisdiction Supplement.

2. Services.

Nomura may, in its absolute discretion, agree to enter into equity derivative transactions pursuant to this SPBMC. Nomura will not provide any advice (investment, financial, accounting legal or otherwise) in relation to this Agreement or any SPB Transaction or SPB Transaction Unwind.

3. Confirmation Process.

3.1 SPB Transaction Request

- (a) Counterparty may request on any Scheduled Trading Day after the date of this SPBMC that Nomura enter into an SPB Transaction or effect an SPB Transaction Unwind (each an "SPB Transaction Request"). Such SPB Transaction Request shall specify, at a minimum, the number of Units, the Underlying(s) and whether such transaction is to be an SPB Transaction (and if so whether a Long SPB Transaction or a Short SPB Transaction) or an SPB Transaction Unwind.
- (b) Any SPB Transaction Request shall constitute an offer made upon the terms of this SPBMC to Nomura to enter into such SPB Transaction or effect such SPB Transaction Unwind. Counterparty may, by notice to Nomura (such notice being effective only when actually received by Nomura), revoke the offer at any time until Nomura accepts the offer.
- (c) At any time whilst the offer constituted by an SPB Transaction Request for an SPB Transaction or an SPB Transaction Unwind is outstanding Nomura may accept such SPB Transaction Request and shall promptly acknowledge acceptance of such SPB Transaction Request subject to the terms described hereinafter.
- (d) Notwithstanding its acceptance of an SPB Transaction Request Nomura, acting in good faith and in a commercially reasonable manner, may reduce the number of Units applicable to such SPB Transaction or SPB

4. **Synthetic Payment.**

Counterparty shall pay to Nomura a Synthetic Payment (a) for each accepted SPB Transaction Request, (b) in respect of each termination (whether under its terms or otherwise) of an SPB Transaction and (c) as otherwise specified in the applicable SPB Product Supplement. A Synthetic Payment shall be calculated by Nomura and will be equal to the product of the Synthetic Payment Adjustment and the Synthetic Payment Notional Amount ("**Synthetic Payment Amount**"). If Combined Synthetic Payment is specified as "Not Applicable" in the relevant SPB Transaction Supplement, Counterparty shall pay all Synthetic Payment Amounts that have accrued but remain unpaid since the previous Synthetic Payment Date on the following Synthetic Payment Date. If Combined Synthetic Payment is specified as "Applicable" in the relevant SPB Transaction Supplement, then such Synthetic Payment Amounts will be included in the Initial Price and Final Price stated in the relevant SPB Transaction Supplement.

5. **Margin.**

With respect to any SPB Transaction an Independent Amount with respect to the Counterparty shall be applicable which shall be an amount equal to the Equity Notional Amount multiplied by the Margin Percentage specified in the SPB Transaction Supplement or as otherwise agreed by the parties from time to time.

6. **Determinations.**

Where any fact, criterion or qualitative issue is required to be determined by Nomura or the Calculation Agent under any Terms, unless otherwise stated herein, Nomura or the Calculation Agent, as applicable, shall exercise such determination in good faith and in its commercially reasonable discretion.

7. **No Rights in Underlying.**

The entry into an SPB Transaction does not confer on either Party any rights (whether in respect of voting, distributions or otherwise) attaching to the relevant Underlying.

8. **Termination of Agreement.**

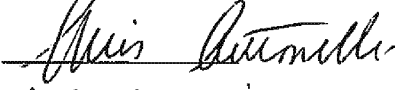
If there are no SPB Transactions outstanding under this SPBMC, either Party may terminate this SPBMC by giving two SPB Business Days' notice to the other Party in writing.

9. **Miscellaneous.**

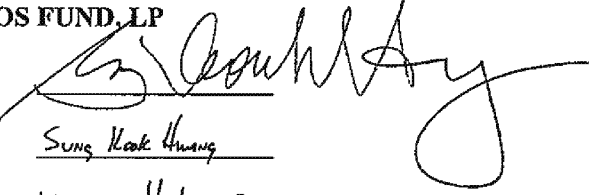
(a) The Parties hereto intend for:

IN WITNESS WHEREOF the Parties have executed this document with effect from the date specified on the first page of this document.

NOMURA INTERNATIONAL PLC

By: 
Name: Chris Antonelli
Title: Managing Director

ARCHEGOS FUND, LP

By: 
Name: Sung Hoek Hwang
Title: Managing Member of
The General Partner

SCHEDULE 1

Definitions

For the purposes of all terms under this SPBMC, the following definitions shall apply:

"Bonds" means the bonds or debt securities specified in the SPB Bonds Supplement.

"Cash Settlement Payment Date(s)" means, each Scheduled Cash Settlement Payment Date and with respect to any Units subject to an SPB Transaction Unwind each Unwind Cash Settlement Payment Date.

"Closed Market Country" means each of the People's Republic of China, India, Indonesia, Korea, Malaysia, Pakistan, Russia, Taiwan, Thailand and each other country as may be agreed in writing by the parties from time to time.

"Combined Synthetic Payment" has the meaning given to it in Clause 4 of the SPBMC.

"Corporate Action" has the meaning given to it in Clause 3.4(b) of the SPBMC.

"Currency Day Count Fraction" means, with respect to a currency, 1 divided by such denominator as the Calculation Agent may elect in order to convert the applicable benchmark overnight rate corresponding to that currency into a rate per day.

"Custom Basket Shares" means the Shares of any Issuer included in an SPB Custom Basket.

"Designated Maturity" means as specified in the SPB General Terms Supplement.

"Distribution Receipt Date" means as defined in the SPB Bonds Supplement.

"Effective Date" means as specified in the relevant SPB Transaction Supplement.

"Equity Amount Payer" means as specified in the SPB General Terms Supplement.

"Equity Definitions" means as defined in the SPBMC.

"Equity Notional Amount" means as defined in the SPB General Terms Supplement.

"Equity Notional Reset" means as specified in the SPB General Terms Supplement.

"Ex Amount Market" means each market as determined by the Calculation Agent where the customary practice is that a holder of shares entitlement to a dividend is determined by reference to the date that the Shares have commenced trading ex-dividend on the Exchange.

"Short Position" means with respect to an Underlying that the Counterparty has one or more SPB Transactions where the Counterparty is the Equity Amount Payer.

"Short SPB Transaction" means with respect to an Underlying, an SPB Transaction where the Counterparty is the Equity Amount Payer.

"SPB Bonds" means an SPB Transaction that references Bonds and to which the SPB Bonds Supplement applies.

"SPB Business Day" means each day on which commercial banks and foreign exchange markets settle payments and are open for business (including dealings in foreign exchange and foreign exchange deposits) in London.

"SPB Custom Baskets" means an SPB Transaction that references a basket of Shares and to which the SPB Shares/Custom Baskets Supplement applies.

"SPB Futures" means an SPB Transaction that references Futures and to which the SPB Index/Futures Supplement applies.

"SPB General Terms Supplement" means the general terms supplement appended at Schedule 3 hereto.

"SPB Index" means an SPB Transaction that references an Index and to which the SPB Index/Futures Supplement applies.

"SPB Product Supplement" means each of the SPB Bonds Supplement, the SPB Index/Futures Supplement and the SPB Shares/Custom Baskets Supplement appended to this SPBMC.

"SPB Product Type" means the "Product Type" specified in the relevant SPB Transaction Supplement, being SPB Bonds, SPB Futures, SPB Index, SPB Shares or SPB Custom Baskets, as applicable.

"SPB Shares" means an SPB Transaction that references Shares and to which the SPB Shares/Custom Baskets Supplement applies.

"SPB Transaction" means an Equity Swap Transaction entered into under the terms of this SPBMC.

"SPB Transaction Request" means as defined in Clause 3.1 of the SPBMC.

"SPB Transaction Supplement" means as defined in Clause 3.2 of the SPBMC.

"SPB Transaction Unwind" means, with respect to an Underlying referenced in one or more SPB Transactions, the termination (in whole or in part) of one or more SPB Transactions in respect of that Underlying, as effected on the Termination Valuation Date

with respect to that SPB Transaction Unwind. The Underlying, number of Units and Termination Valuation Date with respect to each SPB Transaction Unwind shall be set out in an SPB Transaction Supplement.

"Spread" means as specified in the SPB General Terms Supplement.

"Synthetic Payment Adjustment" means the value specified in the relevant SPB Transaction Supplement, as may be adjusted by Nomura from time to time in accordance with the provisions of the SPBMC in relation to the Terms.

"Synthetic Payment Amount" has the meaning given to it in Clause 4 of the SPBMC.

"Synthetic Payment Notional Amount" means for the purposes of determining a Synthetic Payment Amount (i) in respect of an accepted SPB Transaction Request, the Initial Price prior to the first Valuation Date multiplied by the number of Units for the SPB Transaction with respect to that SPB Transaction Request specified in the relevant SPB Transaction Supplement, (ii) in respect of the termination of an SPB Transaction pursuant to an SPB Unwind or Clause 3.3 of the SPBMC, the Final Price determined for the purposes of such SPB Transaction Unwind or termination multiplied by the number of Units subject to such SPB Transaction Unwind or termination, (iii) in respect of the termination of an SPB Transaction other than where Sub-clause (ii) applies, the Final Price determined for the purposes of such termination multiplied by the Number of Units under that SPB Transaction as of the Termination Date; and (iv) expressed to be payable under the SPB General Terms Supplement as defined in the SPB General Terms Supplement.

"Termination Date" means as defined in the General Terms Supplement.

"Termination Valuation Date" has the meaning given to it in Clause 3.3 of the SPBMC. Other than for the purposes of Clause 3.3 of the SPBMC, a Termination Valuation Date shall not be a Valuation Date.

"Terms" means each of the following terms: the Transaction Spread, Floating Rate, Dividend/Distribution Percentage, Fee Adjustment and the Synthetic Payment Adjustment.

"Trade Date" means as specified in the relevant SPB Transaction Supplement.

"Transaction Spread" means for each SPB Transaction, the relevant Transaction Spread as defined in the SPB General Terms Supplement unless otherwise specified in the relevant SPB Transaction Supplement, as may be adjusted by Nomura from time to time in accordance with the provisions of the SPBMC in relation to the Terms.

"Type of Return" means as specified in the SPB General Terms Supplement.

SCHEDULE 2

Form of SPB Transaction Supplement

This SPB Transaction Supplement is entered into between **Nomura International plc ("Nomura")** and [●] ("Counterparty" and, together with Nomura, the "Parties") on the Trade Date set forth below.

The purpose of this communication is to confirm the terms and conditions of the **SPB Transaction** entered into between **Nomura and Counterparty** on the Trade Date specified below. This **SPB Transaction Supplement** supplements, forms part of and is subject to the **Synthetic Prime Brokerage Master Confirmation** between the Parties dated [●], as may be amended and supplemented from time to time (the "**SPBMC**"), and, together with the **SPBMC**, the **SPB General Terms Supplement**, the applicable **SPB Product Supplement** and the **Jurisdiction Supplement** (if applicable) constitutes a "Confirmation" as referred to in the Agreement.

The terms of the SPB Transaction to which this SPB Transaction Supplement relates are as follows:

Product Identifier	RIC Code / ISIN	Underlying	SPB Product Type	Futures Price Valuation ¹	Multiplier	Maturity Date	Trade Date	Effective Date	Long / Short / Unwind
			[SPB Bonds] [SPB Shares] [SPB Custom Basket] [SPB Index] [SPB Futures]	[Applicable][Not Applicable]					

¹ This will be "Applicable" where the SPB Product Type is SPB Futures. Futures Price Valuation may also be applied via the SPB Transaction Supplement to SPB Shares. For SPB Custom Baskets, please insert "N/A".

Confidential Treatment Requested by King & Spalding

Number of Units	Initial Price / Final Price ²	FX Rate	Dividend / Distribution Percentage	Transaction Spread (bps)	Fec Adjustment (bps)	Related Exchange	Combined Synthetic Payment	Synthetic Payment Adjustment	Synthetic Payment Date
							[Applicable][Not Applicable]	[●], or otherwise notified by Nomura to Counterparty from time to time in accordance with the SPBMC.	[Each Cash Settlement Payment Date] [3 Currency Business Days after the next Valuation Date defined in the SPB Bonds General Terms Supplement] [The Termination Date]

Floating Amount Payer Payment Dates	Valuation Dates	Floating Rate Option
[Each Cash Settlement Payment Date] [[1st] Business Day of each month and each Unwind Cash Settlement Payment Date] [Last SPB Business Day of each month and each Unwind Cash Settlement Payment Date]	[*] / [1st Scheduled Trading Day of each month] / [Each Scheduled Trading Day] / [(a) 1st February, 1st May, 1st August and 1st November in each year from the Effective Date to the Termination Date, or in each case if not a Scheduled Trading Day, the next following Scheduled Trading Day and (b) the Scheduled Trading Day falling one Settlement Cycle prior to the Termination Date]	[AUD-SWAP OIS-RBA] [HIBOR-HKAB] [JPY-LIBOR-ICE] [NZD-OCR-RBNZ] [SGD-SIBOR-ABS] [USD-LIBOR-ICE] [GBP-LIBOR-ICE] [EUR-EURIBOR-EBF]

Notifications of Calculation Agent amendments:

Any notification of amendments by the Calculation Agent, including, without limitation, amendments resulting from any Corporate Action will not constitute a Confirmation but shall be a notice only.

² This will be the "Initial" where the SPB Transaction is a short or long and Final Price where the SPB Transaction is an Unwind.

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SCHEDULE 3**SPB General Terms Supplement**

This SPB General Terms Supplement supplements, forms part of and is subject to the SPBMC and, together with the SPBMC, the applicable SPB Product Supplement, the relevant SPB Transaction Supplement (as each such term is defined in the SPBMC) and the Jurisdiction Supplement (if applicable) constitutes a "Confirmation" with respect to the relevant SPB Transaction as referred to in the Agreement. This SPB General Terms Supplement shall be construed in accordance with Clause 1 of the SPBMC.

General Terms:

Termination Date: The date which is five (5) calendar years after the date of the SPBMC, unless otherwise agreed between the parties, or the final Cash Settlement Payment Date, whichever is later

Unit: A trading unit of the Underlying (or, in the case of an Underlying that is Custom Basket Shares, the number of Shares of each Issuer included in a single SPB Custom Basket)

Multiplier: In respect of SPB Transactions to which Futures Price Valuation applies, a "Multiplier" may be specified in the relevant SPB Transaction Supplement for the purpose only of informing the Counterparty of the multiplier embedded in the relevant Exchange-traded Contract. Notwithstanding any SPB Transaction Supplement, the Multiplier for the purposes of the Equity Definitions shall be 1 for all SPB Transactions. A "Multiplier" specified in any SPB Transaction Supplement is not intended to take operative effect per the Equity Definitions.

Equity Amounts payable by Equity Amount Payer:

Equity Amount Payer: As specified with respect to the relevant Units in the SPB Transaction Supplement.

Number of Units: As specified with respect to the relevant Underlying in the SPB Transaction Supplement (subject to reduction from time to time pursuant to any SPB Transaction Unwind).

Equity Notional Amount: The product of the Initial Price and the Number of

SCHEDULE 4

PRODUCT SUPPLEMENTS

SPB Bonds Supplement

The following terms shall apply where the SPB Transaction Supplement specifies that the SPB Product Type for an SPB Transaction is SPB Bonds.

This SPB Bonds Supplement supplements, forms part of and is subject to the SPBMC and, together with the SPBMC, the SPB General Terms Supplement, the relevant SPB Transaction Supplement (as each such term is defined in the SPBMC) and the Jurisdiction Supplement (if applicable) constitutes a "Confirmation" with respect to the relevant SPB Transaction as referred to in the Agreement. This SPB Bonds Supplement shall be construed in accordance with Clause 1 of the SPBMC.

General Terms:

Issuer:	The Issuer of the Bonds.
Bonds:	Subject to "Additional Provisions – Conversions" below, the Underlying specified in the relevant SPB Transaction Supplement.
Underlying Shares:	In respect only of Bonds that are exchangeable or convertible bonds, the shares, if any, into or for which the Bonds are or may be convertible or exchangeable at a specified time, or from time to time, whether at the option of the Issuer or any holders thereof or on a mandatory basis.
Transaction Face Amount:	Number of Units multiplied by the principal amount outstanding of a Bond on the Effective Date. The Transaction Face Amount shall be subject to reduction by the Calculation Agent on account of any Partial Redemption.
Relevant Jurisdiction:	With respect to any amount payable under an SPB Transaction, such of the jurisdictions specified in sub-paragraphs (i), (ii) and (iii) of "Dividend/ Distribution Adjustment Event" in this SPB Bonds Supplement as the Calculation Agent may determine to be material for the purposes of such payment.
Scheduled Trading Day:	(a) In respect of Bonds that are not exchangeable or convertible bonds, not applicable; and (b) in respect

of Bonds that are exchangeable or convertible bonds, as determined in accordance with Section 1.31 of the Equity Definitions.

Bond Business Day: Each day which is both an SPB Business Day and (if applicable) a Scheduled Trading Day.

Observation Date: In respect of a payment under Bonds (a) that are bearer bonds, the date of such payment and (b) that are registered bonds, whichever of the record date for such payment under such Bonds (as specified by the Issuer or in the legal instrument governing the Bonds or as otherwise determined by the Calculation Agent) and the date of such payment that the Calculation Agent determines to be the more appropriate in connection with such Bonds.

Exchange: (a) In respect of Bonds that are not exchangeable or convertible bonds, not applicable; and (b) in respect of Bonds that are exchangeable or convertible bonds, the exchange or quotation system on which the largest volume of Underlying Shares normally trade.

Related Exchange: Not Applicable

Equity Amounts payable by Equity Amount Payer:

Equity Amount: Each Equity Amount shall be determined as if this SPB Transaction were a Share Transaction; provided that if the Equity Amount is payable on a Cash Settlement Payment Date falling on or after the Full Redemption Date or the Scheduled Maturity Date, the Equity Amount payable on the corresponding Cash Settlement Payment Date shall be equal to:

- (i) any amounts of principal actually paid by the Issuer in cash to holders of the Bonds in the Relevant Jurisdiction on the Full Redemption Date or Scheduled Maturity Date, as applicable, in respect of Bonds with an outstanding principal amount equal to the Transaction Face Amount as of the Observation Date relating to the Full Redemption Date or the Scheduled Maturity Date of the Bonds (prior to giving effect to such principal payment), as applicable, minus

the Transaction Face Amount as of the Observation Date relating to the Full Redemption Date.

Synthetic Payment for Full Redemptions:

The Synthetic Payment Notional Amount for the purposes of determining a Synthetic Payment pursuant to the occurrence of a Full Redemption shall be equal to the sum of the Full Redemption Amount and any Proceeds Value determined by the Calculation Agent in connection with such Full Redemption (or that would have been so determined if "Non-Cash Distributions, Redemptions and Conversions Occurring Following the Final Valuation Date" had applied thereto).

Additional Equity Amounts:

Additional Equity Amounts Payer:

As specified in the Consequences of Cash Partial Redemptions provision below.

Additional Equity Amounts Period:

The period which commences on, and includes, the Effective Date and ends on, but excludes, the final Cash Settlement Payment Date.

Additional Equity Amount:

In respect of any Partial Redemption that consists of cash (in whole or in part), the Additional Equity Amount shall be an amount equal to:

- (i) the Cash Partial Redemption Amount; minus
- (ii) the Initial Price as of the Valuation Date immediately preceding the Observation Date for such Cash Partial Redemption multiplied by the portion of the Transaction Face Amount to which such Cash Partial Redemption Amount relates (as determined by the Calculation Agent).

Additional Equity Amounts Payment Dates:

The Additional Equity Amounts Payer shall pay to the other Party any Additional Equity Amount five SPB Business Days following the related Partial Redemption Date, notwithstanding the occurrence of the final Cash Settlement Payment Date (unless the Partial Redemption Date occurs more than six months following the final Cash Settlement Payment Date, in which case the Additional Equity Amount will not be paid).

Partial Redemption:

Any repayments of principal on the Bonds or

to an obligation for either Party on account of such Non-Cash Partial Redemption which is a delivery rather than a payment obligation, and subject to the "Non-Cash Distributions and Redemptions Occurring Following the Final Valuation Date" provision of this SPB Bonds Supplement.

Synthetic Payment for Partial Redemptions:

Counterparty, shall pay to Nomura a Synthetic Payment in respect of each Additional Equity Amount Payment Date. The Synthetic Payment Notional Amount for the purposes of determining such Synthetic Payment shall be equal to the sum of the Cash Partial Redemption Amount and the cash value of the Non-Cash Partial Redemption Amount, as determined by the Calculation Agent, (or as would have been so determined if "Non-Cash Distributions, Redemptions and Conversions Occurring Following the Final Valuation Date" had applied thereto).

Distribution Amounts:

- Distribution Amounts Payer: Equity Amount Payer
- Distribution Amounts Period: The period that commences on, and includes the Effective Date and ends on, but excludes, the final Cash Settlement Payment Date.
- Distribution Amount: Any and all payments or distributions, including, without limitation, interest and coupon payments and consent fees, but excluding Partial Redemption Amounts or Full Redemption Amounts, that are actually made by the Issuer to holders of the Bonds in the Relevant Jurisdiction in respect of an outstanding principal amount of the Bonds equal to the Transaction Face Amount as of the relevant Observation Date and for which the Observation Date occurs during the Distribution Amounts Period.
- Actual Cash Distribution Amount: The portion of a Distribution Amount, if any, that consists of cash.
- Non-Cash Distribution Amount: That portion of a Distribution Amount, if any, that consists of property other than cash including, without limitation, securities or other non-cash assets.

SCHEDULE 1

Definitions

For the purposes of all terms under this SPBMC, the following definitions shall apply:

"**Bonds**" means the bonds or debt securities specified in the SPB Bonds Supplement.

"**Cash Settlement Payment Date(s)**" means, each Scheduled Cash Settlement Payment Date and with respect to any Units subject to an SPB Transaction Unwind each Unwind Cash Settlement Payment Date.

"**Closed Market Country**" means each of the People's Republic of China, India, Indonesia, Korea, Malaysia, Pakistan, Russia, Taiwan, Thailand and each other country as may be agreed in writing by the parties from time to time.

"**Combined Synthetic Payment**" has the meaning given to it in Clause 4 of the SPBMC.

"**Corporate Action**" has the meaning given to it in Clause 3.4(b) of the SPBMC.

"**Currency Day Count Fraction**" means, with respect to a currency, 1 divided by such denominator as the Calculation Agent may elect in order to convert the applicable benchmark overnight rate corresponding to that currency into a rate per day.

"**Custom Basket Shares**" means the Shares of any Issuer included in an SPB Custom Basket.

"**Designated Maturity**" means as specified in the SPB General Terms Supplement.

"**Distribution Receipt Date**" means as defined in the SPB Bonds Supplement.

"**Effective Date**" means as specified in the relevant SPB Transaction Supplement.

"**Equity Amount Payer**" means as specified in the SPB General Terms Supplement.

"**Equity Definitions**" means as defined in the SPBMC.

"**Equity Notional Amount**" means as defined in the SPB General Terms Supplement.

"**Equity Notional Reset**" means as specified in the SPB General Terms Supplement.

"**Ex Amount Market**" means each market as determined by the Calculation Agent where the customary practice is that a holder of shares entitlement to a dividend is determined by reference to the date that the Shares have commenced trading ex-dividend on the Exchange.

"Short Position" means with respect to an Underlying that the Counterparty has one or more SPB Transactions where the Counterparty is the Equity Amount Payer.

"Short SPB Transaction" means with respect to an Underlying, an SPB Transaction where the Counterparty is the Equity Amount Payer.

"SPB Bonds" means an SPB Transaction that references Bonds and to which the SPB Bonds Supplement applies.

"SPB Business Day" means each day on which commercial banks and foreign exchange markets settle payments and are open for business (including dealings in foreign exchange and foreign exchange deposits) in London.

"SPB Custom Baskets" means an SPB Transaction that references a basket of Shares and to which the SPB Shares/Custom Baskets Supplement applies.

"SPB Futures" means an SPB Transaction that references Futures and to which the SPB Index/Futures Supplement applies.

"SPB General Terms Supplement" means the general terms supplement appended at Schedule 3 hereto.

"SPB Index" means an SPB Transaction that references an Index and to which the SPB Index/Futures Supplement applies.

"SPB Product Supplement" means each of the SPB Bonds Supplement, the SPB Index/Futures Supplement and the SPB Shares/Custom Baskets Supplement appended to this SPBMC.

"SPB Product Type" means the "Product Type" specified in the relevant SPB Transaction Supplement, being SPB Bonds, SPB Futures, SPB Index, SPB Shares or SPB Custom Baskets, as applicable.

"SPB Shares" means an SPB Transaction that references Shares and to which the SPB Shares/Custom Baskets Supplement applies.

"SPB Transaction" means an Equity Swap Transaction entered into under the terms of this SPBMC.

"SPB Transaction Request" means as defined in Clause 3.1 of the SPBMC.

"SPB Transaction Supplement" means as defined in Clause 3.2 of the SPBMC.

"SPB Transaction Unwind" means, with respect to an Underlying referenced in one or more SPB Transactions, the termination (in whole or in part) of one or more SPB Transactions in respect of that Underlying, as effected on the Termination Valuation Date

with respect to that SPB Transaction Unwind. The Underlying, number of Units and Termination Valuation Date with respect to each SPB Transaction Unwind shall be set out in an SPB Transaction Supplement.

"**Spread**" means as specified in the SPB General Terms Supplement.

"**Synthetic Payment Adjustment**" means the value specified in the relevant SPB Transaction Supplement, as may be adjusted by Nomura from time to time in accordance with the provisions of the SPBMC in relation to the Terms.

"**Synthetic Payment Amount**" has the meaning given to it in Clause 4 of the SPBMC.

"**Synthetic Payment Notional Amount**" means for the purposes of determining a Synthetic Payment Amount (i) in respect of an accepted SPB Transaction Request, the Initial Price prior to the first Valuation Date multiplied by the number of Units for the SPB Transaction with respect to that SPB Transaction Request specified in the relevant SPB Transaction Supplement, (ii) in respect of the termination of an SPB Transaction pursuant to an SPB Unwind or Clause 3.3 of the SPBMC, the Final Price determined for the purposes of such SPB Transaction Unwind or termination multiplied by the number of Units subject to such SPB Transaction Unwind or termination, (iii) in respect of the termination of an SPB Transaction other than where Sub-clause (ii) applies, the Final Price determined for the purposes of such termination multiplied by the Number of Units under that SPB Transaction as of the Termination Date; and (iv) expressed to be payable under the SPB General Terms Supplement as defined in the SPB General Terms Supplement.

"**Termination Date**" means as defined in the General Terms Supplement.

"**Termination Valuation Date**" has the meaning given to it in Clause 3.3 of the SPBMC. Other than for the purposes of Clause 3.3 of the SPBMC, a Termination Valuation Date shall not be a Valuation Date.

"**Terms**" means each of the following terms: the Transaction Spread, Floating Rate, Dividend/Distribution Percentage, Fee Adjustment and the Synthetic Payment Adjustment.

"**Trade Date**" means as specified in the relevant SPB Transaction Supplement.

"**Transaction Spread**" means for each SPB Transaction, the relevant Transaction Spread as defined in the SPB General Terms Supplement unless otherwise specified in the relevant SPB Transaction Supplement, as may be adjusted by Nomura from time to time in accordance with the provisions of the SPBMC in relation to the Terms.

"**Type of Return**" means as specified in the SPB General Terms Supplement.

"Underlying" means (i) in respect of an SPB Transaction to which Futures Price Valuation does not apply, the bonds, debt securities, index or shares specified in the relevant SPB Transaction Supplement, as applicable in each case, and (ii) in respect of SPB Transactions to which Futures Price Valuation applies, the Futures or the relevant Exchange-traded Contract relating to the Shares or Index specified in the relevant SPB Transaction Supplement, as applicable in each case.

"Underlying Currency" means the currency in which the relevant Underlying (or, in the case of Custom Basket Shares, the Shares of any Issuer included in the SPB Custom Baskets) is denominated except that if the Underlying is an Index the Underlying Currency means the relevant currency of the Index as described on the relevant Bloomberg Page or such other source as the Calculation Agent shall reasonably determine.

"Underlying Jurisdiction" means, with respect to any SPB Transaction that has an SPB Product Type of (a) SPB Shares, SPB Futures or SPB Index, the jurisdiction of incorporation of the issuer of the Underlying, and (b) SPB Custom Baskets, each of the jurisdictions of incorporation of the issuers of the Shares included in the SPB Custom Basket.

"Units" means as specified in the SPB General Terms Supplement.

"Unwind Cash Settlement Payment Date" mean 1 Settlement Cycle following each Termination Valuation Date, or if not a Currency Business Day, the next following Currency Business Day.

"U.S. Underlyings" mean publicly traded equities or exchange traded funds issued by U.S. issuers or traded on U.S. exchanges (including American depositary receipts), baskets of such equities or exchange traded funds, or regularly quoted and published third party-sponsored indices that include any of such equities or exchange traded funds.

"Valuation Date" means as specified in the relevant SPB Transaction Supplement and, if applicable, the relevant SPB Product Supplement.

"Valuation Time" means as defined in the SPB General Terms Supplement.

SCHEDULE 2

Form of SPB Transaction Supplement

This SPB Transaction Supplement is entered into between Nomura International plc ("**Nomura**") and [●] ("**Counterparty**" and, together with Nomura, the "**Parties**") on the Trade Date set forth below.

The purpose of this communication is to confirm the terms and conditions of the SPB Transaction entered into between Nomura and Counterparty on the Trade Date specified below. This SPB Transaction Supplement supplements, forms part of and is subject to the Synthetic Prime Brokerage Master Confirmation between the Parties dated [●], as may be amended and supplemented from time to time (the "**SPBMC**"), and, together with the SPBMC, the SPB General Terms Supplement, the applicable SPB Product Supplement and the Jurisdiction Supplement (if applicable) constitutes a "Confirmation" as referred to in the Agreement.

The terms of the SPB Transaction to which this SPB Transaction Supplement relates are as follows:

Product Identifier	RIC Code / ISIN	Underlying	SPB Product Type	Futures Price Valuation ¹	Multiplier	Maturity Date	Trade Date	Effective Date	Long / Short / Unwind
			[SPB Bonds] [SPB Shares] [SPB Custom Basket] [SPB Index] [SPB Futures]	[Applicable][Not Applicable]					

¹ This will be "Applicable" where the SPB Product Type is SPB Futures. Futures Price Valuation may also be applied via the SPB Transaction Supplement to SPB Shares. For SPB Custom Baskets, please insert "N/A".

Number of Units	Initial Price / Final Price ²	FX Rate	Dividend / Distribution Percentage	Transaction Spread (bps)	Fee Adjustment (bps)	Related Exchange	Combined Synthetic Payment	Synthetic Payment Adjustment	Synthetic Payment Date
							[Applicable][Not Applicable]	[●], or otherwise notified by Nomura to Counterparty from time to time in accordance with the SPBMC.	[Each Cash Settlement Payment Date] [3 Currency Business Days after the next Valuation Date defined in the SPB Bonds General Terms Supplement] [The Termination Date]

Floating Amount Payer Payment Dates	Valuation Dates	Floating Rate Option
[Each Cash Settlement Payment Date] [[1st] Business Day of each month and each Unwind Cash Settlement Payment Date] [Last SPB Business Day of each month and each Unwind Cash Settlement Payment Date]	[•] / [1st Scheduled Trading Day of each month] / [Each Scheduled Trading Day] / [(a) 1st February, 1st May, 1st August and 1st November in each year from the Effective Date to the Termination Date, or in each case if not a Scheduled Trading Day, the next following Scheduled Trading Day and (b) the Scheduled Trading Day falling one Settlement Cycle prior to the Termination Date]	[AUD-SWAP OIS-RBA] [HIBOR-HKAB] [JPY-LIBOR-ICE] [NZD-OCR-RBNZ] [SGD-SIBOR-ABS] [USD-LIBOR-ICE] [GBP-LIBOR-ICE] [EUR-EURIBOR-EBF]

Notifications of Calculation Agent amendments:

Any notification of amendments by the Calculation Agent, including, without limitation, amendments resulting from any Corporate Action will not constitute a Confirmation but shall be a notice only.

² This will be the "Initial" where the SPB Transaction is a short or long and Final Price where the SPB Transaction is an Unwind.

Currency) from the Underlying Currency into the Settlement Currency on the relevant Valuation Date using the Relevant Exchange Rate subject to the occurrence of an FX Disruption Event (if applicable).

The Final Price shall be inclusive of accrued interest through the relevant Valuation Date, unless the Calculation Agent determines that on the Effective Date the Bonds trade exclusive of accrued interest, in which case such Final Price will be exclusive of accrued interest.

Where the Underlying Jurisdiction is Japan, for the purposes of determining the Final Price, the Calculation Agent may take into account any closing special quote per Underlying quoted by the Exchange (*tokubetsu kehaine*).

Valuation Time:	The time selected by the Calculation Agent.
Valuation Dates:	As specified in the relevant SPB Transaction Supplement; provided that any reference to "Scheduled Trading Day" in the definition of Valuation Dates as specified in the relevant SPB Transaction Supplement shall be construed as a reference to "Bond Business Day".
Disrupted Day:	Section 6.4 of the Equity Definitions shall not apply. " Disrupted Day " means any Scheduled Trading Day on which (a) any event that disrupts or impairs (as determined by the Calculation Agent) the ability of market participants in general to effect transactions in or obtain market values for the Bonds or (in the case of a Bond which is a convertible or exchangeable bond) any Underlying Shares has occurred or (b) in the case of a Bond which is a convertible or exchangeable bond , the Exchange fails to open for trading during its regular trading session. The Calculation Agent shall as soon as reasonably practicable under the circumstances notify the Parties or other Party, as the case may be, of the occurrence of a Disrupted Day on any day that, but for the occurrence of a Disrupted Day, would have been a Valuation Date. Without limiting the obligation of the Calculation Agent to notify the Parties as set forth

the Transaction Face Amount as of the Observation Date relating to the Full Redemption Date.

Synthetic Payment for Full Redemptions:

The Synthetic Payment Notional Amount for the purposes of determining a Synthetic Payment pursuant to the occurrence of a Full Redemption shall be equal to the sum of the Full Redemption Amount and any Proceeds Value determined by the Calculation Agent in connection with such Full Redemption (or that would have been so determined if "Non-Cash Distributions, Redemptions and Conversions Occurring Following the Final Valuation Date" had applied thereto).

Additional Equity Amounts:

Additional Equity Amounts Payer:

As specified in the Consequences of Cash Partial Redemptions provision below.

Additional Equity Amounts Period:

The period which commences on, and includes, the Effective Date and ends on, but excludes, the final Cash Settlement Payment Date.

Additional Equity Amount:

In respect of any Partial Redemption that consists of cash (in whole or in part), the Additional Equity Amount shall be an amount equal to:

- (i) the Cash Partial Redemption Amount; minus
- (ii) the Initial Price as of the Valuation Date immediately preceding the Observation Date for such Cash Partial Redemption multiplied by the portion of the Transaction Face Amount to which such Cash Partial Redemption Amount relates (as determined by the Calculation Agent).

Additional Equity Amounts Payment Dates:

The Additional Equity Amounts Payer shall pay to the other Party any Additional Equity Amount five SPB Business Days following the related Partial Redemption Date, notwithstanding the occurrence of the final Cash Settlement Payment Date (unless the Partial Redemption Date occurs more than six months following the final Cash Settlement Payment Date, in which case the Additional Equity Amount will not be paid).

Partial Redemption:

Any repayments of principal on the Bonds or

to an obligation for either Party on account of such Non-Cash Partial Redemption which is a delivery rather than a payment obligation, and subject to the "Non-Cash Distributions and Redemptions Occurring Following the Final Valuation Date" provision of this SPB Bonds Supplement.

Synthetic Payment for Partial Redemptions:

Counterparty, shall pay to Nomura a Synthetic Payment in respect of each Additional Equity Amount Payment Date. The Synthetic Payment Notional Amount for the purposes of determining such Synthetic Payment shall be equal to the sum of the Cash Partial Redemption Amount and the cash value of the Non-Cash Partial Redemption Amount, as determined by the Calculation Agent, (or as would have been so determined if "Non-Cash Distributions, Redemptions and Conversions Occurring Following the Final Valuation Date" had applied thereto).

Distribution Amounts:

- Distribution Amounts Payer: Equity Amount Payer
- Distribution Amounts Period: The period that commences on, and includes the Effective Date and ends on, but excludes, the final Cash Settlement Payment Date.
- Distribution Amount: Any and all payments or distributions, including, without limitation, interest and coupon payments and consent fees, but excluding Partial Redemption Amounts or Full Redemption Amounts, that are actually made by the Issuer to holders of the Bonds in the Relevant Jurisdiction in respect of an outstanding principal amount of the Bonds equal to the Transaction Face Amount as of the relevant Observation Date and for which the Observation Date occurs during the Distribution Amounts Period.
- Actual Cash Distribution Amount: The portion of a Distribution Amount, if any, that consists of cash.
- Non-Cash Distribution Amount: That portion of a Distribution Amount, if any, that consists of property other than cash including, without limitation, securities or other non-cash assets.

Consequences of Actual Cash Distribution Amounts: The Distribution Amounts Payer shall pay the Floating Amount Payer an amount (the "**Cash Distribution Amount**") equal to the product of the applicable Dividend/Distribution Percentage and the Actual Cash Distribution Amount five SPB Business Days following the relevant Distribution Receipt Date, notwithstanding the occurrence of the final Cash Settlement Payment Date (unless the Distribution Receipt Date occurs more than six (6) months following the final Cash Settlement Payment Date, in which case the Cash Distribution Amount will not be paid).

Consequences of Non-Cash Distribution Amounts: The Calculation Agent shall adjust the terms of the Transaction, effective as of the relevant Distribution Receipt Date, to account for any Non-Cash Distribution Amount(s), subject to the "Non-Cash Distributions and Redemptions Occurring Following the Final Valuation Date" provision of this SPB Bonds Supplement.

Distribution Receipt Dates: In respect of a Distribution Amount, the date on which the payment or distribution by the Issuer in respect of that Distribution Amount would have been received by holders of the Bonds in the Relevant Jurisdiction.

Additional Disruption Events:

Insolvency Filing: Applicable

Additional Provisions:

- (a) **Conversions.** This provision shall apply only in respect of Bonds that are convertible or exchangeable bonds. If the Issuer converts the Bonds of holders in the Relevant Jurisdiction, whether pursuant to a mandatory conversion or optional conversion rights of the issuer or a holder, in whole or in part, into any securities or assets other than cash (including, without limitation, any Underlying Shares) (a "**Conversion**"), as of any Observation Date that occurs during the period from and including the Effective Date to but excluding the final Cash Settlement Payment Date, then, subject to the "Non-Cash Distributions and Redemptions Occurring Following the Final Valuation Date" provision of this SPB Bonds Supplement:
 - (i) if such conversion is in respect of less than all of the SPB Bonds

Execution Copy

SPB MASTER CONFIRMATION

This SPB Master Confirmation (this “**SPBMC**”) is dated as of March 10, 2021. It sets out the terms and conditions on which **Nomura Global Financial Products Inc.** (“**Nomura**”) agrees to provide a swap transaction facility to **Archegos Fund, LP** (“**Counterparty**” and, together with Nomura, each a “**Party**” and collectively the “**Parties**”).

1. Definitions and Interpretation.

- 1.1 The definitions and provisions contained in the 2006 ISDA Definitions (the “**Swap Definitions**”) and in the 2002 ISDA Equity Derivatives Definitions (the “**Equity Definitions**”, and together with the Swap Definitions, the “**Definitions**”), in each case as published by the International Swaps and Derivatives Association, Inc. (“**ISDA**”), are incorporated into this SPBMC and the documents comprising the Confirmation (as hereinafter defined) with respect to each SPB Transaction entered into hereunder subject as specified herein. Any capitalized term not otherwise defined herein (including in Schedule 1 hereto) shall have the meaning assigned to such term in the Definitions.
- 1.2 In the event of any inconsistency between any of the Swap Definitions, the Equity Definitions, this SPBMC, the SPB General Terms Supplement, an SPB Product Supplement, an SPB Transaction Supplement or the Jurisdiction Supplement (if applicable), the following documents will prevail in relation to the relevant Transaction in the following order of precedence: the SPB Transaction Supplement, the Jurisdiction Supplement (if applicable), the applicable SPB Product Supplement, the SPB General Terms Supplement, this SPBMC, the Equity Definitions and the Swap Definitions.
- 1.3 Any reference to a currency shall have the meaning contained in the 1998 ISDA FX and Currency Option Definitions, as published by ISDA.
- 1.4 This SPBMC supplements, forms part of, and is subject to, the ISDA Master Agreement (including the Schedule and Credit Support Annex) entered into between the Parties and dated as of March 8, 2021, as amended and supplemented from time to time (the “**Agreement**”). All provisions in the Agreement govern this SPBMC, except as expressly modified below.
- 1.5 For the purposes of the Definitions and for the Agreement:
- (a) each SPB Transaction (subject to full or partial termination from time to time pursuant to any SPB Transaction Unwind) shall be a “**Transaction**” for the purposes of the Agreement and an Equity Swap Transaction for the purposes of the Equity Definitions; and
 - (b) the “**Confirmation**” with respect to each such SPB Transaction shall comprise this SPBMC, the SPB General Terms Supplement, the applicable SPB Product Supplement, the SPB Transaction Supplement relating to that SPB Transaction and, if applicable, the Jurisdiction Supplement.

2. Confirmation Process

2.1 SPB Transaction Request

- (a) **Counterparty may request on any Scheduled Trading Day after the date of this SPBMC that Nomura enter into an SPB Transaction or effect an SPB Transaction Unwind (each an “SPB Transaction Request”). Such SPB Transaction Request shall specify, at a minimum, the number of Units, the Underlying(s) and whether such transaction is to be**

an SPB Transaction (and if so whether a Long SPB Transaction or a Short SPB Transaction) or an SPB Transaction Unwind.

- (b) Any SPB Transaction Request shall constitute an offer made upon the terms of this SPBMC to Nomura to enter into such SPB Transaction or effect such SPB Transaction Unwind. Counterparty may, by notice to Nomura (such notice being effective only when actually received by Nomura), revoke the offer at any time until Nomura accepts the offer.
- (c) At any time whilst the offer constituted by an SPB Transaction Request for an SPB Transaction or an SPB Transaction Unwind is outstanding Nomura may accept such SPB Transaction Request and shall promptly acknowledge acceptance of such SPB Transaction Request subject to the terms described hereinafter.

2.2 SPB Transaction Supplements

- (a) For each SPB Transaction entered into and SPB Transaction Unwind effected on any date Nomura will prepare and make available to Counterparty a transaction supplement substantially in the form appended at Schedule 2 (an “**SPB Transaction Supplement**”).
- (b) Following the provision of an SPB Transaction Supplement, Counterparty shall promptly notify Nomura of any disagreements as to any terms. If Counterparty has not contacted Nomura specifying the disagreements within one (1) SPB Business Day of the day on which such SPB Transaction Supplement was made available to it then Counterparty shall be deemed to have agreed to such SPB Transaction Supplement and its terms shall be final and conclusive absent manifest error.

2.3 SPB Transaction Unwinds

Under each SPB Transaction against which an SPB Transaction Unwind is applied (but only in respect of the part of that SPB Transaction which is terminated pursuant to such application), a Valuation Date shall occur (the “**Termination Valuation Date**”), which shall be the Scheduled Trading Day agreed between the Parties or, if no agreement has been reached between the Parties at the time of the relevant SPB Transaction Request then the Termination Valuation Date shall be determined by the Calculation Agent. The Final Price, the Cash Settlement Payment Date and Payment Date with respect to the Units of the relevant SPB Transaction(s) (or part thereof) to be unwound shall be determined in accordance with the provisions of the relevant SPB Product Supplement or Jurisdiction Supplement. The number of Units the subject of each SPB Transaction affected by an SPB Transaction Unwind shall be amended by the Calculation Agent to reflect such unwind on each applicable Termination Valuation Date.

2.4 Adjustments and modifications to SPB Transaction Supplements

- (a) If Nomura determines, in its good faith discretion, that any adjustments or modifications are required to any terms of any SPB Transaction Supplement, Nomura may:
 - (i) if the relevant adjustment or modification relates to any Terms, make such adjustment or modification upon at least five (5) SPB Business Days’ written notification to Counterparty of the revised Terms; **provided** that (x) the foregoing is without prejudice to any right that Nomura may have to make a Price Adjustment to any SPB Transaction in accordance with the other terms hereof and (y) Nomura may make adjustments or modifications to the Terms of any Short SPB Transaction related to a security that is classified by Nomura as a hard-to-borrow or non-GC security or an index that includes any such security as a constituent upon notice to Counterparty; or

- (ii) if the relevant adjustment or modification relates to any other term of an SPB Transaction Supplement, make the relevant adjustment or modification to the relevant SPB Transaction Supplement and make an amended and restated version of such SPB Transaction Supplement available to Counterparty.
- (b) Any notification of amendments to an SPB Transaction made by the Calculation Agent to the Parties, including, without limitation, amendments resulting from any Merger Events, Tender Offers, other Extraordinary Events or Potential Adjustment Events (each a “**Corporate Action**”), will (notwithstanding that such amendments may be notified in an amended and restated SPB Transaction Supplement) not constitute an SPB Transaction Supplement but shall be a notice only (and accordingly clause 2.4(c) shall not apply thereto).
- (c) Following the provision of an amended and restated SPB Transaction Supplement or any adjustment or modification to Terms pursuant to Clause 2.4(a) above, Counterparty shall promptly notify Nomura of any disagreements as to any terms. If Counterparty has not contacted Nomura specifying the disagreements within three (3) SPB Business Days of the day on which such amended and restated SPB Transaction Supplement was made available to it (or, if earlier, the latest day by which the relevant Transaction must be confirmed in accordance with Applicable Law), then Counterparty shall be deemed to have agreed to such amended and restated SPB Transaction Supplement and its terms shall be final and conclusive absent manifest error.

2.5 Early Termination

Nomura may, in its sole discretion, by giving at least five SPB Business Days’ prior written notice to Counterparty (or such lesser period if required to comply with Applicable Law), terminate any outstanding SPB Transactions at a reasonable market rate determined by the Calculation Agent as if Counterparty had made and Nomura had accepted an SPB Transaction Request in respect of an SPB Transaction Unwind in relation to those SPB Transactions on the day such notice is effective.

3. Synthetic Payment.

Counterparty shall pay to Nomura a Synthetic Payment (a) for each accepted SPB Transaction Request, (b) in respect of each termination (whether under its terms or otherwise) of an SPB Transaction and (c) as otherwise specified in the applicable SPB Product Supplement. A Synthetic Payment shall be calculated by Nomura and will be equal to the product of the Synthetic Payment Adjustment and the Synthetic Payment Notional Amount (“**Synthetic Payment Amount**”). If Combined Synthetic Payment is specified as “Not Applicable” in the relevant SPB Transaction Supplement, Counterparty shall pay all Synthetic Payment Amounts that have accrued but remain unpaid since the previous Synthetic Payment Date on the following Synthetic Payment Date. If Combined Synthetic Payment is specified as “Applicable” in the relevant SPB Transaction Supplement, then such Synthetic Payment Amounts will be included in the Initial Price and Final Price stated in the relevant SPB Transaction Supplement.

4. Margin.

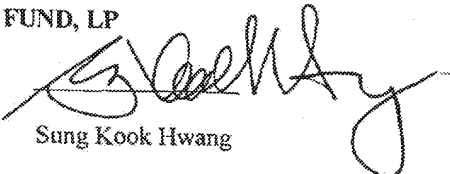
With respect to any SPB Transaction, an Independent Amount with respect to the Counterparty shall be applicable, which Independent Amount shall be determined as follows: (a) if the parties have agreed that SPB Transactions will be margined in accordance with a rules-based margin methodology provided by Nomura to the Counterparty from time to time (the “**Margin Methodology**”), an amount equal to the Equity Value multiplied by a margin rate determined by Nomura in accordance with the Margin Methodology (which Independent Amount may be specified as an aggregate amount in respect of all SPB Transactions and/or other margin positions

IN WITNESS WHEREOF the Parties have executed this document with effect from the date specified on the first page of this document.

NOMURA GLOBAL FINANCIAL PRODUCTS INC.

By: 
Name: Joshual Kurek
Title: Authorized Representative

ARCHEGOS FUND, LP

By: 
Name: Sung Kook Hwang
Title: Managing Member of the General Partner

Nomura Global Financial Products Inc. / Archegos Fund, LP
SPB Master Confirmation

“**Lender**” means, with respect to an SPB Transaction, any third party entity whom the Calculation Agent determines is engaged in securities lending transactions with Nomura or any of its Affiliates in connection with the SPB Transaction (including on a portfolio basis) involving securities identical or equivalent to (or involving securities of the same issuer in respect of) the relevant Underlying.

“**Long Position**” means with respect to an Underlying that the Counterparty has one or more SPB Transactions where the Counterparty is the Floating Amount Payer.

“**Long SPB Transaction**” means with respect to an Underlying, an SPB Transaction where the Counterparty is the Floating Amount Payer.

“**Multiple Exchange Index**” means, in relation to an SPB Transaction, an Index to which the Calculation Agent determines the provisions of the SPB Index/Futures Supplement relating to “**Multiple Exchange Indices**” shall apply.

“**Open Market Country**” means any country that is not a Closed Market Country.

“**Record Amount Market**” means each market as determined by the Calculation Agent where the customary practice is that a holder of shares entitlement to a dividend is determined by reference to the applicable record date for such dividend.

“**Relevant Exchange Rate**” means the exchange rate for converting one unit of the relevant Underlying Currency into 1 unit of the Settlement Currency at a time on the relevant date as determined by the Calculation Agent in a commercially reasonable manner.

“**Scheduled Cash Settlement Payment Date**” means 1 Settlement Cycle following each Valuation Date, or if not a Currency Business Day, the next following Currency Business Day.

“**Short Position**” means with respect to an Underlying that the Counterparty has one or more SPB Transactions where the Counterparty is the Equity Amount Payer.

“**Short SPB Transaction**” means with respect to an Underlying, an SPB Transaction where the Counterparty is the Equity Amount Payer.

“**SPB Bonds**” means an SPB Transaction that references Bonds and to which the SPB Bonds Supplement applies.

“**SPB Business Day**” means each day on which commercial banks and foreign exchange markets settle payments and are open for business (including dealings in foreign exchange and foreign exchange deposits) in London.

“**SPB Custom Baskets**” means an SPB Transaction that references a basket of Shares and to which the SPB Shares/Custom Baskets Supplement applies.

“**SPB Futures**” means an SPB Transaction that references Futures and to which the SPB Index/Futures Supplement applies.

“**SPB Index**” means an SPB Transaction that references an Index and to which the SPB Index/Futures Supplement applies.

“**SPB Product Supplement**” means each of the SPB Bonds Supplement, the SPB Index/Futures Supplement and the SPB Shares/Custom Baskets Supplement appended to this SPBMC.

“**SPB Product Type**” means the “Product Type” specified in the relevant SPB Transaction Supplement, being SPB Bonds, SPB Futures, SPB Index, SPB Shares or SPB Custom Baskets, as applicable.

“SPB Shares” means an SPB Transaction that references Shares and to which the SPB Shares/Custom Baskets Supplement applies.

“SPB Transaction” means an Equity Swap Transaction entered into under the terms of this SPBMC.

“SPB Transaction Unwind” means, with respect to an Underlying referenced in one or more SPB Transactions, the termination (in whole or in part) of one or more SPB Transactions in respect of that Underlying, as effected on the Termination Valuation Date with respect to that SPB Transaction Unwind. The Underlying, number of Units and Termination Valuation Date with respect to each SPB Transaction Unwind shall be set out in an SPB Transaction Supplement.

“Synthetic Payment Adjustment” means the value specified in the relevant SPB Transaction Supplement, as may be adjusted by Nomura from time to time in accordance with the provisions of the SPBMC in relation to the Terms.

“Synthetic Payment Notional Amount” means for the purposes of determining a Synthetic Payment Amount (i) in respect of an accepted SPB Transaction Request, the Initial Price prior to the first Valuation Date multiplied by the number of Units for the SPB Transaction with respect to that SPB Transaction Request specified in the relevant SPB Transaction Supplement, (ii) in respect of the termination of an SPB Transaction pursuant to an SPB Unwind or Clause 2.3 of the SPBMC, the Final Price determined for the purposes of such SPB Transaction Unwind or termination multiplied by the number of Units subject to such SPB Transaction Unwind or termination, (iii) in respect of the termination of an SPB Transaction other than where Sub-clause (ii) applies, the Final Price determined for the purposes of such termination multiplied by the Number of Units under that SPB Transaction as of the Termination Date and expressed to be payable under the SPB Transaction Supplement.

“Termination Valuation Date” has the meaning given to it in Clause 2.3 of the SPBMC. Other than for the purposes of Clause 2.3 of the SPBMC, a Termination Valuation Date shall not be a Valuation Date.

“Terms” means each of the following terms: the Transaction Spread, Floating Rate, Dividend/Distribution Percentage, Fee Adjustment and the Synthetic Payment Adjustment.

“Transaction Spread” means for each SPB Transaction, the relevant Transaction Spread as specified in the relevant SPB Transaction Supplement, as may be adjusted by Nomura from time to time in accordance with the provisions of the SPBMC in relation to the Terms.

“Underlying” means (i) in respect of an SPB Transaction to which Futures Price Valuation does not apply, the bonds, debt securities, index or shares specified in the relevant SPB Transaction Supplement, as applicable in each case, and (ii) in respect of SPB Transactions to which Futures Price Valuation applies, the Futures or the relevant Exchange-traded Contract relating to the Shares or Index specified in the relevant SPB Transaction Supplement, as applicable in each case.

“Underlying Currency” means the currency in which the relevant Underlying (or, in the case of Custom Basket Shares, the Shares of any Issuer included in the SPB Custom Baskets) is denominated except that if the Underlying is an Index the Underlying Currency means the relevant currency of the Index as described on the relevant Bloomberg Page or such other source as the Calculation Agent shall reasonably determine.

“Underlying Jurisdiction” means, with respect to any SPB Transaction that has an SPB Product Type of (a) SPB Shares, SPB Futures or SPB Index, the jurisdiction of incorporation of the issuer of the Underlying, and (b) SPB Custom Baskets, each of the jurisdictions of incorporation of the issuers of the Shares included in the SPB Custom Basket.

“Unwind Cash Settlement Payment Date” mean 1 Settlement Cycle following each Termination Valuation Date, or if not a Currency Business Day, the next following Currency Business Day.

SCHEDULE 2

Form of SPB Transaction Supplement

This SPB Transaction Supplement is entered into between Nomura Global Financial Products Inc. (“**Nomura**”) and Counterparty (“**Counterparty**” and, together with Nomura, the “**Parties**”) on the Trade Date set forth below.

The purpose of this communication is to confirm the terms and conditions of the SPB Transaction entered into between Nomura and Counterparty on the Trade Date specified below. This SPB Transaction Supplement supplements, forms part of and is subject to the SPB Master Confirmation between the Parties dated as of [●], as may be amended and supplemented from time to time (the “**SPBMC**”), and, together with the SPBMC, the SPB General Terms Supplement, the applicable SPB Product Supplement and the Jurisdiction Supplement (if applicable) constitutes a “Confirmation” as referred to in the Agreement.

The terms of the SPB Transaction to which this SPB Transaction Supplement relates are as follows:

Floating Amount Payer Payment Dates	Valuation Dates	Floating Rate Option	Combined Synthetic Payment	Margin Percentage
[Each Cash Settlement Payment Date] [[1st Business Day of each month and each Unwind Cash Settlement Payment Date] [Last SPB Business Day of each month and each Unwind Cash Settlement Payment Date]	[•] / [1st Scheduled Trading Day of each month] / [Each Scheduled Trading Day] / [(a) 1st February, 1st May, 1st August and 1st November in each year from the Effective Date to the Termination Date, or in each case if not a Scheduled Trading Day, the next following Scheduled Trading Day and (b) the Scheduled Trading Day falling one Settlement Cycle prior to the Termination Date]	[AUD-SWAP OIS-RBA] [HIBOR-HKAB] [JPY-LIBOR-ICE] [NZD-OCR-RBNZ] [SGD-SIBOR-ABS] [USD-LIBOR-ICE] [GBP-LIBOR-ICE] [EUR-EURIBOR-EBF]	[Applicable][Not Applicable]	

Product Identifier	RIC Code / ISIN	Underlying	SPB Product Type	Trade Date	Effective Date	Long / Short / Unwind	Futures Price Valuation ¹	Multiplier ²	Maturity Date ³
			(SPB Bonds) (SPB Shares) (SPB Custom Basket) ⁴ (SPB				[Applicable][Not Applicable]		

¹ This will be “Applicable” where the SPB Product Type is SPB Futures. Futures Price Valuation may also be applied via the SPB Transaction Supplement to SPB Shares. For SPB Custom Baskets, please insert “N/A”.

² This will be “Applicable” where the SPB Product Type is SPB Futures. Futures Price Valuation may also be applied via the SPB Transaction Supplement to SPB Shares. For SPB Custom Baskets, please insert “N/A”.

³ This will be “Applicable” where the SPB Product Type is SPB Futures. Futures Price Valuation may also be applied via the SPB Transaction Supplement to SPB Shares. For SPB Custom Baskets, please insert “N/A”.

⁴ Where the Product Type is SPB Custom Basket, the following shall apply:

The information provided to you as counterparty to an SPB Master Confirmation (the “**Information**” and the “**Counterparty**” respectively) in relation to any custom baskets of shares or other relevant financial instruments created by Nomura International plc (an “**NIP Custom Basket**”), is provided by the Prime Finance department of Nomura International plc (“**NIP**”). NIP is authorised by the Prudential Regulation Authority (“**PRA**”), regulated by the UK Financial Conduct Authority and the PRA and is a member of the London Stock Exchange.

For the avoidance of doubt and without limitation, Information shall include: (i) any materials relating to the NIP Custom Basket; and (ii) in particular, the level(s) of any such NIP Custom Baskets or the level(s) of transaction(s) linked to the NIP Custom Basket which may be published or communicated by NIP from time to time (including on any page, platform or source, such as Bloomberg) and any corresponding page ticker or identifier (such level and/or ticker together, the “**Level**”).

Information relating to the NIP Custom Basket (or any part of it) is confidential and has been furnished solely for the Counterparty’s information, it should be held in complete and strict confidence, and must not be referred to, disclosed, transmitted, reproduced or redistributed, in whole or in part, to another person. By receiving such Information the Counterparty agrees and represents that, (a) unless the Counterparty first obtains written consent from NIP, the Counterparty shall not disclose the Level to any person (including any of the Counterparty’s affiliates or group companies) other than those of the Counterparty’s own directors, officers and employees whose knowledge of such information is strictly necessary for these purposes and (b) the Counterparty shall inform NIP immediately upon becoming aware of any suspected or actual breach of this requirement. Neither

			Index] [SPB Futures]						
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Number of Units	Initial Price / Final Price ⁵	FX Rate	Synthetic Payment Adjustment	Dividend / Distribution Percentage	Transaction Spread (bps)	Fee Adjustment (bps)	Related Exchange
			[●], or otherwise notified by Nomura to Counterparty from time to time in accordance with the SPBMC.				

Notifications of Calculation Agent amendments:

Any notification of amendments by the Calculation Agent, including, without limitation, amendments resulting from any Corporate Action will not constitute a Confirmation but shall be a notice only.

the Custom Baskets nor Levels are administered as a benchmark for the purposes of the European Benchmark Regulation (Regulation (EU) 2016/1011 (“EU BMR”)) or the Benchmarks (Amendment and Transitional Provisions) (EU Exit) Regulations 2019 (“UK BMR”).

Unless otherwise agreed in writing between the Counterparty and NIP, the Counterparty shall not use any information, NIP Custom Baskets or Levels in any manner which would amount to the use of such information or Levels as a benchmark within the scope of the EU BMR, UK BMR, or within the scope of the IOSCO Principles for Financial Benchmarks, which for the avoidance of doubt includes, use of information, NIP Custom Baskets or Levels: 1. As reference for the issuance of a financial instrument; 2. As reference for the determination of the amount payable under a financial instrument or a financial contract; 3. As reference by a party to a financial contract; and 4. For measuring the performance of an investment fund.

⁵ This will be the “Initial” where the SPB Transaction is a short or long and Final Price where the SPB Transaction is an Unwind

SCHEDULE 3**SPB General Terms Supplement**

This SPB General Terms Supplement supplements, forms part of and is subject to the SPBMC and, together with the SPBMC, the applicable SPB Product Supplement, the relevant SPB Transaction Supplement (as each such term is defined in the SPBMC) and the Jurisdiction Supplement (if applicable) constitutes a “Confirmation” with respect to the relevant SPB Transaction as referred to in the Agreement. This SPB General Terms Supplement shall be construed in accordance with Clause 1 of the SPBMC.

General Terms:

Termination Date:	For each SPB Transaction (a) as specified in the relevant SPB Transaction Supplement, subject to adjustment in accordance with Following Business Day Convention; and (b) if a Termination Date is not specified, the final Cash Settlement Payment Date in respect of that SPB Transaction.
Unit:	A trading unit of the Underlying (or, in the case of an Underlying that is Custom Basket Shares, the number of Shares of each Issuer included in a single SPB Custom Basket)
Multiplier:	In respect of SPB Transactions to which Futures Price Valuation applies, a “Multiplier” may be specified in the relevant SPB Transaction Supplement for the purpose only of informing the Counterparty of the multiplier embedded in the relevant Exchange-traded Contract. Notwithstanding any SPB Transaction Supplement, the Multiplier for the purposes of the Equity Definitions shall be 1 for all SPB Transactions. A “Multiplier” specified in any SPB Transaction Supplement is not intended to take operative effective per the Equity Definitions.

Equity Amounts payable by Equity Amount Payer:

Equity Amount Payer:	As specified with respect to the relevant Units in the SPB Transaction Supplement. If a Long SPB Transaction, then the Equity Amount Payer shall be Nomura, and if a Short SPB Transaction, then the Equity Amount Payer shall be Counterparty.
Number of Units:	As specified with respect to the relevant Underlying in the SPB Transaction Supplement (subject to reduction from time to time pursuant to any SPB Transaction Unwind).
Equity Notional Amount:	The product of the Initial Price and the Number of Units (subject to any SPB Transaction Unwind).
Equity Notional Reset:	Applicable
Type of Return:	As specified in the relevant SPB Transaction Supplement; provided, however, that if Type of Return is not specified in the relevant SPB Transaction Supplement, it shall be Total Return unless the relevant SPB Transaction references an Index, in which case the Type of Return shall be Price Return. Section 8.6(b) of the Equity Definitions shall be amended so that

SCHEDULE 4

PRODUCT SUPPLEMENTS

SPB Bonds Supplement

The following terms shall apply where the SPB Transaction Supplement specifies that the SPB Product Type for an SPB Transaction is SPB Bonds.

This SPB Bonds Supplement supplements, forms part of and is subject to the SPBMC and, together with the SPBMC, the SPB General Terms Supplement, the relevant SPB Transaction Supplement (as each such term is defined in the SPBMC) and the Jurisdiction Supplement (if applicable) constitutes a “Confirmation” with respect to the relevant SPB Transaction as referred to in the Agreement. This SPB Bonds Supplement shall be construed in accordance with Clause 1 of the SPBMC.

General Terms:

Issuer: The Issuer of the Bonds.

Bonds: Subject to “Additional Provisions – Conversions” below, the Underlying specified in the relevant SPB Transaction Supplement.

Underlying Shares: In respect only of Bonds that are exchangeable or convertible bonds, the shares, if any, into or for which the Bonds are or may be convertible or exchangeable at a specified time, or from time to time, whether at the option of the Issuer or any holders thereof or on a mandatory basis.

Transaction Face Amount: Number of Units multiplied by the principal amount outstanding of a Bond on the Effective Date. The Transaction Face Amount shall be subject to reduction by the Calculation Agent on account of any Partial Redemption.

Relevant Jurisdiction: With respect to any amount payable under an SPB Transaction, such of the jurisdictions specified in sub-paragraphs (i), (ii) and (iii) of “Dividend/ Distribution Adjustment Event” in this SPB Bonds Supplement as the Calculation Agent may determine to be material for the purposes of such payment.

Scheduled Trading Day: (a) In respect of Bonds that are not exchangeable or convertible bonds, not applicable; and (b) in respect of Bonds that are exchangeable or convertible bonds, as determined in accordance with Section 1.31 of the Equity Definitions.

Bond Business Day: Each day which is both an SPB Business Day and (if applicable) a Scheduled Trading Day.

Observation Date: In respect of a payment under Bonds (a) that are bearer bonds, the date of such payment and (b) that are registered bonds, whichever of the record date for such payment under such Bonds (as specified by the Issuer or in the legal instrument governing the Bonds or as otherwise determined by the Calculation Agent) and the date of such payment that the Calculation Agent determines to be the more appropriate in

connection with such Bonds.

Exchange:

(a) In respect of Bonds that are not exchangeable or convertible bonds, not applicable; and (b) in respect of Bonds that are exchangeable or convertible bonds, the exchange or quotation system on which the largest volume of Underlying Shares normally trade.

Related Exchange:

Not Applicable

Equity Amounts payable by Equity Amount Payer:

Equity Amount:

Each Equity Amount shall be determined as if this SPB Transaction were a Share Transaction; provided that if the Equity Amount is payable on a Cash Settlement Payment Date falling on or after the Full Redemption Date or the Scheduled Maturity Date, the Equity Amount payable on the corresponding Cash Settlement Payment Date shall be equal to:

- (i) any amounts of principal actually paid by the Issuer in cash to holders of the Bonds in the Relevant Jurisdiction on the Full Redemption Date or Scheduled Maturity Date, as applicable, in respect of Bonds with an outstanding principal amount equal to the Transaction Face Amount as of the Observation Date relating to the Full Redemption Date or the Scheduled Maturity Date of the Bonds (prior to giving effect to such principal payment), as applicable, minus
- (ii) the Initial Price multiplied by the Transaction Face Amount as of the Observation Date relating to the Full Redemption Date or as of the Scheduled Maturity Date of the Bonds (prior to giving effect to such principal payment), as applicable.

Cash Settlement Payment Dates:

Notwithstanding the definition of Cash Settlement Payment Dates in Schedule 1 of the SPMBC, if the Observation Date with respect to the Scheduled Maturity Date or the Full Redemption Date occurs on or prior to the date that would (but for this proviso) have been the final Cash Settlement Payment Date (the “**Scheduled Final Cash Settlement Payment Date**”), such Cash Settlement Payment Date shall not occur, and instead the final Cash Settlement Payment Date shall occur five SPB Business Days following the Scheduled Maturity Date or the Full Redemption Date (as the case may be).

Initial Price:

(i) Prior to and on the first Valuation Date, the Initial Price shall be a price per Unit of the relevant Underlying determined by the Calculation Agent acting in a commercially reasonable manner, as converted (where the Underlying Currency is different from the Settlement Currency) from the Underlying Currency into the Settlement Currency on the Effective Date or relevant Valuation Date, as applicable, using the Relevant Exchange Rate subject to the occurrence of an FX Disruption Event (if applicable); and

to notify the Parties of the occurrence of a Disrupted Day shall not affect the validity of the occurrence and effect of such Disrupted Day on any SPB Transaction to which this SPB Bonds Supplement applies.

Consequences of a Disrupted Day:

Section 6.6 of the Equity Definitions shall not apply. If any Valuation Date (other than a Valuation Date occurring pursuant to sub-paragraph (a) of the definition thereof in this SPB Bonds Supplement) is a Disrupted Day, then such Valuation Date shall be the first succeeding Bond Business Day that is not a Disrupted Day; provided that if such Valuation Date has not occurred as of the Valuation Time on the eighth Bond Business Day immediately following the date which, but for the occurrence of the event causing the Disrupted Day, would have been such Valuation Date, then (1) that eighth Bond Business Day shall be deemed to be such Valuation Date, and (2) the Calculation Agent shall determine its good faith estimate of the value of the Bonds (inclusive of accrued interest through such eighth Bond Business Day, unless the Calculation Agent determines that on such day the Bonds then trade exclusive of accrued interest), on that eighth Bond Business Day (and such value shall be the Final Price for such Value Date).

Full Redemption Date:

The date, if any, on which the Issuer pays all holders of the Bonds in the Relevant Jurisdiction in respect of the entire then outstanding principal amount of the Bonds held by such holders in cash (a "**Full Redemption**") in respect of an Observation Date that occurs during the period extending from and including the Effective Date to but excluding the Scheduled Final Cash Settlement Payment Date.

Scheduled Maturity Date:

The date on which the Bonds are scheduled to be redeemed in full (without taking into account any provisions in their terms and conditions relating to the early redemption or acceleration of the Bonds).

Full Redemption Amount:

The amount of principal actually paid by the Issuer in cash on the Full Redemption Date to holders of the Bonds in the Relevant Jurisdiction in respect of Bonds with an outstanding principal amount equal to the Transaction Face Amount as of the Observation Date relating to the Full Redemption Date.

Synthetic Payment for Full Redemptions:

The Synthetic Payment Notional Amount for the purposes of determining a Synthetic Payment pursuant to the occurrence of a Full Redemption shall be equal to the sum of the Full Redemption Amount and any Proceeds Value determined by the Calculation Agent in connection with such Full Redemption (or that would have been so determined if "Non-Cash Distributions, Redemptions and Conversions Occurring Following the Final Valuation Date" had applied thereto).

Additional Equity Amounts:

Additional Equity Amounts Payer:

As specified in the Consequences of Cash Partial Redemptions provision below.

If the Additional Equity Amount is negative, the Floating Amount Payer shall pay the absolute value of the related Additional Equity Amount to the Equity Amount Payer on the relevant Additional Equity Amounts Payment Date.

Consequences of Non-Cash Partial Redemption:

The Calculation Agent shall adjust the terms of the Transaction, as it reasonably deems appropriate, to account for any Non-Cash Partial Redemption(s), but without giving rise to an obligation for either Party on account of such Non-Cash Partial Redemption which is a delivery rather than a payment obligation, and subject to the “Non-Cash Distributions and Redemptions Occurring Following the Final Valuation Date” provision of this SPB Bonds Supplement.

Synthetic Payment for Partial Redemptions:

Counterparty shall pay to Nomura a Synthetic Payment in respect of each Additional Equity Amount Payment Date. The Synthetic Payment Notional Amount for the purposes of determining such Synthetic Payment shall be equal to the sum of the Cash Partial Redemption Amount and the cash value of the Non-Cash Partial Redemption Amount, as determined by the Calculation Agent (or as would have been so determined if “Non-Cash Distributions, Redemptions and Conversions Occurring Following the Final Valuation Date” had applied thereto).

Distribution Amounts:

Distribution Amounts Payer:

Equity Amount Payer

Distribution Amounts Period:

The period that commences on, and includes the Effective Date and ends on, but excludes, the final Cash Settlement Payment Date.

Distribution Amount:

Any and all payments or distributions, including, without limitation, interest and coupon payments and consent fees, but excluding Partial Redemption Amounts or Full Redemption Amounts, that are actually made by the Issuer to holders of the Bonds in the Relevant Jurisdiction in respect of an outstanding principal amount of the Bonds equal to the Transaction Face Amount as of the relevant Observation Date and for which the Observation Date occurs during the Distribution Amounts Period.

Actual Cash Distribution Amount:

The portion of a Distribution Amount, if any, that consists of cash.

Non-Cash Distribution Amount:

That portion of a Distribution Amount, if any, that consists of property other than cash including, without limitation, securities or other non-cash assets.

Consequences of Actual Cash Distribution Amounts:

The Distribution Amounts Payer shall pay the Floating Amount Payer an amount (the “**Cash Distribution Amount**”) equal to the product of the applicable Dividend/Distribution Percentage and the Actual Cash Distribution Amount five SPB Business Days following the relevant Distribution Receipt Date,

notwithstanding the occurrence of the final Cash Settlement Payment Date (unless the Distribution Receipt Date occurs more than six (6) months following the final Cash Settlement Payment Date, in which case the Cash Distribution Amount will not be paid).

Consequences of Non-Cash Distribution Amounts:

The Calculation Agent shall adjust the terms of the Transaction, effective as of the relevant Distribution Receipt Date, to account for any Non-Cash Distribution Amount(s), subject to the “Non-Cash Distributions and Redemptions Occurring Following the Final Valuation Date” provision of this SPB Bonds Supplement.

Distribution Receipt Dates:

In respect of a Distribution Amount, the date on which the payment or distribution by the Issuer in respect of that Distribution Amount would have been received by holders of the Bonds in the Relevant Jurisdiction.

Additional Disruption Events:

Insolvency Filing: Applicable

Additional Provisions:

- (a) **Conversions.** This provision shall apply only in respect of Bonds that are convertible or exchangeable bonds. If the Issuer converts the Bonds of holders in the Relevant Jurisdiction, whether pursuant to a mandatory conversion or optional conversion rights of the issuer or a holder, in whole or in part, into any securities or assets other than cash (including, without limitation, any Underlying Shares) (a “Conversion”), as of any Observation Date that occurs during the period from and including the Effective Date to but excluding the final Cash Settlement Payment Date, then, subject to the “Non-Cash Distributions and Redemptions Occurring Following the Final Valuation Date” provision of this SPB Bonds Supplement:
 - (i) if such conversion is in respect of less than all of the SPB Bonds then outstanding, then this SPB Transaction shall become an SPB Transaction with respect to the Bonds and such other securities or such other assets, or any combination of the foregoing, as applicable, and the Calculation Agent shall adjust the terms of such SPB Transaction as it reasonably deems appropriate to account for such conversion; and
 - (ii) if such conversion is in respect of all of the Bonds then outstanding, then this SPB Transaction shall become an SPB Transaction with respect to such other securities or such other assets, or any combination of the foregoing, as applicable, and the Calculation Agent shall adjust the terms of such SPB Transaction as it reasonably deems appropriate to account for such conversion.
- (b) **Non-Cash Distributions, Redemptions and Conversions Occurring Following the Final Valuation Date.** Notwithstanding anything to the contrary in this SPB Bonds Supplement, if the Observation Date for any Non-Cash Distribution Amount, Non-Cash Partial Redemption or Conversion occurs during the period from and including the final Valuation Date to but excluding the final Cash Settlement Payment Date for an SPB Transaction, then in lieu of making adjustments described under the headings “Consequences of Non-Cash Distribution Amounts”, “Consequences of Non-Cash Partial Redemptions” and “Conversions”, (i) the Calculation Agent shall determine a cash value of the proceeds (the “Proceeds Value”) that would be received by a holder in the Relevant Jurisdiction of Bonds with an outstanding principal amount equal to the Transaction Face

SPB Shares/Custom Baskets Supplement

The following terms shall apply where the SPB Transaction Supplement specifies that the SPB Product Type for an SPB Transaction is SPB Shares or SPB Custom Baskets.

This SPB Shares/Custom Baskets Supplement supplements, forms part of and is subject to the SPBMC and, together with the SPBMC, the SPB General Terms Supplement, the relevant SPB Transaction Supplement (as each such term is defined in the SPBMC) and the Jurisdiction Supplement (if applicable) constitutes a “Confirmation” with respect to the relevant SPB Transaction as referred to in the Agreement. This SPB Shares/Custom Baskets Supplement shall be construed in accordance with Clause 1 of the SPBMC.

General Terms:

- Futures Price Valuation:** Where the SPB Transaction Supplement specifies that the SPB Product Type for an SPB Transaction is SPB Shares, as specified in the relevant SPB Transaction Supplement, provided that, for purposes hereof, Section 6.8 of the Equity Definitions shall be amended by deleting references to “Index” and “Index Transaction” and replacing them with references to “Share” and “Share Transaction” respectively, and that the words “level of the relevant Index” in Section 6.8(e) of the Equity Definitions shall be deleted and replaced with the words “price of the relevant Shares as determined by the Calculation Agent”.
- Shares:** Where the SPB Transaction Supplement specifies that the SPB Product Type for an SPB Transaction is SPB Shares: (a) If Futures Price Valuation applies, the share that underlies the Exchange-traded Contract; (b) if Futures Price Valuation does not apply, the Underlying.
- Exchange-traded Contract:** Where the SPB Transaction Supplement specifies that the SPB Product Type for an SPB Transaction is SPB Shares: (a) if Futures Price Valuation applies, the Underlying; (b) if Futures Price Valuation does not apply, Not Applicable.
- Exchange:** (a) Where the SPB Transaction Supplement specifies that the SPB Product Type for an SPB Transaction is SPB Shares, the exchange or quotation system identified by the Exchange Reuters ID Number in the SPB Transaction Supplement; or
(b) where the SPB Transaction Supplement specifies that the SPB Product Type for an SPB Transaction is SPB Custom Baskets, each exchange or quotation system on which the largest volume of Shares of each Issuer included in the SPB Custom Basket normally trade.
- Related Exchange:** (a) Where the SPB Transaction Supplement specifies that the SPB Product Type for an SPB Transaction is SPB Shares, All Exchanges;
(b) where the SPB Transaction Supplement specifies that the SPB Product Type for an SPB Transaction is SPB Custom Baskets, each exchange or quotation system where trading has a material effect (as determined by the Calculation Agent) on the overall market for futures or options contracts relating to the Shares of each Issuer included in the SPB Custom Basket; or

SPB Index/Futures Supplement

The following terms shall apply where the SPB Transaction Supplement specifies that the SPB Product Type for an SPB Transaction is SPB Index or SPB Futures.

This SPB Index/Futures Supplement supplements, forms part of and is subject to the SPBMC and, together with the SPBMC, the SPB General Terms Supplement, the relevant SPB Transaction Supplement (as each such term is defined in the SPBMC) and the Jurisdiction Supplement (if applicable) constitutes a “Confirmation” with respect to the relevant SPB Transaction as referred to in the Agreement. This SPB Index/Futures Supplement shall be construed in accordance with Clause 1 of the SPBMC.

General Terms:

- Futures Price Valuation:
- (a) Where the SPB Transaction Supplement specifies that the SPB Product Type for an SPB Transaction is SPB Futures, applicable; or
 - (b) where the SPB Transaction Supplement specifies that the SPB Product Type for an SPB Transaction is SPB Index, as specified in the relevant SPB Transaction Supplement.
- Index:
- (a) Where the SPB Transaction Supplement specifies that the SPB Product Type for an SPB Transaction is SPB Futures, the Index will be the index that underlies the Exchange-traded Contract. The Calculation Agent shall determine whether the Index is a Multiple Exchange Index; or
 - (b) where the SPB Transaction Supplement specifies that the SPB Product Type for an SPB Transaction is SPB Index, (i) if Futures Price Valuation applies, the index that underlies the Exchange-traded Contract; or (ii) if Futures Price Valuation does not apply, the Underlying.
- Exchange-traded Contract:
- (a) Where the SPB Transaction Supplement specifies that the SPB Product Type for an SPB Transaction is SPB Futures, the Underlying; or
 - (b) where the SPB Transaction Supplement specifies that the SPB Product Type for an SPB Transaction is SPB Index, (i) if Futures Price Valuation applies, the Underlying; or (ii) if Futures Price Valuation does not apply, Not Applicable.
- Exchange:
- (a) If the Index is not a Multiple Exchange Index, the exchange or quotation system identified by the Exchange Reuters ID Number and (b) if the Index is a Multiple Exchange Index, with respect to each Component Security, the stock exchange where that Component Security is principally traded.
- Related Exchange:
- (a) Where the SPB Transaction Supplement specifies that the SPB Product Type for an SPB Transaction is SPB Futures and the Underlying Jurisdiction in an Open Market Country, if the Exchange Traded Contract is an option contract or futures contract on the Index, the stock or futures exchange where such options contract or futures contract is principally traded;
 - (b) where the SPB Transaction Supplement specifies that



Portfolio Swap Master Confirmation


This Master Confirmation is dated as of February 4, 2020 and is subject to the ISDA Master Agreement between **UBS AG (UBS)** and the Counterparty named below dated as of February 4, 2020 as amended and supplemented from time to time (the Master Agreement).

Counterparty **ARCHEGOS FUND, LP**
Address c/o Archegos Capital Management, LP
888 Seventh Avenue, 38th Floor
New York, NY 10019

Phone 212.271.2012


Attention Scott V. Becker

Execution
Signed for and on behalf of UBS by:

Signature 
Name **Abigail Clark**
Date **Director**
02.11.2020

Signature 
Name **Esther Geller**
Date **Director**

Signed for and on behalf of Counterparty by:

Signature 
Name **Sung Kook Ahn**
Date **Feb 5, 2020**

INTRODUCTION

1 DEFINITIONS AND INTERPRETATION

- 1.1 **Incorporation by Reference:** This Master Confirmation constitutes a Confirmation under the Master Agreement and incorporates by reference:
- (a) the 2002 ISDA Equity Derivatives Definitions (as supplemented by the 2007 Full Lookthrough Depository Receipt Supplement) (**Equity Definitions**); and
 - (b) the 2006 ISDA Definitions (together with the Equity Definitions, the **Definitions**).
- 1.2 **Sections:** References to "Sections" are to sections in the Equity Definitions.
- 1.3 **Capitalised Terms:** Capitalised terms not otherwise defined herein are defined in the Definitions.

2 COVERED TRANSACTIONS

- 2.1 **Covered Transactions:** Unless agreed otherwise at the time of trading each Equity Swap Transaction, Index Swap Transaction and Basket Swap Transaction entered into between Counterparty and UBS on or after the date of this Master Confirmation will be a **Covered Transaction** subject to this Master Confirmation.
- 2.2 **Separate Transactions:** Each Covered Transaction is a separate Transaction for the purposes of the Master Agreement.

3 AMENDMENTS

- 3.1 Without limiting either party's termination and partial termination rights under any Covered Transaction the parties may agree at any time to change the terms of any Covered Transaction, including changing which party is the Equity Amount Payer (as defined in the Equity Derivatives Definitions) and which is the Floating Amount Payer (as defined in the ISDA Definitions).
- 3.2 Where the parties agree to do so, such amendments will be confirmed in the Activity Report by an entry in respect of the relevant Covered Transaction in which "Resize" will be specified as the "Event Type".

4 CONFIRMATION PROCESS

- 4.1 **Reports:** We will prepare and send to you the following Reports which will be part of and subject to this Master Confirmation:
- (a) **Activity Report:** a daily swap synthetic transaction activity report for all Covered Transactions;
 - (b) **Swap Supplement:** a daily swap economics confirmation;
 - (c) **Basket Swap Notifications:** in the case of any Basket Swap Transaction, the Basket Swap Notification described in the "Basket Swap" section of this Master Confirmation.
- 4.2 **Transmission of Reports:** We will send relevant Reports to you electronically within 1 Local Business Day of the relevant Trade Date, Termination Date or amendment date.
- (a) **Discrepancies:** It is your responsibility to review each Report and notify us of any discrepancy.
 - (b) **No Signatures:** Signatures are not required from either party.
 - (c) **Deemed Consent:** Unless you have notified us of an objection, you will be deemed to have accepted the terms set out in each Report on the earlier of (i) 3 Local Business Days following receipt and (ii) such shorter period as may be required by Applicable Law.

SPECIFIC UNDERLIER TERMS

Equity Swap Transactions

Shares	As specified in the Activity Report under the heading "Instrument Name". "Shares" may include convertible bonds (Bonds) and exchange-traded contracts.
Equity Notional Amount	For each Valuation Date: Number of Shares * Initial Price , converted where necessary in accordance with the FX Provisions.
Number of Shares	The "Quantity" specified in the Activity Report.
Share Adjustments	<ul style="list-style-type: none"> (a) Method of Adjustment: Calculation Agent Adjustment. (b) Consequences of Merger Events: <ul style="list-style-type: none"> (i) Share-for-Share: Alternative Obligation. (ii) Share-for-Other: Calculation Agent Adjustment. (iii) Share-for-Combined: Component Adjustment. (c) Tender Offer: Applies. (d) Consequences of Tender Offers: Calculation Agent Adjustment. (e) Composition of Combined Consideration: Applies. (f) Nationalisation, Insolvency or Delisting: Cancellation and Payment.

Equity Swaps with Bond Underliers

Conversion Right

The Floating Amount Payer may, by giving notice to the Equity Amount Payer, terminate all or part of a Covered Transaction referencing a Bond (the terminated portion being the **Converted Portion**) and replace it with a Covered Transaction referencing the number of shares in the Bond Issuer that a Bondholder would receive if it exercised its conversion right under the Bond Terms with respect to a number of Bonds corresponding to the Converted Portion.

Such conversion right is subject to:

- (a) full payment by the Floating Amount Payer of all Conversion Costs; and
- (b) the Conversion Proviso.

The final Valuation Date in respect of the Converted Portion will be determined by the Calculation Agent in its sole discretion.

With effect from the final Valuation Date, the Number of Shares under this Covered Transaction shall be reduced by the Converted Portion accordingly.

Put Right

If a Bondholder would be entitled under the Bond Terms to redeem the Bonds early for cash, the Equity Amount Receiver may, by giving notice to the Equity Amount Payer, terminate this Transaction (in whole or in part) (the terminated portion being **Put Shares**), provided that:

- (a) the payment date of such cash amount will be deemed to be the final Valuation Date in respect of the Put Shares, and with effect from such date, the Number of Shares under this Covered Transaction shall be reduced by the Put Shares accordingly; and
- (b) such right of redemption under the Bonds is subject to the Conversion

Proviso.

Mandatory Early Termination If the Bond Issuer exercises its right to redeem the Bonds early by delivery of shares or cash under the Bond Terms then (upon the Equity Amount Payer giving reasonable notice of such exercise and subject to full payment by the Equity Amount Receiver of any Conversion Costs):

- (a) if the Bonds are redeemed by delivery of shares, the Covered Transaction will be terminated in whole and replaced by a Covered Transaction referencing the number of shares which a holder of a Number of Shares in the Bonds would have received under the Bond Terms; and
- (b) if the Bonds are redeemed in cash, the Covered Transaction will be terminated and the payment date of such cash amount will be deemed to be the final Valuation Date.

Provided that if a Bondholder may elect for cash or physical settlement the Floating Amount Payer will have a corresponding right hereunder, subject to the Conversion Proviso.

Conversion Costs With respect to any Bond, the conversion price, commissions, costs, expenses, duties, tax (other than FATCA Withholding Tax (as defined in the Schedule)), levies, fees or other charges payable by Equity Amount Payer or its nominee in connection with the conversion.

Conversion Proviso Any conversion hereunder is subject to the Equity Amount Payer being able to convert sufficient Bonds into shares of the Issuer under the Bond Terms within a reasonable time and in accordance the rules of any relevant Exchange or clearing system.

Bonds Convertible Bonds referenced by a Covered Transaction.

Bond Terms The terms and conditions of the Bonds.

Bond Issuer The issuer of the Bonds.

Bondholder An actual holder of any Bonds.

Equity Swaps with Exchange Traded Underliers

Type of Return Total Return.

Futures Price Valuation Applicable.

Final Price The Official Settlement Price of the relevant Exchange-traded Contract.

Valuation Time The time at which the Final Price is published by the Related Exchange

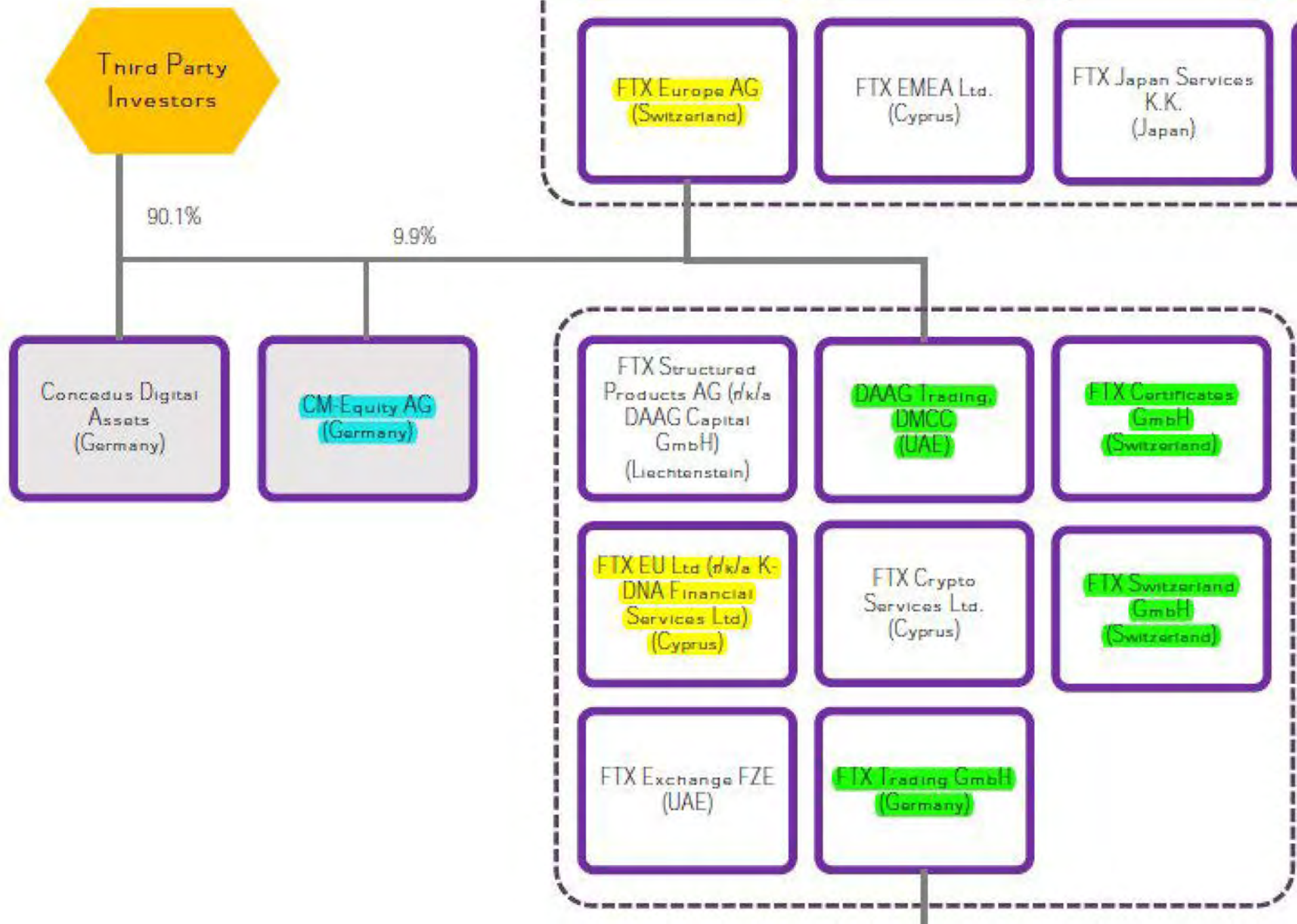
Exchange-traded Contract The futures or options contract relating to the relevant Index or Share traded on the Related Exchange the expiry date for which is (or would have been, were it not a Disrupted Day or a non-Scheduled Trading Day) the Valuation Date.

Non-Commencement or Discontinuance of Exchange Traded Contract Section 6.8(e) is replaced by the following:
 "If there is no Official Settlement Price as a result of the fact that trading in the Exchange-traded Contract never commences or is permanently discontinued at any time on or prior to the Valuation Date, such event shall be deemed a Hedging Disruption".

Index Underliers

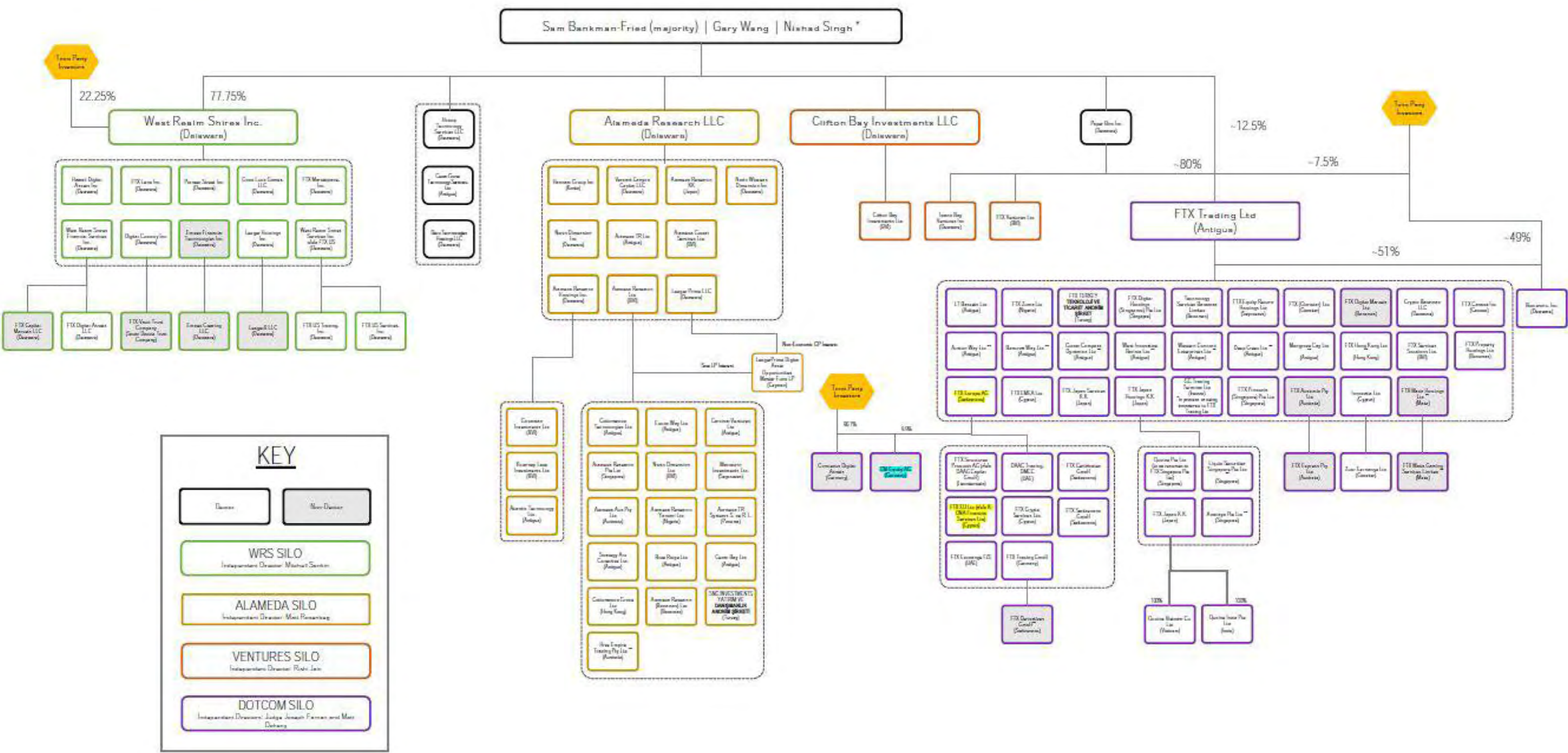
Index	The index specified in the Activity Report.
Equity Notional Amount	Number of Units * Initial Price.
Number of Units	The "Quantity" specified in the Activity Report.
Index Adjustment Events	Index Cancellation: Cancellation and Payment. Index Modification: Cancellation and Payment. Index Disruption: Calculation Agent Adjustment
Index Disclaimer	Applies.
Basket Swaps	
Notional Amount	As specified in the Basket Swap Notification or Bloomberg Publication.
Basket Creation	Counterparty may request that UBS create a Basket at any time. For each Basket Swap, UBS must either (i) send a Basket Swap Notification to Counterparty and Counterparty must acknowledge the constituents by e-mail prior to trading; or (ii) publish a Bloomberg Publication that is only available to UBS and those parties notified by Counterparty to UBS to have permission to view it.
Basket Modification	Counterparty may remove one or more Shares from the Basket at any time, subject to UBS's prior consent, which consent shall not be unreasonably withheld.
Basket Swap Notification	An e-mail sent by UBS to Counterparty listing the constituents of the relevant Basket.
Bloomberg Publication	A publication on Bloomberg listing the constituents of the relevant Basket.

ic GP Interest



PRELIMINARY ORGANIZATIONAL CHART

Last updated: Draft of November 17, 2022



KEY

- Delaware
- Non-Delaware
- WRS SILO**
Independent Director: Michael Santoro
- ALAMEDA SILO**
Independent Director: Matt Pennington
- VENTURES SILO**
Independent Director: Robin Jain
- DOTCOM SILO**
Independent Directors: Judge Joseph Ferman and Matt DeLong

* Percentages directly held by each of Sam Bankman-Fried, Gary Wang and Nishad Singh in individual entities varies.
 ** Indicates non-operational subsidiary entity.

Debtor Name: FTX Europe AG

Case Number: 22-11075 (JTD)

Assets - Real and Personal Property

Part 4, Question 15: Non-publicly traded stock interests in incorporated and unincorporated businesses, including any interest in an LLC, partnership, or joint venture.

Non-publicly traded stock and interests in incorporated and unincorporated businesses, including any interest in an LLC, partnership, or joint venture (Name of entity:)	% of Ownership	Valuation method used for current value	Current value of debtor's interest
BCOIN DIGITAL ASSETS LTD	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
CM-EQUITY AG	9.9%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
CONCEDUS DIGITAL ASSETS	90.1%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
DAAG TRADING, DMCC	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
FTX CERTIFICATES GMBH	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
FTX CRYPTO SERVICES LTD.	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
FTX EU LTD.	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
FTX EXCHANGE FZE	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
FTX STRUCTURED PRODUCTS AG	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
FTX SWITZERLAND GMBH	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
FTX TRADING GMBH	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
		TOTAL	\$0.00 + Undetermined Amounts

Debtor Name: West Realm Shires Inc.

Case Number: 22-11183 (JTD)

Assets - Real and Personal Property

Part 4, Question 15: Non-publicly traded stock interests in incorporated and unincorporated businesses, including any interest in an LLC, partnership, or joint venture.

Non-publicly traded stock and interests in incorporated and unincorporated businesses, including any interest in an LLC, partnership, or joint venture (Name of entity:)	% of Ownership	Valuation method used for current value	Current value of debtor's interest
DIGITAL CUSTODY INC.	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
EMBED FINANCIAL TECHNOLOGIES INC.	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
FTX LEND INC.	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
FTX MARKETPLACE, INC.	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
GOOD LUCK GAMES, LLC	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
HAWAII DIGITAL ASSETS INC.	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
LEDGER HOLDINGS INC.	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
PIONEER STREET INC.	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
WEST REALM SHIRES FINANCIAL SERVICES INC.	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
WEST REALM SHIRES SERVICES INC.	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
BITNOMIAL, INC.	Undetermined	Funded Amount	\$2,000,000.00
IEX GROUP, INC.	Undetermined	Funded Amount	\$112,554,985.67
TOTAL			\$114,554,985.67 + Undetermined Amounts

Debtor Name: West Realm Shires Inc.

Case Number: 22-11183 (JTD)

Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy

SOFA Question 25: Other businesses in which the debtor has or has had an interest

Business Name and Address	Nature of Business Operation	EIN	Existed From	Existed To
DIGITAL CUSTODY INC. 122 S PHILLIPS AVE SUITE 250 SIOUX FALLS, SD 57104	Financial offerings	Unknown	11/17/2021	Current
EMBED FINANCIAL TECHNOLOGIES INC. 651 N BROAD STREET SUITE 206B MIDDLETOWN, DE 19709	Securities Clearing Firm	Unknown	03/01/2022	Current
FTX LEND INC. 167 N GREEN STREET SUITE 1102 CHICAGO, IL 60607	Non-Operating Lending Business	Unknown	03/25/2022	Current
FTX MARKETPLACE, INC. 167 N GREEN STREET SUITE 1102 CHICAGO, IL 60607	Dormant Entity	Unknown	10/13/2021	Current
GOOD LUCK GAMES, LLC 167 N GREEN STREET SUITE 1102 CHICAGO, IL 60607	Operates a virtual gaming business.; Creator of the crypto card auto battle game Storybook Brawl	Unknown	09/07/2021	Current
HAWAII DIGITAL ASSETS INC. 167 N GREEN STREET SUITE 1102 CHICAGO, IL 60607	Dormant Entity	35-2669879	08/09/2022	Current
LEDGER HOLDINGS INC. 1110 BRICKELL AVE SUITE 430K-200 MAMI, FL 33131	Holding Company	87-2550264	09/07/2021	Current
PIONEER STREET INC. 167 N GREEN STREET SUITE 1102 CHICAGO, IL 60607	Dormant Entity	84-455402	01/29/2020	Current
WEST REALM SHIRES FINANCIAL SERVICES INC. 167 N. GREEN STREET SUITE 1102 CHICAGO, IL 60607	Holding company of FTX Capital Markets LLC	88-2663993	05/27/2022	Current
WEST REALM SHIRES SERVICES INC. 167 N. GREEN STREET SUITE 1102 CHICAGO, IL 60607	Operator of On-line Digital Currency exchange marketplace	Unknown	05/05/2020	Current
BITNOMIAL, INC. 318 W ADAMS STREET CHICAGO, IL 60606	Undetermined	Unknown	Undetermined	Current
IEX GROUP, INC. 3 WORLD TRADE CENTER 58TH FLOOR NY, NY 10007	Undetermined	Unknown	Undetermined	Current

Debtor Name: **FTX Europe AG**

Case Number: 22-11075 (JTD)

Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy**SOFA Question 25: Other businesses in which the debtor has or has had an interest**

Business Name and Address	Nature of Business Operation	EIN	Existed From	Existed To
BCOIN DIGITAL ASSETS LTD 3 Cavendish Row Dublin 1, DO I KV26 IRELAND (EIRE)	Dormant Entity	Unknown	11/14/2021	Current
CM-EQUITY AG KAUFINGERSTRASSE 20 MUNICH, 80331 GERMANY	Majority owned by Third Party	Unknown	09/30/2022	Current
CONCEDUS DIGITAL ASSETS Schlehenstrasse 6 90542 Eckental GERMANY	Financial offerings	Unknown	11/14/2021	Current
DAAG TRADING, DMCC UNIT 2617 DMCC BUSINESS CENTRE LEVEL NO. 1, JEWELRY & GEMPLEX 3 DUBAI, UNITED ARAB EMIRATES	Proprietary trading firm	Unknown	11/14/2021	Current
FTX CERTIFICATES GMBH CHURERSTRASSE 135 8808 PFÄFFIKON SWITZERLAND	Issuer of Structured Products.	Unknown	11/14/2021	Current
FTX CRYPTO SERVICES LTD. AVE 23 SPYROU KYPRIANOU 3RD FLOOR, 4001 LIMASSOL, CYPRUS	Crypto Asset Service Provider	Unknown	11/24/2020	Current
FTX EU LTD. Churerstrasse 135 8808 Pfaffikon, SWITZERLAND	Investment Services	Unknown	11/14/2021	Current
FTX EXCHANGE FZE c/o FTX Europe AG Churerstrasse 135 8808 Pfaffikon, SWITZERLAND	Trading Vehicle	Unknown	11/14/2021	Current
FTX STRUCTURED PRODUCTS AG 13 SCHAANERSTRASSE VADUZ, 9490 LIECHTENSTEIN	Services for banks and credit institutions	Unknown	11/14/2021	Current
FTX SWITZERLAND GMBH CHURERSTRASSE 135 8808 PFÄFFIKON SWITZERLAND	Financial Intermediary	Unknown	11/14/2021	Current
FTX TRADING GMBH 63 Wülfeler Straße Hanover, 30539 GERMANY	Fintech product collaboration vehicle	Unknown	02/03/2020	Current

Fill in this information to identify the case:

Debtor name FTX Trading GmbH
 United States Bankruptcy Court for the: District of Delaware
 Case number (if known): 22-11123 (JTD)

Check if this is an amended filing

Official Form 206G

Schedule G: Executory Contracts and Unexpired Leases

12/15

Be as complete and accurate as possible. If more space is needed, copy and attach the additional page, numbering the entries consecutively.

1. Does the debtor have any executory contracts or unexpired leases ?

- No. Check this box and file this form with the court with the debtor's other schedules. There is nothing else to report on this form.
- Yes. Fill in all of the information below even if the contracts or leases are listed on Schedule A/B: Assets - Real and Personal Property (Official Form 206A/B).

2. List all contracts and unexpired leases

State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.1	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	JOINT VENTURE AGREEMENT DATED 10/27/2020	CM-Equity Kaufingerstrafie 20 Munich, 80331 GERMANY
2.2	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	ENGAGEMENT FOR TAXATION AND PAYROLL SERVICES DATED 5/5/2022	Deloitte Limited 24 Spyrou Kyprianou Avenue P.O.Box 21675 Nicosia, CY-1075 CYPRUS
2.3	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	JOINT VENTURE AGREEMENT DATED 10/27/2020	Digital Assets DAAG IndustriestraBe 28 Herisau, 9100 SWITZERLAND
2.4	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	LIQUIDITY SERVICES PROVIDER AGREEMENT DATED 3/1/2022	FTX EU Ltd. Churerstrasse 135 8808 Pfaffikon, SWITZERLAND
2.5	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	MANAGEMENT CONSULTING CONTRACT DATED 1/5/2022	FTX Europe AG 135 Churerstrasse Pfaffikon, 8808, SWITZERLAND

Name

Part 2: List All Creditors with NONPRIORITY Unsecured Claims

3. List in alphabetical order all of the creditors with nonpriority unsecured claims. If the debtor has more than 6 creditors with nonpriority unsecured claims, fill out and attach the Additional Page of Part 2.		Amount of claim
3.1	Nonpriority creditor's name and mailing address Allianz Suisse Versicherung-Gesellschaft AG Richtipl. 1, 8304 Wallisellen SWITZERLAND Date or dates debt was incurred Various Last 4 digits of account number	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Trade Payable Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes \$ 965.29
3.2	Nonpriority creditor's name and mailing address AristaFlow GmbH Talfinger Str. 7 Ulm, 89073 GERMANY Date or dates debt was incurred Various Last 4 digits of account number	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Trade Payable Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes \$ 19,403.35
3.3	Nonpriority creditor's name and mailing address CM-EQUITY KAUFINGERSTRABE 20 MUNICH, 80331 GERMANY Date or dates debt was incurred Undetermined Last 4 digits of account number	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input checked="" type="checkbox"/> Disputed Basis for the claim: Stablecoin Collateral Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes \$ Undetermined
3.4	Nonpriority creditor's name and mailing address Kephias Corporation 1254 Bay St Florence, OR 97439 Date or dates debt was incurred Various Last 4 digits of account number	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Trade Payable Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes \$ Undetermined
3.5	Nonpriority creditor's name and mailing address MLL MEYERLUSTENBERGER GRABENSTRASSE 2 6340 BAAR/ZUG ZURICH, SWITZERLAND Date or dates debt was incurred Various Last 4 digits of account number	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Trade Payable Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes \$ 5,013.56
3.6	Nonpriority creditor's name and mailing address Prof. Dr. Dirk Zetzsche, Düsseldorf ADDRESS ON FILE Date or dates debt was incurred Various Last 4 digits of account number	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Trade Payable Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes \$ 32,076.00

Name

Additional Page if Debtor Has More Executory Contracts or Unexpired Leases

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page.

List all contracts and unexpired leases

State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.13	<p>State what the contract or lease is for and the nature of the debtor's interest</p> <p>State the term remaining</p> <p>List the contract number of any government contract</p>	<p>LEASE AGREEMENT - THE OFFICES 5, OFFICE NUMBER TO5-FLR06-06.01 DATED 9/1/2022</p>	<p>Dubai World Trade Centre LLC Sheikh Zayed Road P.O.Box 9292 Dubai, UNITED ARAB EMIRATES</p>
2.14	<p>State what the contract or lease is for and the nature of the debtor's interest</p> <p>State the term remaining</p> <p>List the contract number of any government contract</p>	<p>LEASE SURRENDER AGREEMENT DATED 8/10/2022</p>	<p>Dubai World Trade Centre LLC Sheikh Zayed Road P.O. Box 9292 Dubai, UNITED ARAB EMIRATES</p>
2.15	<p>State what the contract or lease is for and the nature of the debtor's interest</p> <p>State the term remaining</p> <p>List the contract number of any government contract</p>	<p>INTERNET PRO BUSINESS EDGE DATED 10/27/2022</p>	<p>EMIRATES TELECOMMUNICATIONS GROUP COMPANY P.J.S.C. ETISALAT TOWER 1 DIERA PO BOX 3838 ABU DHABI, UNITED ARAB EMIRATES</p>
2.16	<p>State what the contract or lease is for and the nature of the debtor's interest</p> <p>State the term remaining</p> <p>List the contract number of any government contract</p>	<p>ACCOUNTING WITH VAT SERVICES DATED 8/5/2022</p>	<p>FARAHAT & CO. PO BOX 4647 DUBAI, UNITED ARAB EMIRATES</p>
2.17	<p>State what the contract or lease is for and the nature of the debtor's interest</p> <p>State the term remaining</p> <p>List the contract number of any government contract</p>	<p>FRANCHISE AGREEMENT</p>	<p>FTX Europe AG 135 Churerstrasse Pfaffikon, 8808, SWITZERLAND</p>
2.18	<p>State what the contract or lease is for and the nature of the debtor's interest</p> <p>State the term remaining</p> <p>List the contract number of any government contract</p>	<p>INTERCOMPANY SERVICE AGREEMENT DATED 10/1/2022</p>	<p>FTX Trading Ltd. 10-11 Mandolin Place, Friars Hill Road St. John's AG-04, ANTIGUA & BARBUDA</p>
2.19	<p>State what the contract or lease is for and the nature of the debtor's interest</p> <p>State the term remaining</p> <p>List the contract number of any government contract</p>	<p>MARKETING AGREEMENT</p>	<p>Hoko Agency Middle East FZ LLC TwoFour54 PO Box 2454 Abu Dhabi, UNITED ARAB EMIRATES</p>

Name

Additional Page if Debtor Has More Executory Contracts or Unexpired Leases

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page.

List all contracts and unexpired leases**State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease**

2.6	State what the contract or lease is for and the nature of the debtor's interest	TERM SHEET AGREEMENT DATED 12/23/2021	DMAP Vendor (Giorgio Antonucci and Ren6 Robert Wandfluh) ADDRESS UNKNOWN
	State the term remaining List the contract number of any government contract		
2.7	State what the contract or lease is for and the nature of the debtor's interest	ENGAGEMENT LETTER AND STATEMENT OF WORK DATED 6/4/2022	Ernst & Young Law GmbH Pelzmann Gall Größ Rechtsanwälte GmbH Wagramer Straße 19, IZD-Tower Vienna, 1220 AUSTRIA
	State the term remaining List the contract number of any government contract		
2.8	State what the contract or lease is for and the nature of the debtor's interest	FRANCHISE AGREEMENT DATED 5/12/2021	FTX EU Ltd. Churerstrasse 135 8808 Pfaffikon, SWITZERLAND
	State the term remaining List the contract number of any government contract		
2.9	State what the contract or lease is for and the nature of the debtor's interest	INTERCOMPANY AMENDMENT TO THE FRANCHISE AGREEMENT DATED 12/5/2021	FTX EU Ltd. Churerstrasse 135 8808 Pfaffikon, SWITZERLAND
	State the term remaining List the contract number of any government contract		
2.10	State what the contract or lease is for and the nature of the debtor's interest	FRANCHISE AGREEMENT	FTX Exchange FZE c/o FTX Europe AG Churerstrasse 135 8808 Pfaffikon, SWITZERLAND
	State the term remaining List the contract number of any government contract		
2.11	State what the contract or lease is for and the nature of the debtor's interest	MANAGEMENT CONSULTING CONTRACT DATED 1/5/2022	FTX Trading GmbH 63 Wulfeler Straße Hanover, 30539 GERMANY
	State the term remaining List the contract number of any government contract		
2.12	State what the contract or lease is for and the nature of the debtor's interest	POWER OF ATTORNEY AGREEMENT DATED 9/5/2022	FTX Trading Ltd. 10-11 Mandolin Place, Friars Hill Road St. John's AG-04, ANTIGUA & BARBUDA
	State the term remaining List the contract number of any government contract		

Name

Additional Page if Debtor Has More Executory Contracts or Unexpired Leases

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page.

List all contracts and unexpired leases**State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease**

2.6	State what the contract or lease is for and the nature of the debtor's interest	EMPLOYMENT AGREEMENT DATED 5/2/2022	Constantinos Charalampous ADDRESS ON FILE
State the term remaining List the contract number of any government contract			
2.7	State what the contract or lease is for and the nature of the debtor's interest	EMPLOYMENT AGREEMENT DATED 5/26/2021	Erini Athinodorou ADDRESS ON FILE
State the term remaining List the contract number of any government contract			
2.8	State what the contract or lease is for and the nature of the debtor's interest	EMPLOYMENT AGREEMENT DATED 11/19/2021	Frini Fournari ADDRESS ON FILE
State the term remaining List the contract number of any government contract			
2.9	State what the contract or lease is for and the nature of the debtor's interest	FRANCHISE AGREEMENT DATED 5/12/2021	FTX Europe AG 135 Churerstrasse Pfaffikon, 8808, SWITZERLAND
State the term remaining List the contract number of any government contract			
2.10	State what the contract or lease is for and the nature of the debtor's interest	INTERCOMPANY AMENDMENT TO THE FRANCHISE AGREEMENT DATED 12/5/2021	FTX Europe AG 135 Churerstrasse Pfaffikon, 8808, SWITZERLAND
State the term remaining List the contract number of any government contract			
2.11	State what the contract or lease is for and the nature of the debtor's interest	LIQUIDITY SERVICES PROVIDER AGREEMENT DATED 3/1/2022	FTX Trading GmbH 63 Wulfeler Straße Hanover, 30539 GERMANY
State the term remaining List the contract number of any government contract			
2.12	State what the contract or lease is for and the nature of the debtor's interest	SERVICE AGREEMENT DATED 4/1/2022	FTX Trading Ltd. 10-11 Mandolin Place, Friars Hill Road St. John's AG-04, ANTIGUA & BARBUDA
State the term remaining List the contract number of any government contract			

Name

Additional Page if Debtor Has More Executory Contracts or Unexpired Leases

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page.

List all contracts and unexpired leases**State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease**

2.20	<p>State what the contract or lease is for and the nature of the debtor's interest</p> <p>State the term remaining</p> <p>List the contract number of any government contract</p>	SIDE AGREEMENT	James Eugene Manczak ADDRESS ON FILE
2.21	<p>State what the contract or lease is for and the nature of the debtor's interest</p> <p>State the term remaining</p> <p>List the contract number of any government contract</p>	AMENDMENT TO THE FRANCHISE AGREEMENT NO. 2 DATED 2/11/2022	K-DNA Financial Services Ltd Griva Digeni Anna Tower 1st Floor Limassol, CY-3063 CYPRUS
2.22	<p>State what the contract or lease is for and the nature of the debtor's interest</p> <p>State the term remaining</p> <p>List the contract number of any government contract</p>	AMENDMENT TO THE FRANCHISE AGREEMENT DATED 2/9/2022	K-DNA Financial Services Ltd Griva Digeni Anna Tower 1st Floor Limassol, CY-3063 CYPRUS
2.23	<p>State what the contract or lease is for and the nature of the debtor's interest</p> <p>State the term remaining</p> <p>List the contract number of any government contract</p>	SIDE LETTER TO THE FRANCHISE AGREEMENT DATED 5/12/2021	K-DNA Financial Services Ltd. 56, Griva Digeni Anna Tower, 1st Floor Limassol, CY-3063 CYPRUS
2.24	<p>State what the contract or lease is for and the nature of the debtor's interest</p> <p>State the term remaining</p> <p>List the contract number of any government contract</p>	QUOTA PURCHASE AGREEMENT	light year capital GmbH Schlehenstraße 6 Eckental, 90542 GERMANY
2.25	<p>State what the contract or lease is for and the nature of the debtor's interest</p> <p>State the term remaining</p> <p>List the contract number of any government contract</p>	LETTER RE: MATTER AGREEMENT DATED 8/22/2022	Loyens & Loeff Advocaten-Avocats CVBA/SCRL Tervurenlaan 2 Brussels, 1040 BELGIUM
2.26	<p>State what the contract or lease is for and the nature of the debtor's interest</p> <p>State the term remaining</p> <p>List the contract number of any government contract</p>	CONSULTANCY AND EXCLUSIVITY AGREEMENT DATED 4/29/2022	Matthew Robert Straughen ADDRESS ON FILE

Name

Additional Page if Debtor Has More Executory Contracts or Unexpired Leases

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page.

List all contracts and unexpired leases**State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease**

2.13	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	EMPLOYMENT AGREEMENT DATED 4/4/2022	Irene Kitrou ADDRESS ON FILE
2.14	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	AFFILIATE AGREEMENT	JAUME MORENO ROVIRA ADDRESS ON FILE
2.15	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	EMPLOYMENT AGREEMENT DATED 3/28/2022	Joanna Argyridou ADDRESS ON FILE
2.16	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	AMENDMENT TO THE FRANCHISE AGREEMENT DATED 2/9/2022	K-DNA Financial Services Ltd Griva Digeni Anna Tower 1st Floor Limassol, CY-3063 CYPRUS
2.17	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	AMENDMENT TO THE FRANCHISE AGREEMENT NO.2 DATED 2/11/2022	K-DNA Financial Services Ltd Griva Digeni Anna Tower 1st Floor Limassol, CY-3063 CYPRUS
2.18	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	SIDE LETTER TO THE FRANCHISE AGREEMENT DATED 5/12/2021	K-DNA Financial Services Ltd. 56, Griva Digeni Anna Tower, 1st Floor Limassol, CY-3063 CYPRUS
2.19	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	ENGAGEMENT LETTER DATED 10/1/2021	Konkrit Accounting Services Ltd Williamson House, Aiolou & Panagioti Diomidous 9 P.O. Box 59511 Katholiki Limassol, CYPRUS

Part 2: Additional Page

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page. If no additional NONPRIORITY creditors exist, do not fill out or submit this page.			Amount of claim
3.7	Nonpriority creditor's name and mailing address IEX GROUP, INC. 3 WORLD TRADE CENTER 58TH FLOOR NEW YORK, NY 10007	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input checked="" type="checkbox"/> Disputed Basis for the claim: Threatened Litigation	\$ Undetermined
	Date or dates debt was incurred Undetermined Last 4 digits of account number	Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	
3.8	Nonpriority creditor's name and mailing address INSIGHT DIRECT USA INC 2701 E INSIGHT WAY CHANDLER, AZ 85286	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Trade Payable	\$ 756.32
	Date or dates debt was incurred Various Last 4 digits of account number	Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	
3.9	Nonpriority creditor's name and mailing address INTRINIO, INC. 76 4TH STREET N #150 SAINT PETERSBURG, FL 33731	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Trade Payable	\$ 1,750.00
	Date or dates debt was incurred Various Last 4 digits of account number	Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	
3.10	Nonpriority creditor's name and mailing address PRICEWATERHOUSECOOPERS 1 EMBANKMENT PLACE LONDON, WC2N 6RH UNITED KINGDOM	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Trade Payable	\$ 2,091.84
	Date or dates debt was incurred Various Last 4 digits of account number	Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	
3.11	Nonpriority creditor's name and mailing address SINA NADER ADDRESS ON FILE	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input checked="" type="checkbox"/> Disputed Basis for the claim: Indemnity Agreement	\$ Undetermined
	Date or dates debt was incurred Undetermined Last 4 digits of account number	Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	

Name

Additional Page if Debtor Has More Executory Contracts or Unexpired Leases

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page.

List all contracts and unexpired leases		State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease
2.62	Retention Incentive Award Agreement Dated 9/30/2022 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	Gregory Sandman ADDRESS ON FILE
2.63	CONSULTING AGREEMENT DATED 3/31/2021 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	HAROLD BOO ADDRESS ON FILE
2.64	COLLABORATION AGREEMENT DATED 3/18/2022 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	IEX DAP Group LLC 3 World Trade Center 58th Floor New York, NY 10007
2.65	IEX GROUP, INC. TERM SHEET FOR STRATEGIC PARTNERSHIP WITH WEST REALM SHIRES INC. DATED 1/4/2022 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	IEX GROUP, INC. ADDRESS UNKNOWN
2.66	MASTER SERVICES AGREEMENT DATED 1/7/2022 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	Intrinio, Inc. 76 4th Street N #150 Saint Petersburg, FL 33731
2.67	CONSULTING AGREEMENT DATED 3/31/2021 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	Ivana Milicic ADDRESS ON FILE
2.68	CONSULTING AGREEMENT DATED 3/31/2021 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	JASON HAMLIN ADDRESS ON FILE

SETTLEMENT AND STOCK EXCHANGE AGREEMENT

BY AND BETWEEN

IEX GROUP, INC.,

WEST REALM SHIRES INC.

AND

FTX TRADING LTD.

dated as of

July 31, 2023

SETTLEMENT AND STOCK EXCHANGE AGREEMENT

This **SETTLEMENT AND STOCK EXCHANGE AGREEMENT** (this “Agreement”) is made as of July 31, 2023, by and between FTX Trading Ltd., a company established under the laws of Antigua and Barbuda (“FTXT”), West Realm Shires Inc. (“WRS” and, together with FTXT, collectively with any of their successors or assigns, “FTX” and each, an “FTX Entity”), and IEX Group, Inc., a Delaware corporation (“IEX”). The signatories to this Agreement are collectively referred to as the “Parties” and individually as a “Party”. Capitalized terms used and not otherwise defined herein have the meanings set forth in Article IX below.

RECITALS

WHEREAS, pursuant to a Share Exchange Agreement, dated as of March 18, 2022, as amended as of May 17, 2022, by and among FTX and IEX, WRS acquired 1,570,142 shares of Common Stock, \$0.01 par value per share, of IEX (the “IEX Shares”) and IEX acquired 5,663,211 shares of Common Shares, par value US\$0.0000026 per share, of FTXT (the “FTXT Shares”) and 49,234,136 shares of Class A Common Stock, \$0.00001 par value per share (the “WRS Shares” and, together with the FTXT Shares, the “FTX Shares”), of WRS (the “Prior Transaction”);

WHEREAS, IEX has asserted that the FTX entities fraudulently induced IEX into entering into the Share Exchange Agreement by, among other things, making false statements during the negotiations therefor and by making knowingly false representations in the Share Exchange Agreement and at the closing thereof;

WHEREAS, on November 11, 2022 and November 14, 2022, FTX and certain of its Affiliates (collectively, the “Debtors”) commenced voluntary proceedings under Chapter 11 of Title 11 of the United States Code (11 U.S.C. §§ 101, *et seq.*, as amended, the “Bankruptcy Code”) by filing petitions for relief in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), which cases are being jointly administered as *In re FTX Trading Ltd., et al.* (Case No. 22-11068 (JTD)) (the “Bankruptcy Proceedings”);

WHEREAS, WRS asserts that it continues to own the IEX Shares and IEX continues to own the FTX Shares;

WHEREAS, IEX has asserted that the IEX Shares are not property of the WRS bankruptcy estate nor any of the other Debtors’ estates;

WHEREAS, the Parties desire to effect an exchange of all the FTX Shares for 991,542 of the IEX Shares (the “Transferred IEX Shares”) pursuant to Sections 105 and 363 of the Bankruptcy Code and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”);

WHEREAS, the Parties desire that FTX will retain 578,600 of the IEX Shares (the “Retained IEX Shares”);

WHEREAS, the Parties desire that, promptly following the Bankruptcy Court’s approval of the Exchange and Settlement Order, IEX and FTX will, commence a sale process for the Retained IEX Shares, as provided in this Agreement, including by soliciting IEX’s existing

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

FTXT:

FTX TRADING, LTD.

By: _____

Name: John J. Ray III

Title: Authorized Signatory

WRS:

WEST REALM SHIRES INC.

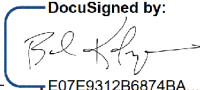
By: _____

Name: John J. Ray III

Title: Authorized Signatory

IEX:

IEX GROUP, INC.

By:  _____
Name: Brad Katsuyama
Title: CEO

Debtor Name: West Realm Shires Services Inc.

Case Number: 22-11071 (JTD)

Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy

SOFA Question 4: Payments or other transfers of property made within 1 year before filing this case that benefited any insider

Creditor Name and Address	Relationship to Debtor	Total Amount or Value	Dates	Reason for Payment or Transfer
Bankman, Joseph ADDRESS ON FILE	Father to Samuel Bankman-Fried	\$17,139.64	07/28/2022	Cash Payment
Bankman, Joseph ADDRESS ON FILE	Father to Samuel Bankman-Fried	\$7,299.32	06/15/2022	Cash Payment
Bankman, Joseph ADDRESS ON FILE	Father to Samuel Bankman-Fried	\$4,773.00	04/22/2022	Cash Payment
Bankman, Joseph ADDRESS ON FILE	Father to Samuel Bankman-Fried	\$26.00	04/20/2022	Cash Payment
Bankman, Joseph ADDRESS ON FILE	Father to Samuel Bankman-Fried	\$1,000,000.00	01/25/2022	Cash Payment
Bankman, Joseph ADDRESS ON FILE	Father to Samuel Bankman-Fried	\$7,947.95	12/28/2021	Cash Payment
Bankman, Joseph ADDRESS ON FILE	Father to Samuel Bankman-Fried	\$16,909.00	2022	Expense Reimbursement
Bankman, Joseph ADDRESS ON FILE	Father to Samuel Bankman-Fried	\$500.00	2022	Retirement Related Benefits
Bankman, Joseph ADDRESS ON FILE	Father to Samuel Bankman-Fried	\$41,666.65	2022	Salary
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$5.00	11/03/2022	Amex Charge
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$100.00	11/01/2022	Amex Charge
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$1,156.00	10/28/2022	Amex Charge
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$180.00	10/21/2022	Amex Charge
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$68.00	10/19/2022	Amex Charge
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$24.92	10/17/2022	Amex Charge
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$2,026.65	10/10/2022	Amex Charge
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$5.00	10/03/2022	Amex Charge
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$260.59	10/03/2022	Amex Charge
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$80.00	10/01/2022	Amex Charge
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$884.00	09/30/2022	Amex Charge

Additional Page if Debtor Has More Executory Contracts or Unexpired Leases

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page.		
List all contracts and unexpired leases		State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease
2.258	<p>State what the contract or lease is for and the nature of the debtor's interest</p> <p>SEPARATION AGREEMENT AND GENERAL RELEASE DATED 10/21/2022</p> <p>State the term remaining</p> <p>List the contract number of any government contract</p>	<p>Jessica Moser ADDRESS ON FILE</p>
2.259	<p>State what the contract or lease is for and the nature of the debtor's interest</p> <p>RE: OFFER OF EMPLOYMENT DATED 9/8/2021</p> <p>State the term remaining</p> <p>List the contract number of any government contract</p>	<p>Jessica Moser ADDRESS ON FILE</p>
2.260	<p>State what the contract or lease is for and the nature of the debtor's interest</p> <p>FTX BRAND AMBASSADOR AGREEMENT DATED 10/12/2021</p> <p>State the term remaining</p> <p>List the contract number of any government contract</p>	<p>Jeya Presad ADDRESS ON FILE</p>
2.261	<p>State what the contract or lease is for and the nature of the debtor's interest</p> <p>FTX PROFESSIONAL SERVICES AGREEMENT DATED 6/24/2022</p> <p>State the term remaining</p> <p>List the contract number of any government contract</p>	<p>João Victor Garcia ADDRESS ON FILE</p>
2.262	<p>State what the contract or lease is for and the nature of the debtor's interest</p> <p>EMPLOYEE INVENTION ASSIGNMENT AND CONFIDENTIALITY AGREEMENT DATED 12/28/2021</p> <p>State the term remaining</p> <p>List the contract number of any government contract</p>	<p>Joe Bankman ADDRESS ON FILE</p>
2.263	<p>State what the contract or lease is for and the nature of the debtor's interest</p> <p>OFFER OF EMPLOYMENT DATED 12/27/2021</p> <p>State the term remaining</p> <p>List the contract number of any government contract</p>	<p>Joe Bankman ADDRESS ON FILE</p>
2.264	<p>State what the contract or lease is for and the nature of the debtor's interest</p> <p>OFFER OF EMPLOYMENT DATED 3/1/2022</p> <p>State the term remaining</p> <p>List the contract number of any government contract</p>	<p>John Conbere ADDRESS ON FILE</p>

Additional Page if Debtor Has More Executory Contracts or Unexpired Leases

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page.

List all contracts and unexpired leases		State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease
2.216 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	LOAN AGREEMENT DATED 9/8/2020	JEREMY ARNOLD ADDRESS ON FILE
2.217 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	ENGAGEMENT AGREEMENT DATED 1/14/2021	Joe Bankman ADDRESS ON FILE
2.218 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	CONSULTING AGREEMENT DATED 1/24/2022	Joel Becker ADDRESS ON FILE
2.219 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	CONSULTING AGREEMENT DATED 6/21/2022	JOEL BECKER ADDRESS ON FILE
2.220 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	CONSULTING AGREEMENT DATED 1/7/2022	Joel Becker ADDRESS ON FILE
2.221 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	ASSIGNMENT AND ASSUMPTION AGREEMENT DATED 2/1/2022	JOHN SAMUEL TRABUCCO ADDRESS ON FILE
2.222 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	LOAN AGREEMENT DATED 7/1/2022	Josephine Lee Pereira-Potent ADDRESS ON FILE

Additional Page if Debtor Has More Executory Contracts or Unexpired Leases

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page.

List all contracts and unexpired leases

State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.69	<p>State what the contract or lease is for and the nature of the debtor's interest</p> <p>State the term remaining</p> <p>List the contract number of any government contract</p>	<p>CONSULTING AGREEMENT DATED 4/14/2021</p>	<p>Jayesh Peswani ADDRESS ON FILE</p>
2.70	<p>State what the contract or lease is for and the nature of the debtor's interest</p> <p>State the term remaining</p> <p>List the contract number of any government contract</p>	<p>Retention Incentive Award Agreement Dated 9/30/2022</p>	<p>Jeff Sime ADDRESS ON FILE</p>
2.71	<p>State what the contract or lease is for and the nature of the debtor's interest</p> <p>State the term remaining</p> <p>List the contract number of any government contract</p>	<p>CONSULTING AGREEMENT DATED 3/31/2021</p>	<p>Jeffrey B Dilley ADDRESS ON FILE</p>
2.72	<p>State what the contract or lease is for and the nature of the debtor's interest</p> <p>State the term remaining</p> <p>List the contract number of any government contract</p>	<p>EMPLOYEE INVENTION ASSIGNMENT AND CONFIDENTIALITY AGREEMENT</p>	<p>Jenny Jin A Bong ADDRESS ON FILE</p>
2.73	<p>State what the contract or lease is for and the nature of the debtor's interest</p> <p>State the term remaining</p> <p>List the contract number of any government contract</p>	<p>ENGAGEMENT AGREEMENT DATED 1/14/2021</p>	<p>Joe Bankman ADDRESS ON FILE</p>
2.74	<p>State what the contract or lease is for and the nature of the debtor's interest</p> <p>State the term remaining</p> <p>List the contract number of any government contract</p>	<p>INVESTORS' RIGHTS AGREEMENT DATED 1/21/2022</p>	<p>JOHANN KIRSTEN ADDRESS ON FILE</p>
2.75	<p>State what the contract or lease is for and the nature of the debtor's interest</p> <p>State the term remaining</p> <p>List the contract number of any government contract</p>	<p>Retention Incentive Award Agreement Dated 9/30/2022</p>	<p>John Dwyer ADDRESS ON FILE</p>

Name

Additional Page if Debtor Has More Executory Contracts or Unexpired Leases

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page.

List all contracts and unexpired leases**State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease**

2.321	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	2020 EQUITY INCENTIVE PLAN (NON-U.S.) DATED 11/22/2021	Jessica Ferguson Murray ADDRESS ON FILE
2.322	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	2020 EQUITY INCENTIVE PLAN (NON-U.S.) DATED 11/22/2021	Jiayun Shi ADDRESS ON FILE
2.323	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	2020 EQUITY INCENTIVE PLAN (NON-U.S.)	JIN Qiu ADDRESS ON FILE
2.324	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	CONSULTING AGREEMENT DATED 1/28/2021	JIN Qiu ADDRESS ON FILE
2.325	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	ENGAGEMENT AGREEMENT DATED 1/14/2021	Joe Bankman ADDRESS ON FILE
2.326	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	SCREENING QUESTIONNAIRE	John Samuel Trabucco ADDRESS ON FILE
2.327	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	DOMAIN NAME PURCHASE AND TRANSFER AGREEMENT DATED 2/24/2020	JOHN STOSSEL ADDRESS ON FILE

Additional Page if Debtor Has More Executory Contracts or Unexpired Leases

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page.

List all contracts and unexpired leases	State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease
2.55 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	OFFER OF EMPLOYMENT DATED 10/30/2021 Balaji Varadaraju Mudaliyar ADDRESS ON FILE
2.56 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	EMPLOYEE INVENTION ASSIGNMENT AND CONFIDENTIALITY AGREEMENT DATED 10/30/2021 Balaji Varadaraju Mudaliyar ADDRESS ON FILE
2.57 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	MASTER SERVICE AGREEMENT DATED 8/13/2021 Barbara Miller ADDRESS ON FILE
2.58 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	NAMING RIGHTS FACILITATION AGREEMENT DATED 3/22/2021 Basketball Properties, Ltd. Attention: John Vidalin, EVP/COO 601 Biscayne Blvd Miami, FL 33132
2.59 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	SPONSORSHIP AGREEMENT DATED 1/6/2022 Benzinga - Allen Arnold 1 CAMPUS MARTIUS, SUITE 200 DETROIT, MI 48226
2.60 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	UNIVERSITY OF CALIFORNIA, BERKELEY - GIFT AGREEMENT DATED 6/26/2022 Berkeley Foundation 1995 UNIVERSITY AVE., SUITE 401 BERKELEY, CA 94704-1058
2.61 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	EMPLOYMENT OFFER DATED 2/10/2022 Bert Scott ADDRESS ON FILE

Debtor Name: West Realm Shires Services Inc.

Case Number: 22-11071 (JTD)

Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy

SOFA Question 4: Payments or other transfers of property made within 1 year before filing this case that benefited any insider

Creditor Name and Address	Relationship to Debtor	Total Amount or Value	Dates	Reason for Payment or Transfer
Mark Wetjen ADDRESS ON FILE	Director/Officer	\$3,029.87	01/21/2022	Cash Payment
Mark Wetjen ADDRESS ON FILE	Director/Officer	\$1,182,653.23	12/31/2021	Cash Payment
Mark Wetjen ADDRESS ON FILE	Director/Officer	\$2,891.10	11/24/2021	Cash Payment
Mark Wetjen ADDRESS ON FILE	Director/Officer	\$4,687.50	2022	Retirement Related Benefits
Mark Wetjen ADDRESS ON FILE	Director/Officer	\$26,041.67	11/30/2021	Salary
Mark Wetjen ADDRESS ON FILE	Director/Officer	\$26,041.67	11/16/2021	Salary
Mark Wetjen ADDRESS ON FILE	Director/Officer	\$130,208.35	2022	Salary
Miller, Barbara ADDRESS ON FILE	Aunt to Samuel Bankman-Fried	\$14,000.00	01/03/2022	Cash Payment
Miller, Ryne ADDRESS ON FILE	General Counsel	\$290,412.00	09/30/2022	Cash Payment
Miller, Ryne ADDRESS ON FILE	General Counsel	\$461.10	08/30/2022	Cash Payment
Miller, Ryne ADDRESS ON FILE	General Counsel	\$2,378.48	08/25/2022	Cash Payment
Miller, Ryne ADDRESS ON FILE	General Counsel	\$1,898.61	08/18/2022	Cash Payment
Miller, Ryne ADDRESS ON FILE	General Counsel	\$118.31	08/03/2022	Cash Payment
Miller, Ryne ADDRESS ON FILE	General Counsel	\$5,412.94	07/23/2022	Cash Payment
Miller, Ryne ADDRESS ON FILE	General Counsel	\$78.17	06/27/2022	Cash Payment
Miller, Ryne ADDRESS ON FILE	General Counsel	\$1,481.11	06/15/2022	Cash Payment
Miller, Ryne ADDRESS ON FILE	General Counsel	\$431.35	06/07/2022	Cash Payment
Miller, Ryne ADDRESS ON FILE	General Counsel	\$3,429.89	04/13/2022	Cash Payment
Miller, Ryne ADDRESS ON FILE	General Counsel	\$439.18	03/22/2022	Cash Payment
Miller, Ryne ADDRESS ON FILE	General Counsel	\$3,653.92	03/15/2022	Cash Payment

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

In re:

FTX TRADING LTD., *et al.*,¹

Debtors.

Chapter 11

Case No. 22-11068 (JTD)

(Jointly Administered)

ALAMEDA RESEARCH LTD., WEST REALM
SHIRES, INC., and WEST REALM SHIRES
SERVICES, INC.,

Plaintiffs,

- against -

MICHAEL GILES, *et al.*,²

Defendants.

Adv. Pro. No. 23-_____(JTD)

**COMPLAINT FOR AVOIDANCE AND RECOVERY OF
TRANSFERS AND OBLIGATIONS PURSUANT TO
11 U.S.C. §§ 105, 544, 547, 548, AND 550
AND DEL. CODE ANN. TIT. 6, §§ 1304 AND 1305, AND FOR
DISALLOWANCE OF CLAIMS PURSUANT TO 11 U.S.C. § 502**

Plaintiffs Alameda Research Ltd. (“Alameda”), West Realm Shires, Inc.

(“WRS”), and West Realm Shires Services, Inc. (“WRSS”) (together, the “Plaintiffs”), through
their undersigned counsel, for their Complaint against Michael Giles and certain former holders

¹ The last four digits of FTX Trading Ltd.’s and Alameda Research LLC’s tax identification numbers are 3288 and 4063 respectively. Due to the large number of debtor entities in these Chapter 11 cases, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ claims and noticing agent at <https://cases.ra.kroll.com/FTX>.

² Due to the large number of Defendants (defined below) in this adversary proceeding, a complete list is attached hereto as **Exhibit A**.

of equity of Embed Financial Technologies Inc. (“Embed”)³ (together, the “Defendants”), state as follows:

NATURE OF THE CASE

1. Plaintiffs bring this adversary proceeding pursuant to Sections 105, 544, 547, 548, and 550 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), and Sections 1304 and 1305 of Title 6 of the Delaware Code, Del. Code Ann. tit. 6, §§ 1304(a)(1)-(2) and 1305, to avoid and recover from Defendants, or from any other person or entity for whose benefit the transfers were made or obligations incurred, all transfers of property of Plaintiffs and all obligations of Plaintiffs to Defendants made on or around September 30, 2022, prior to commencement of the above-captioned bankruptcy cases (collectively, the “Chapter 11 Cases” and each a “Chapter 11 Case”), by the above-captioned debtors and debtors-in-possession (collectively, the “Debtors” and each a “Debtor”).

2. On November 11 and November 14, 2022 (as applicable, the “Petition Date”), the Debtors filed with the United States Bankruptcy Court for the District of Delaware (the “Court”) voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. No trustee has been appointed for Plaintiffs or any other Debtor in the Chapter 11 Cases, and 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 Chapter 11

³ Defendants include former holders of Embed (a) shares, (b) options, and (c) simple agreements for future equity (“SAFEs”). Although SAFEs are entitlements to receive equity upon the occurrence of a future conversion event, Plaintiffs are categorizing SAFE holders as equity holders for purposes of this Complaint for ease of reference. Two separate adversary proceedings are being filed contemporaneously against the following additional former Embed equity holders: (i) Rocket Internet Capital Partners II SCS, Rocket Internet Capital Partners (Euro) II SCS, GFC Global Founders Capital GMBH, GFC Global Founders Capital GMBH & Co. Beteiligungs KG Nr. 1, William Hockey Living Trust, and 9Yards Capital Investments II LP, and (ii) Samuel Bankman-Fried, Zixiao Wang, and Nishad Singh.

Cases was authorized by the Court by an order entered on November 22, 2022 [D.I. 128].

Accordingly, Plaintiffs have the authority to file this Complaint to commence, and thereafter to prosecute, this adversary proceeding.

3. **Prior to the filing of the Chapter 11 Cases,** Alameda was a cryptocurrency trading firm owned by Samuel Bankman-Fried and Zixiao “Gary” Wang. Caroline Ellison was initially co-CEO and later the sole CEO of Alameda. WRS is a Delaware holding company owned by Samuel Bankman-Fried, Nishad Singh, and Gary Wang, with a number of subsidiaries, including WRSS, which did business as FTX.US, the cryptocurrency exchange founded by Bankman-Fried, Singh, and Wang to offer cryptocurrency trading services to U.S. customers. **Embed is a stock clearing firm** and **FINRA licensed broker-dealer founded by Michael Giles.**

4. **On or about March 15, 2022,** WRS began discussions to acquire Embed, ostensibly in order to provide **FTX.US customers with the ability to trade stocks,** in addition to cryptocurrency, on the FTX.US exchange platform. **The contemplated product was to be called FTX Stocks.**

5. Through a series of self-dealing transactions orchestrated by Bankman-Fried, Ellison, Singh, and Wang (hereinafter, the “**FTX Insiders**”), **WRS paid Defendants \$236,764,105.34 of misappropriated FTX Group⁴ funds** to acquire Defendants’ equity interests **in Embed on or around September 30, 2022—mere weeks before the Petition Date.** WRS also agreed, in “Retention Incentive Award Agreements” effective as of September 30, 2022, to pay

⁴ The FTX Group is comprised of four silos. These silos include: (a) a group composed of Plaintiffs and Debtors WRS, WRSS, and their Debtor and non-Debtor subsidiaries; (b) a group composed of Plaintiff and Debtor Alameda, Debtor Alameda Research LLC, and their Debtor subsidiaries; (c) a group composed of Debtor Clifton Bay Investments LLC, Debtor Clifton Bay Investments Ltd., Debtor Island Bay Ventures Inc., and Debtor FTX Ventures Ltd.; and (d) a group composed of Debtor FTX Trading Ltd. and its Debtor and non-Debtor subsidiaries.

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”).

26. The **FTX Insiders**, among others, took advantage of the FTX Group’s lack of controls and recordkeeping to **perpetrate a massive fraud**—**lavishly spending the FTX Group’s assets on**, among other things, **private homes and jets**, **political and “charitable” contributions**, and **various investments**. The **acquisition of Embed was one such transaction**.

27. **All of the funding** for the **Embed acquisition** **came from Alameda**, which, at the **FTX Insiders’ direction**, had **surreptitiously and unlawfully diverted and transferred assets belonging to FTX.com**, the principal international cryptocurrency exchange operated by the FTX Group, to spend on the **FTX Insiders’ pet projects**. By causing Alameda to take money belonging to FTX.com and spend it on the **FTX Insiders’ pet projects**, **the FTX Insiders defrauded FTX.com’s creditors**, **including customers and investors**.

28. The **FTX Insiders purportedly** **pursued the Embed acquisition** because they **believed it would help expand FTX.US’s operations** into **conventional securities markets**, thereby enriching themselves as WRS shareholders. In pursuing the Embed acquisition, the FTX Insiders prioritized speed above all else. They performed almost no due diligence on Embed and accepted the significant terms proposed by Giles, Embed’s founder, CEO, and sole representative during the negotiation, who personally received approximately \$157 million in connection with the acquisition. As a consequence, **WRS paid far more than fair or reasonably equivalent value for Embed**, and awarded Giles an extravagant and unwarranted retention bonus as an incentive to complete the acquisition quickly.

29. **All of the FTX Insiders**, **except for Bankman-Fried**, **have pleaded guilty to crimes perpetrated through the very practices** that facilitated the acquisition of Embed. On December

EXHIBIT A

Transfers and Obligations to Defendants in Connection with the Acquisition of Embed

Defendant	Type of Interest	Amount of Transfer or Obligation
Harland Group LLC ¹	Shares	\$101,130,330.50
Propel Venture Partners, LLC Propel Venture Partners US Fund I, L.P.	Shares	\$17,516,885.68
LGF II, L.P.	Shares	\$12,000,752.03
Buckley Ventures GP, LLC Buckley Ventures, LP	Shares	\$12,000,752.03
Laurence Beal	Shares	\$10,113,033.05
Y Combinator ES20, LLC	Shares	\$9,161,214.61
Acrew Capital MGP, LLC Acrew Capital Fund, L.P.	Shares	\$4,420,123.58
Homebrew Ventures III, LP	Shares	\$2,400,166.59
Propel Venture Partners, LLC Propel Venture Partners US Fund I LP	Shares	\$2,400,166.59
SWS Holding Company, LLC	Shares	\$2,400,166.59
Treasury Fund I, LP	Shares	\$2,379,556.22
Harland Group LLC	Shares	\$1,475,329.71
SWS Holding Company, LLC	Shares	\$1,347,460.52
Bain Capital Venture Fund 2019 LP	Shares	\$1,253,914.97
Fund I, a series of 20VC, LP	Shares	\$1,200,093.41
Soma Capital Fund III Partners LLC SOMA Capital Fund, III, LP	Shares	\$960,070.68
Kerr Investment Holdings Pty Ltd atf The Kerr Family Trust	Shares	\$951,818.44
The 2016 Karkal Family Trust	Shares	\$951,818.44
SWS Holding Company, LLC	Shares	\$951,818.44
YCC20, L.P.	Shares	\$943,222.37
Bain Capital Venture Fund 2019, L.P.	Shares	\$828,783.28
Yaselleraph Finance Pty Ltd atf Yaselleraph Finance Trust	Shares	\$761,470.94
S20, a series of Chris Golda Investments, LP	Shares	\$720,047.95
Launchpad Capital Fund I LP	Shares	\$683,560.13
Buckley Ventures GP, LLC Buckley Ventures, LP	Shares	\$673,730.26
LGF II, L.P.	Shares	\$673,730.26
Motivate Ventures QP Fund I, LP	Shares	\$596,122.85

¹ Harland Group LLC is 100% owned by Giles.

Defendant	Type of Interest	Amount of Transfer or Obligation
Acrew Capital MGP, LLC Acrew Capital Fund, L.P.	Shares	\$556,985.41
Liquid 2 Ventures Fund II, L.P.	Shares	\$480,045.45
Correlation Ventures II, L.P.	Shares	\$480,045.45
Adapt VC LLC	Shares	\$480,045.45
AAVCF3 LP	Shares	\$480,045.45
Basecamp Fund 201 via Alumni Ventures Group Embedded Trust	Shares	\$480,045.45
The Gardner 2008 Living Trust	Shares	\$480,045.45
Cathexis Subsidiaries GP, LLC, Cathexis Ventures LP	Shares	\$480,045.45
Launchpad Capital Fund I LP	Shares	\$480,045.45
Craig Shindledecker	Shares	\$434,860.42
Operator Partners, LLC	Shares	\$432,028.77
Acrew Capital MGP, LLC, Acrew Capital Fund (A), L.P.	Shares	\$380,189.36
Kerr Investment Holdings Pty Ltd a/t/f The Kerr Family Trust	Shares	\$359,619.46
Motivate Ventures Motivate Ventures Fund I, LP	Shares	\$355,695.60
Homebrew Ventures III, LP	Shares	\$328,471.31
Adam Boryenace	Shares	\$303,390.99
Motivate Ventures Motivate Ventures QP Fund I, LP	Shares	\$300,660.47
Kerr Investment Holdings Pty Ltd a/t/f The Kerr Family Trust	Shares	\$269,492.10
The 2016 Karkal Family Trust	Shares	\$269,492.10
Stuart Sopp	Shares	\$269,492.10
VentureSouq Capital SPC o/b/o VSQ SP 59 (YCS20)	Shares	\$240,022.73
Jonathan Weiner	Shares	\$240,022.73
James Nichols	Shares	\$237,959.67
Peter T. Lawler Living Trust	Shares	\$237,959.67
Carol H. Duggan Revocable Living Trust	Shares	\$237,959.67
KV5 Pty Ltd a/t/f KV5 Trust	Shares	\$190,367.73
Michael Ferrari	Shares	\$190,367.73
Motivate Ventures Motivate Ventures Fund I, LP	Shares	\$179,405.21
Stanton Camp	Shares	\$141,582.46
Mike McGee	Shares	\$131,469.43
BCIP Venture Associates II, L.P.	Shares	\$129,467.05
Aaron Frank	Shares	\$120,021.48

Defendant	Type of Interest	Amount of Transfer or Obligation
Benjamin Londergan	Shares	\$120,021.48
Jonathan Christodoro	Shares	\$120,021.48
Z Perret Trust	Shares	\$120,021.48
Akhil Paul	Shares	\$120,021.48
Fairchild Fund III, LLC	Shares	\$120,021.48
BCIP Venture Associates II, L.P.	Shares	\$85,576.49
BCV 2019-MD Primary, L.P.	Shares	\$48,218.94
Kamran Ansari	Shares	\$48,016.68
Acrew Capital MGP, LLC Acrew Capital Fund (A), L.P.	Shares	\$47,915.55
BCV 2019-MD Primary, L.P.	Shares	\$31,876.28
BCIP Venture Associates II-B, L.P.	Shares	\$8,474.72
BCIP Venture Associates II-B, L.P.	Shares	\$5,602.62
Total Transferred to Defendants for Shares		\$202,149,276.05
Monique Saugstad	Options	\$268,950.74
Christopher Young	Options	\$258,986.06
Derek Clark	Options	\$239,075.83
Adam Boryenace	Options	\$121,697.97
Craig Shindledecker	Options	\$121,697.97
Joshua Allen Slate	Options	\$94,616.65
Justin Lovero	Options	\$84,253.82
Joshua Slate	Options	\$60,848.98
Mike McGee	Options	\$60,848.98
Stanton Camp	Options	\$60,848.98
Tana Lawler	Options	\$60,848.98
Tim Millar	Options	\$60,848.98
Dena Wever	Options	\$35,107.26
John Dwyer	Options	\$20,782.58
Brandon Mann	Options	\$16,843.57
David Meents	Options	\$15,578.62
Lindsey Boerner	Options	\$7,265.59
Brent Johnson	Options	\$6,234.77
David Streckert	Options	\$6,234.77
Kiara Baudoin	Options	\$4,156.52
Total Transferred to Defendants for Options		\$1,605,727.62
TI Platform NLI Venture Limited II	SAFE	\$9,067,021.82
Torch Capital II, LP	SAFE	\$6,457,980.65
Treasury Fund I, LP	SAFE	\$3,690,265.99
PruVen Capital Partners Fund I, LP	SAFE	\$2,767,694.43

Defendant	Type of Interest	Amount of Transfer or Obligation
Transpose Platform Fintech Fund II, L.P.	SAFE	\$2,003,816.59
Fin VC Regatta I, LP	SAFE	\$1,845,122.88
TI Platform Fund II, LP	SAFE	\$1,845,122.88
Thomas G. Miglis Revocable Trust	SAFE	\$922,551.33
SWS Holding Company, LLC	SAFE	\$873,968.32
Alumni Ventures Group - Embedded Financial Trust A	SAFE	\$645,798.06
Philippe Jabre	SAFE	\$461,275.66
Bain Capital Venture Fund 2019, L.P.	SAFE	\$401,649.22
Silverstone Venture Investments Limited	SAFE	\$369,024.58
EM Fund I, a series of Chris Golda Investments, LP	SAFE	\$258,772.29
TriplePoint Private Venture Credit Inc. Fund 1, a Series of Not Boring Capital, LP	SAFE	\$230,637.83
Warren Lowell Putnam & Brynn Jinnett Putnam, Tenants in Common	SAFE	\$184,502.17
TriplePoint Ventures 5 LLC	SAFE	\$184,502.17
Embedfi June 2021, a Series of Party Round LLC	SAFE	\$161,444.46
Correlation Ventures II, LP	SAFE	\$131,004.23
TriplePoint Venture Lending Fund, LLC	SAFE	\$83,028.00
Joe Percoco	SAFE	\$69,173.15
Clayton Gardner	SAFE	\$46,115.43
Kick the Hive LLC	SAFE	\$46,115.43
BCIP Venture Associates II, L.P.	SAFE	\$46,115.43
Stephen Harper	SAFE	\$41,463.44
Samuel Jones	SAFE	\$36,892.34
Jonathan Duarte	SAFE	\$36,892.34
Christian Nordby	SAFE	\$36,892.34
Christopher Harper	SAFE	\$27,669.26
BCV 2019-MD Primary, L.P.	SAFE	\$18,446.17
BCIP Venture Associates II-B, L.P.	SAFE	\$15,432.49
Total Transferred to Defendants for SAFEs		\$33,009,101.67
Michael Giles	Retention Payment	\$55,000,000.00
Laurence Beal	Retention Payment	\$2,000,000.00
Monique Saugstad	Retention Payment	\$2,000,000.00
Joshua Allen Slate	Retention Payment	\$700,000.00
Paul Trone	Retention Payment	\$700,000.00
Brandon Mann	Retention Payment	\$500,000.00
Justin Lovero	Retention Payment	\$300,000.00
Matthew Lyon	Retention Payment	\$300,000.00

Defendant	Type of Interest	Amount of Transfer or Obligation
Adam Boryenace	Retention Payment	\$250,000.00
Craig Shindledecker	Retention Payment	\$250,000.00
Christopher Young	Retention Payment	\$200,000.00
Dena Wever	Retention Payment	\$175,000.00
Lindsey Boerner	Retention Payment	\$175,000.00
Brent Johnson	Retention Payment	\$150,000.00
John Dwyer	Retention Payment	\$150,000.00
Tana Lawler	Retention Payment	\$150,000.00
David Meents	Retention Payment	\$100,000.00
David Streckert	Retention Payment	\$100,000.00
Mike McGee	Retention Payment	\$100,000.00
Stanton Camp	Retention Payment	\$100,000.00
Tim Millar	Retention Payment	\$100,000.00
Kiara Baudoin	Retention Payment	\$50,000.00
Total Retention Payments and Payment Obligations to Defendants		\$63,550,000

Additional Page if Debtor Has More Executory Contracts or Unexpired Leases

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page.

List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.153	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	CONFIDENTIALITY AGREEMENT DATED 7/6/2022	Citadel Enterprise Asia Limited 8 Finance Stree Two International Finance Center 16th Floor Hong Kong, CHINA
2.154	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	CONFIDENTIAL GLOBAL SETTLEMENT AGREEMENT DATED 1/13/2022	Citadel Securities Americas LLC Heath Tarbert Jessica Fricke 131 S. Dearborn Chicago, IL 60603
2.155	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	CONFIDENTIALITY AGREEMENT DATED 8/10/2021	ClearBank® Limited 25 Marsh Street 4th Floor, Prologue Works Bristol, BS1 4AX UNITED KINGDOM
2.156	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	2020 EQUITY INCENTIVE PLAN (NON-U.S.) DATED 11/22/2021	Clement Joshua Ip ADDRESS ON FILE
2.157	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	ENGAGEMENT OF CLEMENT T. MAYNARD & COMPANY FOR DARE ACT REGISTRATION DATED 6/25/2021	Clement T. Maynard & Company G. K. Symonette Building Shirley Street PO Box N-7525 Nassau, BAHAMAS
2.158	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	CLOUDFLARE ORDER FORM DATED 11/4/2022	CloudFlare ADDRESS UNKNOWN
2.159	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	MUTUAL NONDISCLOSURE AGREEMENT DATED 10/12/2020	Coinbase, Inc. 100 Pine St. #1250 San Francisco, CA 94111

Additional Page if Debtor Has More Executory Contracts or Unexpired Leases

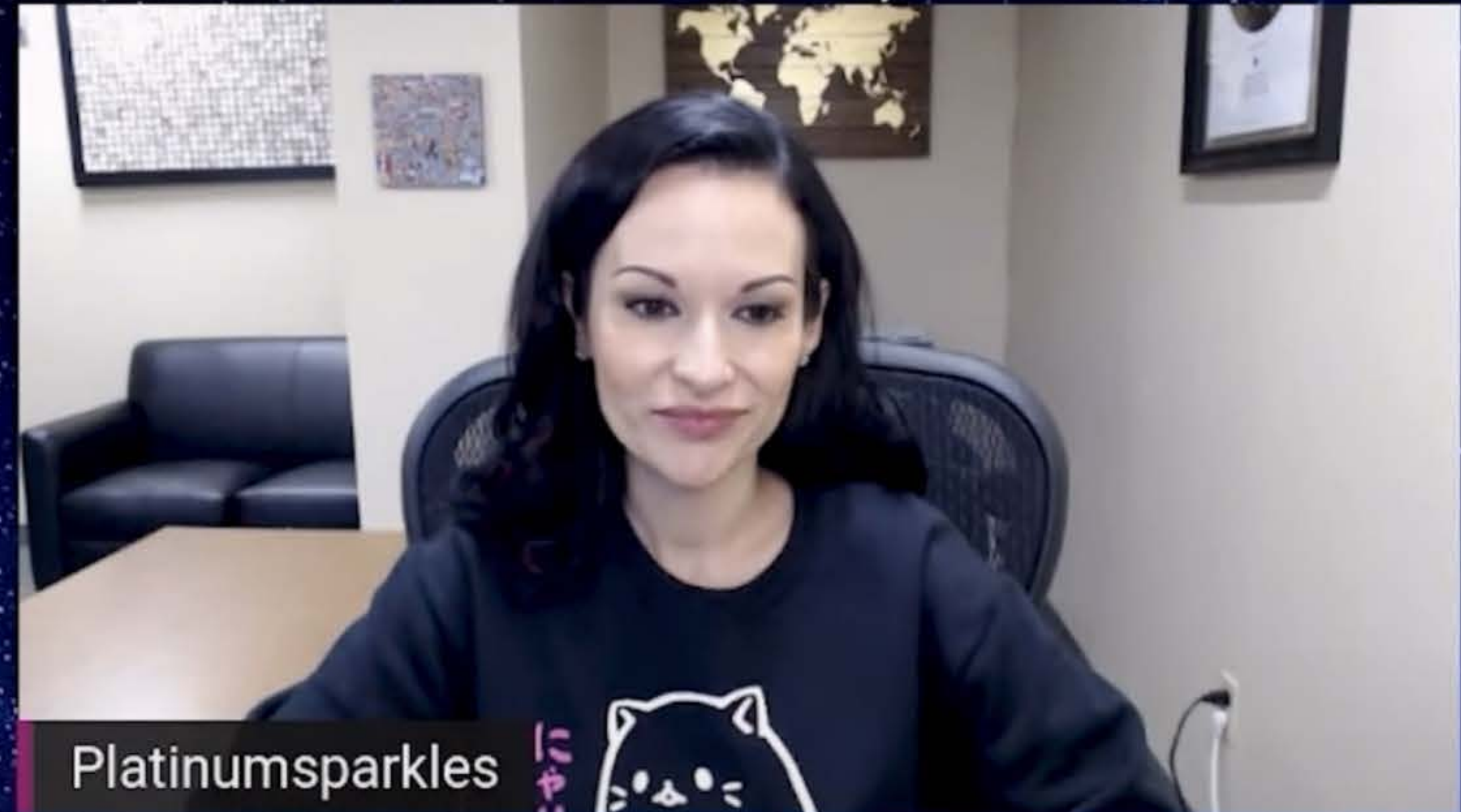
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List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.34	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	CONSULTING AGREEMENT DATED 3/31/2021	CHAN LUK WAI ADDRESS ON FILE
2.35	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	CONSULTING AGREEMENT DATED 3/31/2021	CHRISTIANA LAI ADDRESS ON FILE
2.36	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	CONSULTING AGREEMENT DATED 3/31/2021	Christopher Taylor Johnson ADDRESS ON FILE
2.37	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	Retention Incentive Award Agreement Dated 9/30/2022	Christopher Young ADDRESS ON FILE
2.38	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	CONFIDENTIAL GLOBAL SETTLEMENT AGREEMENT DATED 1/13/2022	Citadel Securities Americas LLC - Heath Tarbert, Jessica Fricke 131 S. Dearborn Chicago, IL 60603
2.39	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	SPONSORSHIP AGREEMENT DATED 8/18/2021	Coachella Music Festival, LLC 425 W. 11th Street, Suite 500 Los Angeles, CA 90015
2.40	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	INVESTORS' RIGHTS AGREEMENT DATED 1/21/2022	COINBASE GLOBAL, INC. 248 3rd Street #434 Oakland, CA 94607



Brett Harrison



Platinumsparkles

our Citadel or Susquehanna investors of FTX



Brett Harrison

FTX
they're not I'm not quite sure where



SBF
@SBF_FTX

26) Say you tokenize stocks.

Instead of waiting 2 days to settle, you can just swap AAPL-token <> USD-token on a blockchain. Which, remember, takes about 10 seconds and costs about \$0.0002 in fees.

No remaining settlement uncertainty or risk.

6:05 AM · 7/16/22 · [Twitter Web App](#)



SBF
@SBF_FTX

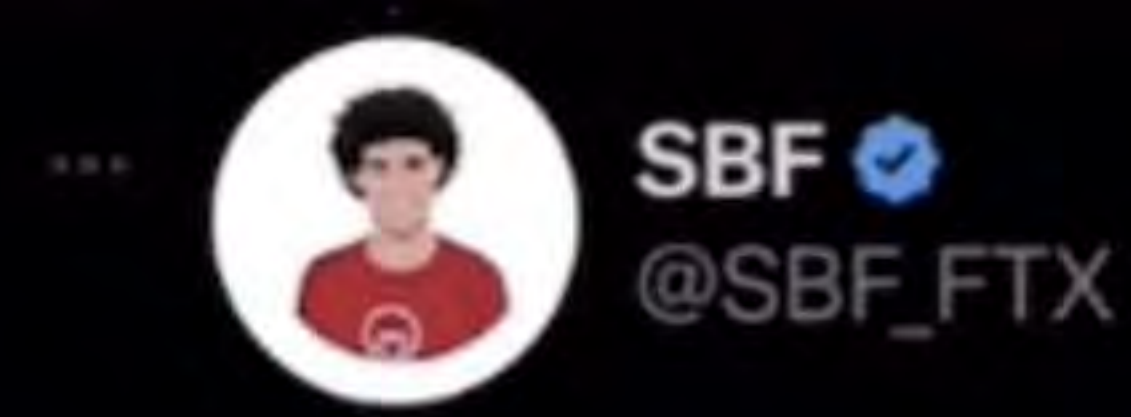
17) Ok, so how about market structure?

On January 28th 2021, most major retail brokers shut down.

Users were unable to buy; sometimes they were unable to sell, too. And on some platforms users got liquidated.

The weird thing is that there was basically no leverage!

6:04 AM · 7/16/22 · [Twitter Web App](#)



SBF
@SBF_FTX

23) And on January 28th 2021, there was a lot of retail trading volume.

Which meant tens (hundreds?) of billions of dollars of pending settlements between tens of counterparties which would take days.

As GME rose in price, so did the potential loss if settlement failed.

6:04 AM · 7/16/22 · [Twitter Web App](#)



SBF
@SBF_FTX

20) The dollars they send in are routed to the broker's bank account. Their order is in turn routed to a PFOF firm, like Citadel or Virtu.

That firm, in turn, might buy the stock on an ATS from another trading firm, which would finally bid on NASDAQ, or NYSE.

6:04 AM · 7/16/22 · [Twitter Web App](#)



Brett Harrison

those are fully collateralized tokens so
you know for every you know one token of



10:51 / 24:05

Can the collateral shares for the tokenized sec...





you know gme share there's of gme token
there's you know a gme share in

Brett Harrison

Exhibit D

Exhibit D

FTX Trading Ltd., et al.,
Time Detail by Activity by Professional
June 1, 2023 through June 30, 2023

FTX Trading Ltd., et al.,
Time Detail by Activity by Professional
June 1, 2023 through June 30, 2023

Due Diligence

Professional	Date	Hours	Activity
Luke Francis	6/22/2023	1.2	Review of tokenized share transfers on exchange
Robert Gordon	6/22/2023	0.1	Call to review drafted explanations of financial statements furnished for due diligence request with H. Ardizzoni, R. Gordon (A&M)
Steve Coverick	6/22/2023	0.1	Call with S. Coverick and L. Callerio (A&M) re: bonus payment analysis
Lorenzo Callerio	6/23/2023	0.8	Update the FTX2.0 tracker including new responses received from G. Walla and K. Ramanathan (A&M) prior to circulate them to PWP
Lorenzo Callerio	6/23/2023	0.3	Review the PMO materials received from C. Stockmeyer (A&M)
Lorenzo Callerio	6/23/2023	0.4	Prepare an FTX2.0 responses / document approval list to be circulated to J. Ray (FTX)
Luke Francis	6/23/2023	1.3	Review of tax related liabilities based on insider payments
Mackenzie Jones	6/23/2023	0.9	Research employment detail related to Dotcom employee severance claims
Steve Coverick	6/23/2023	1.3	Review and provide comments on materials compiled in response to UCC request re: payroll data
Luke Francis	6/24/2023	1.3	Review of insider payments through tokenized shares on exchange
Luke Francis	6/25/2023	0.5	Conference with L. Francis and R. Esposito (A&M) re: tokenized shares of stock on exchange regarding insiders
Rob Esposito	6/25/2023	0.5	Conference with L. Francis and R. Esposito (A&M) re: tokenized shares of stock on exchange regarding insiders
Lorenzo Callerio	6/26/2023	0.4	Update the FTX2.0 trackers including certain additional documents received
Lorenzo Callerio	6/26/2023	0.4	Draft a revised FTX2.0 approval list to be send to M. Wu (S&C) and J. Ray (FTX)
Lorenzo Callerio	6/26/2023	0.4	Draft an approval request list for J. Ray (FTX) re: additional items to be published to the UCC data room
Cullen Stockmeyer	6/27/2023	0.2	Meeting with L. Callerio, C. Stockmeyer (A&M) re: Diligence process update
Cullen Stockmeyer	6/27/2023	1.1	Prepare diligence tracker related to FTX2.0 for additional diligence questions
Lorenzo Callerio	6/27/2023	0.4	Update the internal UCC diligence tracker
Lorenzo Callerio	6/27/2023	0.6	Draft an updated UCC approval list to be sent to J. Ray (FTX)
Lorenzo Callerio	6/27/2023	0.2	Meeting with L. Callerio, C. Stockmeyer (A&M) re: Diligence process update
Lorenzo Callerio	6/27/2023	0.3	Call with S. Coverick and L. Callerio (A&M) re: diligence process update
Mackenzie Jones	6/27/2023	0.9	Research entity background/legal status for tax filing purposes

Business Operations

Professional	Date	Hours	Activity
Kevin Baker	6/8/2023	2.3	Research AWS for specific users related to insider trading and tokenized equity on or around petition date
Kevin Baker	6/8/2023	2.4	Analyze internal FTX deposit addresses related to specific user accounts for S&C request
Kevin Baker	6/8/2023	2.2	Perform quality control measures on KYC file IDs and Google Drive information related to specific customer accounts
Kora Dusendschon	6/8/2023	0.2	Draft correspondence requesting additional information and update on KYC related items
Kora Dusendschon	6/8/2023	0.4	Compile weekly dashboard for R. Perubhatia (FTX) for review and feedback by the team
Kora Dusendschon	6/8/2023	0.1	Review request for additional metrics for tracking dashboard
Kumanan Ramanathan	6/8/2023	0.1	Call with M. Flynn, K. Ramanathan, L. Callerio (A&M) to discuss latest crypto tracing status
Kumanan Ramanathan	6/8/2023	0.3	Call with M. Flynn, K. Ramanathan (A&M), D. Handelsman (S&C) to discuss BitGo KYB/AML agreement
Kumanan Ramanathan	6/8/2023	0.2	Review historical Solana custodial presentation and distribute
Kumanan Ramanathan	6/8/2023	0.3	Review of KYC vendor final engagement letter and provide feedback
Kumanan Ramanathan	6/8/2023	0.4	Call with R. Perubhatia (FTX) to discuss IT matters
Kumanan Ramanathan	6/8/2023	0.3	Investigate domain registration legal entity
Kumanan Ramanathan	6/8/2023	0.3	Review of commercial terms for coin matrix and discuss internally
Kumanan Ramanathan	6/8/2023	0.3	Call with K. Lemire (Quinn) to discuss Solana staking feasibility
Kumanan Ramanathan	6/8/2023	0.3	Review of customer accounts headings for borrow limit 150 million and its historical data
Kumanan Ramanathan	6/8/2023	0.2	Review of final customer support KYC manual vendor presentation materials and distribute to CAO for feedback
Kumanan Ramanathan	6/8/2023	2.9	Prepare Solana custody selection presentation and distribute
Kumanan Ramanathan	6/8/2023	0.2	Review of most recent trading price SEY token and compare against market price of sale
Kumanan Ramanathan	6/8/2023	0.3	Call with G. Walla (A&M) to discuss Alameda's tracing exercise
Kumanan Ramanathan	6/8/2023	0.3	Call with L. Abendschein (Coinbase) to discuss Solana staking options
Kumanan Ramanathan	6/8/2023	0.2	Correspond with D. Hariton (S&C) to discuss tax implications on various hedging proposals
Larry Iwanski	6/8/2023	1.8	Review of 4 separate tracing deliverables under Req 39

Debtor **Alameda Research Ltd**
Name

Debtor **Alameda Research Ltd**
Name

Additional Page if Debtor Has More Executory Contracts or Unexpired Leases

Additional Page if Debtor Has More Executory Contracts or Unexpired Leases

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List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.104	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	MARKET MAKING AGREEMENT DATED 7/24/2021	Coin98 Labs Ltd Intershore Chambers P.O Box 4342 Road Town, Tortola, BRITISH VIRGIN ISLANDS
2.105	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	MARGIN LOAN AGREEMENT DATED 6/4/2020	COINBASE CREDIT, INC. ADDRESS UNKNOWN
2.106	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	CUSTODIAL SERVICES AGREEMENT DATED 5/22/2020	Coinbase Custody International Limited 70 Sir John Rogerson's Quay Dublin 2, D02 R296 IRELAND (EIRE)
2.107	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	SECURITY AGREEMENT OVER A CUSTODY ACCOUNT DATED 1/26/2022	COINBASE CUSTODY INTERNATIONAL LIMITED 70 Sir John Rogerson's Quay Dublin, IRELAND (EIRE)
2.108	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	MUTUAL NONDISCLOSURE AGREEMENT DATED 10/12/2020	Coinbase, Inc. 100 Pine St. #1250 San Francisco, CA 94111
2.109	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	COINONE MEMBERSHIP AGREEMENT	Coinone Inc. ADDRESS UNKNOWN
2.110	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	LETTER AGREEMENT RE: ENGAGEMENT OF COLE-FRIEMAN & MALLON LLP DATED 1/18/2022	Cole-Frieman & Mallon LLP - Bart Mallon 201 California Street Suite 350 San Francisco, CA 94111

2.237	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	SIDE LETTER AGREEMENT DATED 3/5/2021	LMAX Digital Broker Limited 208 Regus, World Trade Center Bayside Road Gibraltar, GIBRALTAR
2.238	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	COINBASE DERIVATIVES PARTICIPANT FIRM AGREEMENT DATED 8/26/2022	LMX Labs, LLC Attn: LMX Labs, LLC Legal Department Civic Opera Building 20 N Wacker Dr, Suite 3000 Chicago, IL 60606
2.239	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	BORROWING AGREEMENT DATED 7/14/2020	Lunar 8 Global Services Inc Mandar House, 3rd Floor Johnson's Ghut Tortola, BRITISH VIRGIN ISLANDS
2.240	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	PROPOSAL FOR PAYROLL SERVICES DATED 2/20/2019	Manpower Services (Hong Kong) Limited 9 CHONG YIP STREET ROOMS 2303-04, 23/F KWUN TONG KOWLOON, CHINA
2.241	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	GROUP SALES AGREEMENT	Margaritaville Beach Resort Nassau The Pointe New Providence Nassau, 00000 BAHAMAS
2.242	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	MUTUAL NON-DISCLOSURE AGREEMENT DATED 11/24/2020	Markus Infanger ADDRESS ON FILE
2.243	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	MARKET MAKING AGREEMENT DATED 8/21/2021	Mars Voyage Limited Vistra Corporate Services Centre Wickhams Cay I Road Town, Tortola, VG1110 BRITISH VIRGIN ISLANDS

CHAPTER 6: PRIVATELY NEGOTIATED TRANSACTIONS

RULE 601. Block Trades

- (a) The Exchange shall designate the products in which block trades shall be permitted and determine the minimum quantity thresholds for such transactions.
- (b) Products designated for Block Trades
None.
- (c) The following shall govern block trades:
- (1) A block trade must be for a quantity that is at or in excess of the applicable minimum threshold. Orders may not be aggregated in order to achieve the minimum transaction size, except by those entities described in Sections (9) and (10) below and as provided in Rule 601(c)(2).
 - (2) Each Person to a block trade must be an Eligible Contract Participant.
 - (3) A broker for a Person shall not execute any order by means of a block trade for a Person unless such Person has specified that the order be executed as a block trade.
 - (4) The price at which a block trade is executed must be fair and reasonable in light of (i) the size of the block trade, (ii) the prices and sizes of other transactions in the same contract at the relevant time, (iii) the prices and sizes of transactions in other relevant markets, including without limitation the underlying cash market or related futures markets, at the relevant time, and (iv) the circumstances of the markets or the Participants to the block trade.
 - (5) Block trades shall not set off conditional orders (e.g., Stop Orders and MIT Orders) or otherwise affect orders in the regular market.
 - (6) One of the Persons or the broker of one of the Persons to the block trade must ensure that each block trade is reported to the Exchange within 5 minutes of the transaction. The Exchange shall promptly publish such information separately from the reports of transactions in the regular market.
 - (7) Reporting Method and Information
 - i. Block trades must be reported to the Exchange by calling the FairX Exchange Control Center or in accordance with another approved reporting method.
 - ii. The block trade report must include the information related to the block trade specified in the Exchange's approved reporting method, including: the identification of parties to the block trade; product details; trade quantity, price, and time; and, Clearing Firm.
 - (8) Clearing Firms, Participants, Participant Firms, and Broker Firms involved in the execution of block trades must maintain a record of the transaction in accordance with Rules 401.
 - (9) A commodity trading advisor ("CTA") registered or exempt from registration under the Act, including, without limitation, any investment advisor registered or exempt from registration under the Investment Advisors Act of 1940, or principal thereof, shall be the applicable entity for purposes of Sections (1), (3), (4) and (5), provided such advisors have total assets under management exceeding \$25

million and the block trade is suitable for the customers of such advisors.

- (10) A foreign Person performing a similar role or function to a CTA or investment advisor as described in Section 10, or principal thereof, and subject as such to foreign regulation, shall be the applicable entity for purposes of Sections (1), (3), (4) and (5), provided such Persons have total assets under management exceeding \$25 million and the block trade is suitable for the customers of such Persons.

RULE 602. Exchange of Derivatives for Related Positions

- (a) The Exchange shall designate the products in which Exchange of Derivatives for Related Position ("EDRP") are permitted.
- (b) EDRPs Permitted
None.
- (c) Nature of an EDRP
- (1) An EDRP consists of two discrete but related simultaneous transactions. One party to the EDRP must be the buyer of (or the holder of the long market exposure associated with) the related position and the seller of the corresponding Contract. The other party to the EDRP must be the seller of (or the holder of the short market exposure associated with) the related position and the buyer of the corresponding Contract.
 - (2) However, a Participant may facilitate, as principal, the related position on behalf of a Customer, provided that the Participant can demonstrate that the related position was passed through to the Customer who received the Exchange Contract position as part of the EDRP.
- (d) Related Positions
The related position (cash OTC swap, OTC option, or other OTC derivative) must be a derivative or related product of such Contract that has a reasonable degree of price correlation and quantitative equivalence to the Contract.
- (e) Quantity
The quantity covered by the related position must be approximately equivalent to the quantity covered by the Exchange Contracts.
- (f) Prices and Price Increments
An EDRP transaction may be entered into in accordance with the applicable price increments or option premium increments set forth in the rules governing the pertinent Contracts, at such prices as are mutually agreed upon by the two parties to the transaction.
- (g) Date and Time of Transaction
The date and the time of execution of all EDRP transactions must be denoted on the record of the transaction required to be created pursuant to Rule 401.
- (h) Termination of Trading in Exchange Contracts
EDRP transactions may be permitted after termination of trading in expiring Contracts, as prescribed in the applicable rules governing such Contracts. Such transactions shall not establish new positions.
- (i) Identification and Submission to the Exchange

LMX Labs LLC

FairX Coinbase Derivatives

Rulebook

Additional Page if Debtor Has More Executory Contracts or Unexpired Leases

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page.

List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.27	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	AMENDED AND RESTATED SHAREHOLDERS' AGREEMENT DATED 9/17/2021	M-League Pte. Ltd. Attention: Sai Srinivas Kiran G 50 Raffles Place #19-00, Singapore Land Tower Singapore, 048623 SINGAPORE
2.28	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	LOAN AGREEMENT DATED 11/4/2021	MR. SEUNG GUN LEE ADDRESS ON FILE
2.29	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	LOAN AGREEMENT	OTC Service AG Boglerenstrasse 2a Küsnacht, 8700 SWITZERLAND
2.30	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	SERVICES AGREEMENT DATED 10/10/2022	Otter Audits LLC 519 West 22nd Street Sioux Falls, SD 57105
2.31	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	SHAREHOLDERS' AGREEMENT DATED 12/9/2020	OVEX (PTY) LTD 1st Floor, The Annex, 2 Energy Lane Bridgeways Precinct, Century City Cape Town, 7441 SOUTH AFRICA
2.32	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	BLOCK TRADE AGREEMENT DATED 9/1/2021	Paradigm Connect Asia Pte Ltd ADDRESS UNKNOWN
2.33	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT DATED 11/19/2021	Paradigm Connect Holdings, LLC 190 Elgin Avenue, George Town Grand Cayman, KY 1-9008 CAYMAN ISLANDS

Additional Page if Debtor Has More Executory Contracts or Unexpired Leases

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page.

List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.34	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	INVESTORS' RIGHTS AGREEMENT DATED 11/19/2021	Paradigm Connect Holdings, LLC, ADDRESS UNKNOWN
2.35	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	SUBSCRIPTION AGREEMENT DATED 10/28/2021	PARADIGM ONE (CAYMAN) FEEDER LP ADDRESS UNKNOWN
2.36	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	SUBSCRIPTION AGREEMENT DATED 10/28/2021	PARADIGM ONE GP, LLC ADDRESS UNKNOWN
2.37	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	SHAREHOLDERS' AGREEMENT DATED 10/27/2021	Piemont Holdings 1 Limited attention: The Legal Department 6th Floor, 37 Esplanade St Helier, JE2 3QA JERSEY
2.38	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	VOTING AGREEMENT DATED 2/1/2022	Portals Labs, Inc. 4470 W. SUNSET BLVD. #90092 LOS ANGELES, CA 90027
2.39	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	INVESTORS' RIGHTS AGREEMENT DATED 2/1/2022	Portals Labs, Inc. 4470 W. SUNSET BLVD. #90092 LOS ANGELES, CA 90027
2.40	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	LETTER AGREEMENT DATED 2/12/2021	PYTH DATA FOUNDATION ADDRESS UNKNOWN

Additional Page if Debtor Has More Executory Contracts or Unexpired Leases

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page.

List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.384	State what the contract or lease is for and the nature of the debtor's interest	2020 EQUITY INCENTIVE PLAN (NON-U.S.) DATED 11/22/2021	Man Ho Cheung ADDRESS ON FILE
	State the term remaining		
	List the contract number of any government contract		
2.385	State what the contract or lease is for and the nature of the debtor's interest	2020 EQUITY INCENTIVE PLAN (NON-U.S.) DATED 11/22/2021	Man Kai Chul (Brandon) ADDRESS ON FILE
	State the term remaining		
	List the contract number of any government contract		
2.386	State what the contract or lease is for and the nature of the debtor's interest	2020 EQUITY INCENTIVE PLAN (U.S.) DATED 11/22/2021	Maria Shaikh ADDRESS ON FILE
	State the term remaining		
	List the contract number of any government contract		
2.387	State what the contract or lease is for and the nature of the debtor's interest	GENERAL SERVICE AGREEMENT DATED 6/30/2020	Market Mastery ADDRESS UNKNOWN
	State the term remaining		
	List the contract number of any government contract		
2.388	State what the contract or lease is for and the nature of the debtor's interest	COLLABORATION AND CONFIDENTIALITY AGREEMENT DATED 2/25/2022	MARQUES & FILMS 22 rue Périer - 92120 MONTROUGE
	State the term remaining		
	List the contract number of any government contract		
2.389	State what the contract or lease is for and the nature of the debtor's interest	2020 EQUITY INCENTIVE PLAN (NON-U.S.) DATED 11/22/2021	Matt Burgess ADDRESS ON FILE
	State the term remaining		
	List the contract number of any government contract		
2.390	State what the contract or lease is for and the nature of the debtor's interest	LETTER AGREEMENT RE FTX ADVISORY BOARD DATED 8/24/2021	Matt Huang - Paradigm Fund L.P., Paradigm Green Fortitudo LP 548 Market Street San Francisco, CA 94104
	State the term remaining		
	List the contract number of any government contract		

Additional Page if Debtor Has More Executory Contracts or Unexpired Leases

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List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.454	State what the contract or lease is for and the nature of the debtor's interest	SECONDARY SHARE PURCHASE AGREEMENT DATED 10/18/2021	Paper Bird Inc 3500 South Dupont Highway Dover, DE 19901
	State the term remaining		
	List the contract number of any government contract		
2.455	State what the contract or lease is for and the nature of the debtor's interest	PAYMENT AGENT AGREEMENT DATED 10/15/2021	Paper Bird Inc 3500 South Dupont Highway Dover, DE 19901
	State the term remaining		
	List the contract number of any government contract		
2.456	State what the contract or lease is for and the nature of the debtor's interest	INVESTORS' RIGHTS AGREEMENT DATED 1/21/2022	Paradigm Fund LP 548 Market Street Ste 46425 San Francisco, CA 94104
	State the term remaining		
	List the contract number of any government contract		
2.457	State what the contract or lease is for and the nature of the debtor's interest	INVESTORS' RIGHTS AGREEMENT DATED 1/21/2022	Paradigm Fund LP 548 Market Street Ste 46425 San Francisco, CA 94104
	State the term remaining		
	List the contract number of any government contract		
2.458	State what the contract or lease is for and the nature of the debtor's interest	INVESTORS' RIGHTS AGREEMENT DATED 1/21/2022	Paradigm Fund LP 548 Market Street Ste 46425 San Francisco, CA 94104
	State the term remaining		
	List the contract number of any government contract		
2.459	State what the contract or lease is for and the nature of the debtor's interest	INVESTORS' RIGHTS AGREEMENT DATED 1/21/2022	Paradigm Fund LP 548 Market Street Ste 46425 San Francisco, CA 94104
	State the term remaining		
	List the contract number of any government contract		
2.460	State what the contract or lease is for and the nature of the debtor's interest	INVESTORS' RIGHTS AGREEMENT DATED 1/21/2022	Paradigm Green Fortitudo LP 548 Market Street Ste 46425 San Francisco, CA 94104
	State the term remaining		
	List the contract number of any government contract		

Assets - Real and Personal Property

Part 4, Question 15: Non-publicly traded stock interests in incorporated and unincorporated businesses, including any interest in an LLC, partnership, or joint venture.

Non-publicly traded stock and interests in incorporated and unincorporated businesses, including any interest in an LLC, partnership, or joint venture (Name of entity:)	% of Ownership	Valuation method used for current value	Current value of debtor's interest
KABOMPO HOLDINGS, LTD.	Undetermined	Funded Amount	\$4,999,995.39
LIGHTBEAM DATA LABS INC.	Undetermined	Funded Amount	\$8,675,000.00
LIMIT BREAK INC.	Undetermined	Funded Amount	\$1,000,997.36
MERGE HOLDINGS LTD	Undetermined	Funded Amount	\$475,965.00
MESSARI HOLDING INC.	Undetermined	Funded Amount	\$499,996.59
METALINK LABS, INC.	Undetermined	Funded Amount	\$300,000.00
M-LEAGUE PTE. LTD.	Undetermined	Funded Amount	\$15,000,000.11
MOJVERSE, INC.	Undetermined	Funded Amount	\$250,000.00
NESTCOIN HOLDING LIMITED	Undetermined	Funded Amount	\$250,050.00
NOOM LIMITED	Undetermined	Funded Amount	\$2,073,965.69
O'LEARY PRODUCTIONS USA LLC	Undetermined	Funded Amount	\$1,000,000.00
ODYSSEY TECHNOLOGIES LIMITED	Undetermined	Funded Amount	\$1,969,205.08
OTC SERVICES LTD.	Undetermined	Funded Amount	\$6,826,000.00
OVEX PROPRIETARY LIMITED	Undetermined	Funded Amount	\$5,000,000.00
PARADIGM CONNECT HOLDINGS, LLC	Undetermined	Funded Amount	\$9,249,976.54
PINTU INVESTMENTS ONE PTE. LTD.	Undetermined	Funded Amount	\$2,000,000.00
PIONIC VENTURES LLC	Undetermined	Funded Amount	\$71,300,000.00
PIXELYNX, INC.	Undetermined	Funded Amount	\$500,000.00
PORTALS LABS, INC.	Undetermined	Funded Amount	\$200,057.14

Assets - Real and Personal Property

Part 11, Question 77: Other property of any kind not already listed

Other property of any kind not already listed Examples: Season tickets, country club membership	Current value of debtor's interest
Fund Investment: VY DHARANA EM TECHNOLOGY FUND (\$0.9M Funded Amount)	Undetermined
Fund Investment: LIQUID VALUE FUND I LP (\$27.1M Funded Amount)	Undetermined
Fund Investment: ETHEREAL VENTURES FUND I L.P. (\$1.4M Funded Amount)	Undetermined
Fund Investment: RACE CAPITAL II, L.P. (\$0.3M Funded Amount)	Undetermined
Fund Investment: PARADIGM ONE (Cayman) Feeder LP (\$20.3M Funded Amount)	Undetermined
Fund Investment: IOSG FUND II LP (\$3M Funded Amount)	Undetermined
Fund Investment: AGILE GROUP FUND A (\$1M Funded Amount)	Undetermined
Fund Investment: KRAKEN VENTURES FUND I LP (\$3M Funded Amount)	Undetermined
Fund Investment: SCHF CAYMAN, L.P. (\$25M Funded Amount)	Undetermined
Fund Investment: VY SPACE II, L.P. (\$9.7M Funded Amount)	Undetermined
Fund Investment: ROK CAPITAL OFFSHORE FUND, LTD. (\$5M Funded Amount)	Undetermined
Fund Investment: UVM SIGNUM BLOCKCHAIN FUND VCC (\$2.1M Funded Amount)	Undetermined
Token Receivable: 1INCH LIMITED, (Token: 1INCH; Qty: 4,444,444.44667; USD Spot Price Receivable Amount: \$5,502,355)	Undetermined
Token Receivable: ARMOR DAO, (Token: ARMOR; Qty: 833,333.33333; USD Spot Price Receivable Amount: \$4,182)	Undetermined
Token Receivable: AXELAR FOUNDATION, (Token: AXL; Qty: 1,173,708.92019; USD Spot Price Receivable Amount: \$804,280)	Undetermined
Token Receivable: BASIS YIELD CORP, (Token: TBD; Qty: 625,000.00000; Funded Amount: \$2,500,000)	Undetermined
Token Receivable: BLUE HORIZON GLOBAL CORP., (Token: ZEND; Qty: 769,231.00000; Funded Amount: \$250,000)	Undetermined
Token Receivable: BONZAI PROTOCOL LTD., (Token: TBD; Qty: 5,000,000.00000; Funded Amount: \$750,000)	Undetermined
Token Receivable: BULLET GALAXY LABS LTD., (Token: GXY; Qty: 800,000.00000; Funded Amount: \$200,000)	Undetermined
Token Receivable: BUZZ DEVELOPMENT INC, (Token: PERC; Qty: 1,199,999.70000; USD Spot Price Receivable Amount: \$261,240)	Undetermined
Token Receivable: CHILLCHAT HOLDINGS PTE. LTD., (Token: TBD; Qty: 15,000,000.00000; Funded Amount: \$500,000)	Undetermined
Token Receivable: CONCURRENT C INC. (Token: TBD; Qty: 196,581.00000; USD Spot Price Receivable Amount: \$75,670)	Undetermined
Token Receivable: CONTRARIAN DEFI LLC, (Token: PORT; Qty: 16,000,000.00000; USD Spot Price Receivable Amount: \$138,442)	Undetermined
Token Receivable: CRYPTOMIND LAB PTE. LTD, (Token: GF; Qty: 12,000,000.00000; USD Spot Price Receivable Amount: \$1,497,600)	Undetermined
Token Receivable: CYBERPREP CORP, (Token: TBD; Qty: 600,000.00000; Funded Amount: \$300,000)	Undetermined

Part 2: List All Creditors with NONPRIORITY Unsecured Claims

3. List in alphabetical order all of the creditors with nonpriority unsecured claims. If the debtor has more than 6 creditors with nonpriority unsecured claims, fill out and attach the Additional Page of Part 2.

		Amount of claim	
3.1	Nonpriority creditor's name and mailing address ETHEREAL VENTURES FUND I LP C/O COOLEY LLP ATTENTION: CATHY RUDE 101 CALIFORNIA STREET, 5TH FLOOR SAN FRANCISCO, CA 94111 Date or dates debt was incurred Undetermined Last 4 digits of account number	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Fund Investment: ETHEREAL VENTURES FUND I LP. (\$0.6M Unfunded Commitment) Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$ Undetermined
3.2	Nonpriority creditor's name and mailing address KINDERGARTEN VENTURES FUND II PO Box 3217 Seattle Seattle, WA 98114 Date or dates debt was incurred Undetermined Last 4 digits of account number	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Fund Investment: KINDERGARTEN VENTURES FUND II (\$0.375M Unfunded Commitment) Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$ Undetermined
3.3	Nonpriority creditor's name and mailing address KRAKEN VENTURES FUND I LP 2425 WILSON ST AUSTIN, TX 78704-5434 Date or dates debt was incurred Undetermined Last 4 digits of account number	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Fund Investment: KRAKEN VENTURES FUND I LP (\$2M Unfunded Commitment) Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$ Undetermined
3.4	Nonpriority creditor's name and mailing address LIQUID VALUE FUND I LP C/O MG STOVER & CO. ATTN: INVESTOR RELATIONS 1331 17TH STREET, SUITE 720 DENVER, CO 80202 Date or dates debt was incurred Undetermined Last 4 digits of account number	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Fund Investment: LIQUID VALUE FUND I LP (\$32.9M Unfunded Commitment) Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$ Undetermined
3.5	Nonpriority creditor's name and mailing address OPEN LOOT ECOSYSTEM FUND I LTD C/O P.O. BOX 3133 CASABLANCA HOUSE LUCK HILL ROAD TOWN TORTOLA BRITISH VIRGIN ISLANDS Date or dates debt was incurred Undetermined Last 4 digits of account number	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Fund Investment: OPEN LOOT ECOSYSTEM FUND I LTD (\$0.25M Unfunded Commitment) Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$ Undetermined
3.6	Nonpriority creditor's name and mailing address PARADIGM ONE (CAYMAN) FEEDER LP Date or dates debt was incurred Undetermined Last 4 digits of account number	As of the petition filing date, the claim is: <i>Check all that apply.</i> <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Fund Investment: PARADIGM ONE (CAYMAN) FEEDER LP (\$14.7M Unfunded Commitment) Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	\$ Undetermined

Additional Page if Debtor Has More Executory Contracts or Unexpired Leases

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page.

List all contracts and unexpired leases		State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease
2.104	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	ASSIGNMENT OF TECHNOLOGY AGREEMENT DATED 1/12/2021 Nishad Singh ADDRESS ON FILE
2.105	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	FOUNDER'S RESTRICTED STOCK PURCHASE AGREEMENT DATED 1/12/2021 Nishad Singh ADDRESS ON FILE
2.106	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	MEDIA AUTHORIZATION DATED 2/21/2022 NP DIGITAL ADDRESS UNKNOWN
2.107	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	LETTER AGREEMENT RE: MERCHANT SERVICES DATED 1/20/2022 NUVEI LIMITED Kafkasou, 9, Treppides Towe Floor 3, Flat/Office 301 Nicosia Aglantzia, 2112 CYPRUS
2.108	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	INVESTORS' RIGHTS AGREEMENT DATED 1/21/2022 Paradigm Fund LP 548 Market Street Ste 46425 San Francisco, CA 94104
2.109	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	INVESTORS' RIGHTS AGREEMENT DATED 1/21/2022 Paradigm Fund LP 548 Market Street Ste 46425 San Francisco, CA 94104
2.110	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	INVESTORS' RIGHTS AGREEMENT DATED 1/21/2022 Paradigm Fund LP 548 Market Street Ste 46425 San Francisco, CA 94104

Additional Page if Debtor Has More Executory Contracts or Unexpired Leases

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List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.111	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	INVESTORS' RIGHTS AGREEMENT DATED 1/21/2022	Paradigm Fund LP 548 Market Street Suite 46425 San Francisco, CA 94104
2.112	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	INVESTORS' RIGHTS AGREEMENT DATED 1/21/2022	Paradigm Fund LP 548 Market Street Ste 46425 San Francisco, CA 94104
2.113	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	INVESTORS' RIGHTS AGREEMENT DATED 1/21/2022	Paradigm Green Fortitudo LP 548 Market Street Suite 46425 San Francisco, CA 94104
2.114	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	INVESTORS' RIGHTS AGREEMENT DATED 1/21/2022	Paradigm Green Fortitudo LP 548 Market Street Ste 46425 San Francisco, CA 94104
2.115	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	INVESTORS' RIGHTS AGREEMENT DATED 1/21/2022	Paradigm Green Fortitudo LP 548 Market Street Ste 46425 San Francisco, CA 94104
2.116	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	INVESTORS' RIGHTS AGREEMENT DATED 1/21/2022	Paradigm Green Fortitudo LP 548 Market Street Ste 46425 San Francisco, CA 94104
2.117	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	INVESTORS' RIGHTS AGREEMENT DATED 1/21/2022	Paradigm One LP 548 Market Street Ste 46425 San Francisco, CA 94104

Additional Page if Debtor Has More Executory Contracts or Unexpired Leases

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List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.118	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	INVESTORS' RIGHTS AGREEMENT DATED 1/21/2022	Paradigm One LP 548 Market Street Ste 46425 San Francisco, CA 94104
2.119	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	INVESTORS' RIGHTS AGREEMENT DATED 1/21/2022	Paradigm One LP 548 Market Street San Francisco, CA 94104
2.120	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	INVESTORS' RIGHTS AGREEMENT DATED 1/21/2022	Paradigm One LP 548 Market Street Ste 46425 San Francisco, CA 94104
2.121	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	INVESTORS' RIGHTS AGREEMENT DATED 1/21/2022	Paradigm One LP 548 Market Street Ste 46425 San Francisco, CA 94104
2.122	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	CONSULTING AGREEMENT DATED 3/31/2021	Peter Lau ADDRESS ON FILE
2.123	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	SETTLEMENT AGREEMENT AND RELEASE DATED 8/31/2022	PlayUp Ltd. 48 Epsom Road Zetland NSW 2017 AUSTRALIA
2.124	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	SETTLEMENT AGREEMENT AND RELEASE DATED 8/26/2022	PlayUp Ltd. 48 Epsom Road Zetland NSW 2017 AUSTRALIA

Debtor Name: **Maclaurin Investments Ltd.**

Case Number: 22-11087 (JTD)

Debtor Name: **Clifton Bay Investments LLC**

Case Number: 22-11070 (JTD)

Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy

Assets - Real and Personal Property

SOFA Question 3: Certain payments or transfers to creditors within 90 days before filing this case

Part 11, Question 77: Other property of any kind not already listed

Creditor Name & Address	Check or Wire Number	Payment Date	Reason For Payment	Amount Paid
PARADIGM ONE LP 548 MARKET STREET SUITE #: 46425 SAN FRANCISCO, CA 94104		10/06/2022	Other- Investments	\$3,500,000.00
			SUBTOTAL	\$3,500,000.00
RACE CAPITAL II 437 LYTTON AVE SUITE 100 PALO ALTO, CA 94301		10/05/2022	Other- Investments	\$150,000.00
			SUBTOTAL	\$150,000.00

Other property of any kind not already listed <i>Examples: Season tickets, country club membership</i>	Current value of debtor's interest
Fund Investment: KINDERGARTEN VENTURES FUND II (\$0.13M Funded Amount)	Undetermined
Fund Investment: CANONICAL CRYPTO FUND I, L.P. (\$0.5M Funded Amount)	Undetermined
Fund Investment: DEFI ALLIANCE DELAWARE FEEDER I LP (\$0.25M Funded Amount)	Undetermined
Fund Investment: LN SPORTS & HEALTH TECH FUND I, L.P. (\$0.3M Funded Amount)	Undetermined
Fund Investment: EXPONENT FOUNDERS CAPITAL I, LP (\$1M Funded Amount)	Undetermined
Fund Investment: FUND II, A SERIES OF TOY VENTURES. LP (\$12.5M Funded Amount)	Undetermined
Fund Investment: SEQUOIA CAPITAL FUND, L.P. (\$50M Funded Amount)	Undetermined
Fund Investment: NURAL CAPITAL FIRST LIGHT (US) LP (\$0.1M Funded Amount)	Undetermined
Fund Investment: 6529 NFT FUND QP, LP (\$5M Funded Amount)	Undetermined
Fund Investment: MULTICOIN VENTURE FUND II US, L.P. (\$5M Funded Amount)	Undetermined
Fund Investment: BOND III, LP (\$0.15M Funded Amount)	Undetermined
Fund Investment: MULTICOIN VENTURE FUND III US, LP (\$2.5M Funded Amount)	Undetermined
Fund Investment: ALTIMETER GROWTH PARTNERS FUND VI, L.P. (\$1.5M Funded Amount)	Undetermined
Fund Investment: LIQUID 2 VENTURES FUND III, L.P. (\$0.75M Funded Amount)	Undetermined
Fund Investment: ASYMMETRIC TECHNOLOGIES LP (\$0.5M Funded Amount)	Undetermined
Fund Investment: SKYBRIDGE COIN FUND LP (\$10M Funded Amount)	Undetermined
Token Receivable: GREENPARK SPORTS, INC., (Token: TBD; Qty: 25,000,000.00000; Funded Amount: \$1,000,000)	Undetermined
Token Receivable: OTOY INTERNATIONAL SEZC, (Token: RNDR; Qty: 15,255,208.00000; USD Spot Price Receivable Amount: \$4,857,500)	Undetermined
Token Warrant: CODERRECT INC., (Token Warrant: TBD; Qty: TBD; Funded Amount: \$889)	Undetermined
Token Warrant: CREATOROS INC., (Token Warrant: TBD; Qty: TBD; Funded Amount: \$500)	Undetermined
Token Warrant: MATONEE INC., (Token Warrant: Aptos; Qty: TBD; Funded Amount: \$500)	Undetermined
Token Warrant: NEXUS PRO, INC., (Token: TBD; Qty: TBD; Funded Amount: \$500)	Undetermined
Token Warrant: SUBSPACE LABS, INC., (Token Warrant: TBD; Qty: TBD; Funded Amount: \$1,000)	Undetermined
Token Warrant: TIPLINK CORP., (Token Warrant: TBD; Qty: TBD; Funded Amount: \$500)	Undetermined

Part 2: List All Creditors with NONPRIORITY Unsecured Claims

3. List in alphabetical order all of the creditors with nonpriority unsecured claims. If the debtor has more than 6 creditors with nonpriority unsecured claims, fill out and attach the Additional Page of Part 2.

3.1 Nonpriority creditor's name and mailing address	As of the petition filing date, the claim is:	Amount of claim
3.1 APOLLO CAPITAL OPPORTUNITIES FUND LTD Sea Meadow House PO Box 116 Road Town, Tortola, VG1110 BRITISH VIRGIN ISLANDS	Check all that apply. <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Loan Payable (see Exhibit 2)	\$ Undetermined
Date or dates debt was incurred: Undetermined	Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	
Last 4 digits of account number		
3.2 BlockFi Lending LLC Attn: Zac Prince 88 Chambers St. Suite 205 New York, NY 10007	Check all that apply. <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Loan Payable (see Exhibit 2)	\$ Undetermined
Date or dates debt was incurred: Undetermined	Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	
Last 4 digits of account number		
3.3 BlockFills 401 W. Ontario Street #400 Chicago, IL 60654	Check all that apply. <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Loan Payable (see Exhibit 2)	\$ Undetermined
Date or dates debt was incurred: Undetermined	Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	
Last 4 digits of account number		
3.4 BLOOMBERG FINANCE L.P. 731 LEXINGTON AVE NEW YORK, NY	Check all that apply. <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Trade Payable	\$ 30,012.72
Date or dates debt was incurred: Various	Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	
Last 4 digits of account number		
3.5 CHICAGO MERCANTILE EXCHANGE INC. 20 S. WACKER DR CHICAGO, IL 60606	Check all that apply. <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Trade Payable	\$ 3,866.67
Date or dates debt was incurred: Various	Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	
Last 4 digits of account number		
3.6 Clover INC Port Purcel Qwomar Trading Complex Blackburne Road Unit 8, 3/F, Tortola Road Town, VG1110 BRITISH VIRGIN ISLANDS	Check all that apply. <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Market Making Loans: CLV; Qty: 57,000,000	\$ Undetermined
Date or dates debt was incurred: 7/13/2021	Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	
Last 4 digits of account number		

Additional Page if Debtor Has More Executory Contracts or Unexpired Leases

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page.

List all contracts and unexpired leases	State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease
2.20 State what the contract or lease is for and the nature of the debtor's interest MASTER LOAN AND SECURITY AGREEMENT DATED 11/16/2020 State the term remaining List the contract number of any government contract	Anchorage Lending, LLC 274 Holland Court Bridgewater, NJ 08807-0880
2.21 State what the contract or lease is for and the nature of the debtor's interest MARKET MAKING AGREEMENT DATED 9/27/2021 State the term remaining List the contract number of any government contract	Antimatter Dao Ltd Wickhams Cay II Road Town, Tortola, VG1110 BRITISH VIRGIN ISLANDS
2.22 State what the contract or lease is for and the nature of the debtor's interest MASTER DIGITAL CURRENCY LOAN AGREEMENT DATED 7/9/2022 State the term remaining List the contract number of any government contract	APOLLO CAPITAL OPPORTUNITIES FUND LTD PO Box 116 Road Town, Tortola, VG1110 BRITISH VIRGIN ISLANDS
2.23 State what the contract or lease is for and the nature of the debtor's interest MARKET MAKING AGREEMENT DATED 1/7/2022 State the term remaining List the contract number of any government contract	Apricot Platform Limited Dresden Tower 11TH FLOOR Barrio Panama City, PANAMA
2.24 State what the contract or lease is for and the nature of the debtor's interest BORROWING AGREEMENT DATED 3/2/2020 State the term remaining List the contract number of any government contract	Ashla International Inc c/o Mr. Loi Luu 3/F J&C Building, PO Box 933 Tortola Road Town, VG 1110 BRITISH VIRGIN ISLANDS
2.25 State what the contract or lease is for and the nature of the debtor's interest LOAN AGREEMENT DATED 9/22/2020 State the term remaining List the contract number of any government contract	AUX CAYES FINTECH CO, LTD. Eden Plaza Suite 202, 2nd Floor Eden Islands, Mahe 1352 SEYCHELLES
2.26 State what the contract or lease is for and the nature of the debtor's interest MASTER LOAN AGREEMENT DATED 9/12/2020 State the term remaining List the contract number of any government contract	Avalanche (BVI), Inc. Attn: Gun Sirer 1 Floor 4, Banco Popular Building Road Town, Tortola, VG 1110 BRITISH VIRGIN ISLANDS

Additional Page if Debtor Has More Executory Contracts or Unexpired Leases

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page.

List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.34	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	PAYMENT AGENT AGREEMENT DATED 6/1/2019	Alameda Research Ltd Tortola Pier Park Building 1, Second Floor, Wickhams Cay 1 BRITISH VIRGIN ISLANDS
2.35	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	MUTUAL NON-DISCLOSURE AGREEMENT DATED 8/10/2022	Alder Labs, Inc. 548 Market St PMB 77661 San Francisco, CA 94104
2.36	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	CONSULTING AGREEMENT DATED 3/31/2021	Alec Ziupsnys ADDRESS ON FILE
2.37	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	CONSULTING AGREEMENT DATED 1/2/2021	Alec Ziupsnys ADDRESS ON FILE
2.38	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	2020 EQUITY INCENTIVE PLAN (NON-U.S.) DATED 11/22/2021	Alejandro Silva ADDRESS ON FILE
2.39	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	ADVISORY BOARD LETTER DATED 8/24/2021	Alfred Lin - Sequoia Capital Operations, LLC 2800 Sand Hill Road Suite 101 Menlo Park, CA 94025
2.40	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	2020 EQUITY INCENTIVE PLAN (NON-U.S.) DATED 11/22/2021	Allen Chen ADDRESS ON FILE

Additional Page if Debtor Has More Executory Contracts or Unexpired Leases

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page.

List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.538	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	CONSULTING AGREEMENT DATED 1/24/2021	Sebastian Conybeare ADDRESS ON FILE
2.539	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	SCREENING QUESTIONNAIRE	Sebastian Darrel Conybeare ADDRESS ON FILE
2.540	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	INVESTORS' RIGHTS AGREEMENT DATED 7/21/2021	SENATOR GLOBAL OPPORTUNITY MASTER FUND LP 510 Madison Avenue 28th Floor New York, NY 10022
2.541	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	INVESTORS' RIGHTS AGREEMENT DATED 10/18/2021	SEQUOIA CAPITAL GLOBAL GROWTH FUND III - ENDURANCE PARTNERS, L.P. 2800 Sand Hill Road Suite 101 Menlo Park, CA 94025
2.542	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	LETTER AGREEMENT RE: MANAGEMENT RIGHTS - COMMON INTEREST AGREEMENT DATED 7/21/2021	SEQUOIA CAPITAL GLOBAL GROWTH FUND III - ENDURANCE PARTNERS, L.P. 2800 Sand Hill Road Suite 101 Menlo Park, CA 94025
2.543	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	AGREEMENT REGARDING TERMINATION OF BUSINESS COLLABORATION AGREEMENT	Şeref Bayırlı ADDRESS ON FILE
2.544	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	BUSINESS COLLABORATION AGREEMENT - TERMINATED 9/9/2022 DATED 9/13/2021	Şeref Bayırlı ADDRESS ON FILE

Debtor Name: Alameda Research Ltd

Case Number: 22-11067 (JTD)

Assets - Real and Personal Property

Debtor Name: Alameda Research Ltd

Case Number: 22-11067 (JTD)

Schedule F: Creditors Who Have Nonpriority Unsecured Claims, Exhibit 2 - Loan Payables

Lender	Loan Currency	Outstanding Amount	Interest Rate	Interest Payment Currency	Maturity Date
APOLLO CAPITAL OPPORTUNITIES FUND LTD	USDC	3,000,000	9.0%	USDC	12/16/2022
BlockFi Lending LLC	BTC	1,800	3.5%	BTC	None
BlockFi Lending LLC	USDC	30,000,000	8.5%	USDC	None
BlockFi Lending LLC	USDC	30,000,000	8.5%	USDC	None
BlockFi Lending LLC	USDC	30,000,000	8.5%	USDC	None
BlockFills	USD	3,000,026	2.5%	N/A	7/5/2020
Compound Capital Partnes	USDC	2,500,000	9.0%	USDC	12/16/2022
itBit PTE. LTD (Paxos)	BTC	250	0.0%	BTC	None
itBit PTE. LTD (Paxos)	BTC	500	0.2%	BTC	None
itBit PTE. LTD (Paxos)	USD	5,000,000	0.2%	USD	None
Lemon Fund	USDT	1,500,000	9.0%	N/A	None
TrustToken, Inc.	TRU	7,200,000	0.0%	N/A	None

Part 4, Question 15: Non-publicly traded stock interests in incorporated and unincorporated businesses, including any interest in an LLC, partnership, or joint venture.

Non-publicly traded stock and interests in incorporated and unincorporated businesses, including any interest in an LLC, partnership, or joint venture (Name of entity:)	% of Ownership	Valuation method used for current value	Current value of debtor's interest
ALAMEDA AUS PTY LTD	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
ALAMEDA RESEARCH (BAHAMAS) LTD	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
ALAMEDA RESEARCH PTE LTD	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
ALAMEDA RESEARCH YANKARI LTD	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
ALAMEDA TR SYSTEMS S. DE R. L.	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
BLUE RIDGE LTD	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
CARDINAL VENTURES LTD	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
CEDAR BAY LTD	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
COTTONWOOD GROVE LTD	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
COTTONWOOD TECHNOLOGIES LTD	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
EUCLID WAY LTD	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
HIVE EMPIRE TRADING PTY LTD	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
MACLAURIN INVESTMENTS LTD.	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
NORTH DIMENSION LTD	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
SNG INVESTMENTS YATIRIM VE DANIŞMANLIK ANONİM ŞİRKETİ	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
STRATEGY ARK COLLECTIVE LTD.	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
3COMMAS TECHNOLOGIES OÜ	Undetermined	Funded Amount	\$4,940,115.63
TOTAL			\$4,940,115.63 + Undetermined Amounts

Additional Page if Debtor Has More Executory Contracts or Unexpired Leases

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page.

List all contracts and unexpired leases		State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease
2.41	SPONSORSHIP AGREEMENT DATED 5/10/2021 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	AllRightsReserved Limited 12/F, Han Wai Commercial Building 213-233 Queens Road East Wanchai Hong Kong, CHINA
2.42	WHITE LABEL SERVICES AGREEMENT DATED 3/16/2022 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	AlteumX International S.A. ADDRESS UNKNOWN PANAMA
2.43	LETTER AGREEMENT RE. FTX ADVISORY BOARD DATED 8/24/2021 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	Amy Wu - Lightspeed Strategic Partners I, L.P. Lightspeed 548 Market Street San Francisco, CA 94104
2.44	CONSULTING AGREEMENT DATED 1/2/2021 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	Andra North ADDRESS ON FILE
2.45	SETTLEMENT AGREEMENT AND RELEASE DATED 10/11/2022 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	Andrew John Collins ADDRESS ON FILE
2.46	2020 EQUITY INCENTIVE PLAN (NON-U.S.) DATED 11/22/2021 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	Andy Tran ADDRESS ON FILE
2.47	LEGAL FEE AGREEMENT State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	Annerton Rechtsanwaltsgesellschaft mbH Wöhlerstraße 5 Niederlassung Frankfurt Frankfurt, 60323 GERMANY

Additional Page if Debtor Has More Executory Contracts or Unexpired Leases

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List all contracts and unexpired leases		State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease
2.83	NON-BINDING CONFIDENTIAL TERM SHEET - FOR DISCUSSION PURPOSES ONLY DATED 7/24/2021 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	Ledger Holdings Inc. 1110 Brickell Ave Suite 430k-200 Miami, FL 33131
2.84	MEMBERSHIP INTEREST PURCHASE AGREEMENT DATED 10/1/2022 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	LedgerPrime LLC 1209 Orange St Corporation Trust Center Wilmington, DE 19801
2.85	MEMBERSHIP INTEREST PURCHASE AGREEMENT DATED 10/1/2022 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	LedgerPrime LLC c/o United Corporate Services, Inc. Attn: Shiliang Tang 874 Walker Road, Suite C Dover, DE 19904
2.86	CONSULTING AGREEMENT DATED 4/14/2021 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	Lena Ngoy ADDRESS ON FILE
2.87	MANAGEMENT RIGHTS AGREEMENT DATED 8/31/2021 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	LIGHTSPEED OPPORTUNITY FUND, L.P. 2200 Sand Hill Road Menlo Park, CA 94025
2.88	MANAGEMENT RIGHTS AGREEMENT DATED 8/31/2021 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	LIGHTSPEED STRATEGIC PARTNERS I, L.P. 2200 Sand Hill Road Menlo Park, CA 94025
2.89	LETTER AGREEMENT DATED 1/25/2021 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	Lime Partners LLC 767 Fifth Avenue Floor 46 New York, NY 10153

Additional Page if Debtor Has More Executory Contracts or Unexpired Leases

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page.

List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2,636	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	2020 EQUITY INCENTIVE PLAN (NON-U.S.) Victor Xu ADDRESS ON FILE
2,637	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	SCREENING QUESTIONNAIRE Victor Xu ADDRESS ON FILE
2,638	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	2020 EQUITY INCENTIVE PLAN (NON-U.S.) DATED 11/22/2021 Vincent Tsun Ho Kwok ADDRESS ON FILE
2,639	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	LINE OF CREDIT AGREEMENT DATED 3/8/2022 Virtu Financial Singapore Pte. Ltd. 1557 Keppel Road, #03-01 Singapore, 089066 SINGAPORE
2,640	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	LINE OF CREDIT AGREEMENT DATED 7/26/2022 Virtu Financial Singapore Pte. Ltd. 1557 Keppel Road #03-01 Singapore, 089066 SINGAPORE
2,641	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	2020 EQUITY INCENTIVE PLAN (NON-U.S.) Vivian Ka Kel Chung ADDRESS ON FILE
2,642	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	SERVICE PROVIDER AGREEMENT DATED 5/1/2021 VKR Insights Limited POST OFFICE BOX N-4417 NASSAU, New Providence BAHAMAS

Additional Page if Debtor Has More Executory Contracts or Unexpired Leases

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page.

List all contracts and unexpired leases State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2,300	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	WHITE LABEL SERVICES AGREEMENT DATED 12/17/2021 Idealex Services OÜ Harju maakond Tallinn, Kristiine linnaosa Keemia tn 4 10616 ESTONIA
2,301	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	COLLABORATION AGREEMENT DATED 3/18/2022 IEX DAP Group LLC 3 World Trade Center 58th Floor New York, NY 10007
2,302	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	IEX GROUP, INC. TERM SHEET FOR STRATEGIC PARTNERSHIP WITH WEST REALM SHIRES INC. DATED 1/4/2022 IEX GROUP, INC. ADDRESS UNKNOWN
2,303	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	FIAT INTEGRATION AND REVOLVING LOAN AGREEMENT DATED 10/16/2020 iFinex Inc. c/o SHRM Trustees (BVI) Limited Attn: Legal Department P.O. Box 4301, Trinity Chambers Road Town, Tortola, VG1110 BRITISH VIRGIN ISLANDS
2,304	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	MASTER LICENSE AND SERVICES AGREEMENT DATED 6/22/2021 Inca Digital, Inc. 1100 15 St NW Floor 4 Washington, DC, 20005
2,305	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	REWARDS AGENT AGREEMENT DATED 1/1/2021 Incentive Ecosystem Foundation ADDRESS UNKNOWN
2,306	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	FTX EASTERN EUROPE AGREEMENT DATED 12/17/2019 Information Security Group LLC Shovkovychna st 16-b, 54 Kyliv, 01024 UKRAINE

Debtor Name: **West Realm Shires Inc.**

Case Number: 22-11183 (JTD)

Assets - Real and Personal Property

Part 4, Question 15: Non-publicly traded stock interests in incorporated and unincorporated businesses, including any interest in an LLC, partnership, or joint venture.

Non-publicly traded stock and interests in incorporated and unincorporated businesses, including any interest in an LLC, partnership, or joint venture (Name of entity:)	% of Ownership	Valuation method used for current value	Current value of debtor's interest
DIGITAL CUSTODY INC.	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
EMBED FINANCIAL TECHNOLOGIES INC.	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
FTX LEND INC.	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
FTX MARKETPLACE, INC.	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
GOOD LUCK GAMES, LLC	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
HAWAII DIGITAL ASSETS INC.	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
LEDGER HOLDINGS INC.	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
PIONEER STREET INC.	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
WEST REALM SHIRES FINANCIAL SERVICES INC.	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
WEST REALM SHIRES SERVICES INC.	100%	% Ownership Per Corporate Org Structure [DI: #92]	Undetermined
BITNOMIAL, INC.	Undetermined	Funded Amount	\$2,000,000.00
IEX GROUP, INC.	Undetermined	Funded Amount	\$112,554,985.67
		TOTAL	\$114,554,985.67 + Undetermined Amounts

Additional Page if Debtor Has More Executory Contracts or Unexpired Leases

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page.

List all contracts and unexpired leases:	State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease
2.62 State what the contract or lease is for and the nature of the debtor's interest Retention Incentive Award Agreement Dated 9/30/2022 State the term remaining List the contract number of any government contract	Gregory Sandman ADDRESS ON FILE
2.63 State what the contract or lease is for and the nature of the debtor's interest CONSULTING AGREEMENT DATED 3/31/2021 State the term remaining List the contract number of any government contract	HAROLD BOO ADDRESS ON FILE
2.64 State what the contract or lease is for and the nature of the debtor's interest COLLABORATION AGREEMENT DATED 3/18/2022 State the term remaining List the contract number of any government contract	IEX DAP Group LLC 3 World Trade Center 58th Floor New York, NY 10007
2.65 State what the contract or lease is for and the nature of the debtor's interest IEX GROUP, INC. TERM SHEET FOR STRATEGIC PARTNERSHIP WITH WEST REALM SHIRES INC DATED 1/4/2022 State the term remaining List the contract number of any government contract	IEX GROUP, INC. ADDRESS UNKNOWN
2.66 State what the contract or lease is for and the nature of the debtor's interest MASTER SERVICES AGREEMENT DATED 1/7/2022 State the term remaining List the contract number of any government contract	Intrinio, Inc. 76 4th Street N #150 Saint Petersburg, FL 33731
2.67 State what the contract or lease is for and the nature of the debtor's interest CONSULTING AGREEMENT DATED 3/31/2021 State the term remaining List the contract number of any government contract	Ivana Milicic ADDRESS ON FILE
2.68 State what the contract or lease is for and the nature of the debtor's interest CONSULTING AGREEMENT DATED 3/31/2021 State the term remaining List the contract number of any government contract	JASON HAMLIN ADDRESS ON FILE

67. Do your lists or records include personally identifiable information of customers (as defined in 11 U.S.C. §§ 101(41A) and 107)?
 No
 Yes

68. Is there an amortization or other similar schedule available for any of the property listed in Part 10?
 No
 Yes

69. Has any of the property listed in Part 10 been appraised by a professional within the last year?
 No
 Yes

Part 11: All other assets

70. Does the debtor own any other assets that have not yet been reported on this form?
 Include all interests in executory contracts and unexpired leases not previously reported on this form.
 No. Go to Part 12.
 Yes. Fill in the information below.

		Current value of debtor's interest
71. Notes receivable		
Description (include name of obligor)		
None	Total Face Amount = →	\$ 0.00
	Doubtful or uncollectible Amount	
72. Tax refunds and unused net operating losses (NOLs)		
Description (for example, federal, state, local)	Tax Year	\$ 0.00
None	Tax Year	\$
	Tax Year	\$
73. Interests in insurance policies or annuities		\$ 0.00
None		
74. Causes of action against third parties (whether or not a lawsuit has been filed)		\$ 0.00
None		
Nature of Claim		
Amount Requested \$		
75. Other contingent and unliquidated claims or causes of action of every nature, including counterclaims of the debtor and rights to set off claims		\$ 0.00
None		
Nature of Claim		
Amount Requested \$		
76. Trusts, equitable or future interests in property		\$ 0.00
None		
77. Other property of any kind not already listed <i>Examples: Season tickets, country club membership</i>		
Fund Investment SKYBRIDGE CAPITAL II, LLC (\$45.9M Funded Amount)		\$ Undetermined
		\$
78. Total of Part 11. Add lines 71 through 77. Copy the total to line 90.		\$ Undetermined
79. Has any of the property listed in Part 11 been appraised by a professional within the last year? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		

*Plus Undetermined Amounts

Additional Page if Debtor Has More Executory Contracts or Unexpired Leases

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page.

List all contracts and unexpired leases		State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease
2.6	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	OPERATING AGREEMENT DATED 4/15/2021 Luxor Technology Corporation 5232 236th Place SE Issaquah, WA 98029
2.7	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	OPERATING AGREEMENT DATED 4/15/2021 NEW GEN MINTING LLC 5232 236th Place SE Issaquah, WA 98029
2.8	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	SUBSCRIPTION AGREEMENT DATED 3/2/2022 SH FUND GP, LLC POB 735 ALPINE, NJ 07620
2.9	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	SUBSCRIPTION AGREEMENT DATED 9/7/2022 SkyBridge Capital II, LLC Attention: A. Marie Noble 527 Madison Avenue New York, NY 10022
2.10	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	SUBSCRIPTION AGREEMENT DATED 9/7/2022 SkyBridge GP Holdings, LLC Attention: A. Marie Noble 527 Madison Avenue New York, NY 10022
2.11	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	INVESTORS' RIGHTS AGREEMENT DATED 2/12/2021 TOOLS FOR HUMANITY CORPORATION Attention: Alexander Blania 650 2nd Street, #605 San Francisco, CA 94107
2.12	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	AMENDED AND RESTATED VOTING AGREEMENT DATED 2/12/2021 TOOLS FOR HUMANITY CORPORATION Attn: Alexander Blania 650 2nd Street, #605 San Francisco, CA 94107

Additional Page if Debtor Has More Executory Contracts or Unexpired Leases

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page.

List all contracts and unexpired leases		State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease
2.559 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	MUTUAL NON-DISCLOSURE AGREEMENT DATED 8/6/2021	SINEGY Technologies (M) Sdn.Bhd 233, Jalan Burma Georgetown Penang 10050 MALAYSIA
2.560 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	2020 EQUITY INCENTIVE PLAN (NON-U.S.) DATED 11/22/2021	Siu Ming Wun (Karis) ADDRESS ON FILE
2.561 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	NONDISCLOSURE AGREEMENT DATED 8/19/2022	SK Inc 26 Jongno Jongro-gu Seoul, 03188, KOREA, REPUBLIC OF
2.562 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	DATA LICENSING AGREEMENT DATED 1/8/2020	Skew Ltd 107 Cheapside 9th Floor London, EC2V 6DN UNITED KINGDOM
2.563 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	INVESTORS' RIGHTS AGREEMENT DATED 10/18/2021	SKYBRIDGE CAPITAL 527 Madison Avenue 4th Floor New York, NY 10022
2.564 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	LETTER AGREEMENT - RELEASE AND UNWINDING OF CERTAIN RELATIONSHIPS DATED 11/9/2022	SkyBridge Capital II, LLC Attention: A. Marie Noble 527 Madison Avenue New York, NY 10022
2.565 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	LETTER AGREEMENT - RELEASE AND UNWINDING OF CERTAIN RELATIONSHIPS DATED 11/9/2022	SkyBridge Coin Fund LP C/O SKYBRIDGE CAPITAL II, LLC 527 MADISON AVENUE 4TH FLOOR NEW YORK, NY 10022

Additional Page if Debtor Has More Executory Contracts or Unexpired Leases

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page.

List all contracts and unexpired leases		State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease
2.146 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	LETTER AGREEMENT - RELEASE AND UNWINDING OF CERTAIN RELATIONSHIPS DATED 11/9/2022	SkyBridge Coin Fund LP C/O SKYBRIDGE CAPITAL II, LLC 527 MADISON AVENUE 4TH FLOOR NEW YORK, NY 10022
2.147 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	LETTER AGREEMENT - RELEASE AND UNWINDING OF CERTAIN RELATIONSHIPS DATED 11/9/2022	SkyBridge GP Holdings, LLC ATTENTION: A. MARIE NOBLE 527 MADISON AVENUE NEW YORK, NY 10022
2.148 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	Retention Incentive Award Agreement Dated 9/30/2022	Stanton Camp ADDRESS ON FILE
2.149 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	CRYPTOCURRENCY ACCOUNT SERVICES AGREEMENT DATED 12/3/2021	StockTwits, Inc. 1001 6th Avenue 7th Floor New York, NY 10018
2.150 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	SPONSORSHIP AGREEMENT DATED 5/18/2021	Swift Media Entertainment, Inc. ATTN: Walter Wang 5340 Aila Road, #100 Los Angeles, CA 90066
2.151 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	CONSULTING AGREEMENT DATED 3/31/2021	Takashi Hidaka ADDRESS ON FILE
2.152 State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	Retention Incentive Award Agreement Dated 9/30/2022	Tana Lawler ADDRESS ON FILE

Assets - Real and Personal Property

Part 1, Question 3: Checking, savings, money market, or financial brokerage accounts

Name of institution (bank or brokerage firm)	Type of account	Last 4 digits of account number	Current value of debtor's interest
Deltec	Unknown	5100	\$1,121,126.63
Prime Trust	Corporate	2872	\$221,907.00
Signature Bank	Corporate	2685	\$2,529,813.51
TOTAL			\$3,872,847.14

Assets - Real and Personal Property

Part 4, Question 15: Non-publicly traded stock interests in incorporated and unincorporated businesses, including any interest in an LLC, partnership, or joint venture.

Non-publicly traded stock and interests in incorporated and unincorporated businesses, including any interest in an LLC, partnership, or joint venture (Name of entity:)	% of Ownership	Valuation method used for current value	Current value of debtor's interest
CHILLCHAT HOLDINGS PTE. LTD.	Undetermined	Funded Amount	\$100,000.00
CIRCLE INTERNET FINANCIAL LIMITED	Undetermined	Funded Amount	\$10,000,000.00
COIN FINANCE LIMITED	Undetermined	Funded Amount	\$4,000,000.00
COMBAT LAB, INC.	Undetermined	Funded Amount	\$500,000.00
CONXTXS.IO INC	Undetermined	Funded Amount	\$902,935.00
DELTA ONE LABS, CORP.	Undetermined	Funded Amount	\$1,000,000.00
DISTRIBUTED LEDGER TECHNOLOGY (DLTX)	Undetermined	Funded Amount	\$9,500,000.00
DONOTPAY, INC.	Undetermined	Funded Amount	\$750,015.00
DUNE ANALYTICS AS	Undetermined	Funded Amount	\$651,997.00
ETHOS INVESTMENTS XII LLC	Undetermined	Funded Amount	\$9,500,000.00
FLOURISHING HUMANITY CORPORATION LTD.	Undetermined	Funded Amount	\$80,000.00
FLUENCE LABS, INC.	Undetermined	Funded Amount	\$999,996.51
FOLKVANG, SRL	Undetermined	Funded Amount	\$3,000,000.00
FRIKTION LABS INC.	Undetermined	Funded Amount	\$100,000.00
GENESIS BLOCK LIMITED	Undetermined	Funded Amount	\$5,000,000.00
GENESIS DIGITAL ASSETS LIMITED	Undetermined	Funded Amount	\$100,000,000.32
HATEA LOOP LTD.	Undetermined	Funded Amount	\$1,500,000.00
HAWKU, INC.	Undetermined	Funded Amount	\$250,000.00
JITO NETWORK INC.	Undetermined	Funded Amount	\$700,000.00

Debtor Name: Alameda Research Ltd

Case Number: 22-11067 (JTD)

Debtor Name: Alameda Research Ltd

Case Number: 22-11067 (JTD)

Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy

Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy

SOFA Question 3: Certain payments or transfers to creditors within 90 days before filing this case

SOFA Question 3: Certain payments or transfers to creditors within 90 days before filing this case

Creditor Name & Address	Check or Wire Number	Payment Date	Reason For Payment	Amount Paid
		10/21/2022	Services	\$12,893.50
			SUBTOTAL	\$20,544.00
GENESIS GLOBAL CAPITAL 111 TOWN SQUARE PLACE SUITE 1203 JERSEY CITY, NJ 07310		08/16/2022	Other- Loan Principal and/or Interest	\$170,300,000.00
		09/20/2022	Other- Loan Principal and/or Interest	\$3,684,113.01
		10/03/2022	Other- Loan Principal and/or Interest	\$1,123,972.60
		11/03/2022	Other- Loan Principal and/or Interest	\$53,506.85
		11/04/2022	Other- Loan Principal and/or Interest	\$1,475,260.27
			SUBTOTAL	\$176,636,852.73
GGC INTERNATIONAL LIMITED WOODBORNE HALL ROAD TOWN TORTOLA, VG1110 BRITISH VIRGIN ISLANDS		08/22/2022	Other- Payments	\$5,310,000.00
		08/30/2022	Other- Payments	\$21,303.00
		09/27/2022	Other- Payments	\$1,242,702.00
		09/28/2022	Other- Payments	\$183,374.32
		10/03/2022	Other- Payments	\$10,000,000.00
		10/27/2022	Other- Payments	\$112,036.80
		10/31/2022	Other- Payments	\$6,069.00
			SUBTOTAL	\$16,875,485.12
HERBERT SMITH FREEHILLS LLP EXCHANGE HOUSE PRIMROSE STREET LONDON, UNITED KINGDOM		09/13/2022	Services	\$22,788.00
		10/05/2022	Services	\$23,072.89
			SUBTOTAL	\$45,860.89
Interactive Brokers LLC Attention: Client Services 209 South LaSalle Street 10th Floor Chicago, IL 60604		09/15/2022	Other- Investments	\$50,000,000.00
			SUBTOTAL	\$50,000,000.00
JOHN D. MORLEY ADDRESS ON FILE		08/26/2022	Services	\$51,100.00
			SUBTOTAL	\$51,100.00
M GROUP STRATEGIC COMMUNICATIONS 101 AVENUE OF THE AMERICAS, 9TH FLOOR NEW YORK, NY 10013		08/26/2022	Services	\$26,250.00
		09/15/2022	Services	\$27,800.00
			SUBTOTAL	\$54,050.00

Creditor Name & Address	Check or Wire Number	Payment Date	Reason For Payment	Amount Paid
MAXLAW GLOBAL (GBP) ALDGATE TOWER, 2 LEMAN STREET LONDON, E1 8QN UNITED KINGDOM		09/09/2022	Services	\$10,426.14
		10/05/2022	Services	\$10,242.00
		11/03/2022	Services	\$10,064.70
			SUBTOTAL	\$30,732.84
MODULO CAPITAL INC AV ATAULFO DE PAIVA, 341 SL 305 LEBLON RIO DE JANEIRO, RJ, BRAZIL		09/16/2022	Other- Investments	\$100,000,000.00
			SUBTOTAL	\$100,000,000.00
PERKINS COIE LLP 1201 THIRD AVENUE, SUITE 4900 SEATTLE, WA 98101		09/21/2022	Services	\$53,975.90
			SUBTOTAL	\$53,975.90
PIPER ALDERMAN LAW LEVEL 23 GOVERNOR MACQUAIRE TOWER 1 FARRER PLACE NSW SYDNEY, 2000 AUSTRALIA		08/15/2022	Services	\$4,834.43
		10/03/2022	Services	\$42,753.34
		10/17/2022	Services	\$5,069.82
			SUBTOTAL	\$52,657.59
PRIME TRUST ATTN: NATALIE MARTIN 330 S RAMPART BLVD LAS VEGAS, NV 89145		10/26/2022	Other- Investments	\$250,000.00
			SUBTOTAL	\$250,000.00
SILVER MILLER 4450 NW 126TH AVE SUITE 101 CORAL SPRINGS, FL 33065		09/01/2022	Services	\$70,000.00
		10/03/2022	Services	\$70,000.00
			SUBTOTAL	\$140,000.00
SMITH'S CARPENTRY		10/27/2022	Services	\$15,551.35
			SUBTOTAL	\$15,551.35
SULLIVAN & CROMWELL LLP 125 BROAD STREET NEW YORK, NY 10004-2498		10/19/2022	Services	\$195,484.33
		11/03/2022	Services	\$2,253,670.77
			SUBTOTAL	\$2,449,155.10
TRITON ONE LIMITED 36 HOPE ST DOUGLAS ISLE OF MAN, IM1 1AR UNITED KINGDOM		08/15/2022	Services	\$59,200.00

Debtor Name: **MacIaurin Investments Ltd.**

Case Number: 22-11087 (JTD)

Assets - Real and Personal Property

Part 11, Question 71: Notes receivable

Notes receivable Description (include name of obligor)	Total face amount	Doubtful or uncollectible amount	Current value of debtor's interest
Loan Receivable: Mr. Seun Gun Lee - Loan Agreement, November 4, 2021	54,751,149.45	Undetermined	Undetermined
Loan Receivable: Voyager - Loan, June 21, 2022	75,000,000.00	Undetermined	Undetermined
Loan Receivable: PlayUp Limited - Convertible Note, September 21, 2021	35,000,000.00	Undetermined	Undetermined
	TOTAL		+ Undetermined Amounts

Debtor Name: **MacIaurin Investments Ltd.**

Case Number: 22-11087 (JTD)

Assets - Real and Personal Property

Part 4, Question 15: Non-publicly traded stock interests in incorporated and unincorporated businesses, including any interest in an LLC, partnership, or joint venture.

Non-publicly traded stock and interests in incorporated and unincorporated businesses, including any interest in an LLC, partnership, or joint venture (Name of entity:)	% of Ownership	Valuation method used for current value	Current value of debtor's interest
KABOMPO HOLDINGS, LTD.	Undetermined	Funded Amount	\$4,999,995.39
LIGHTBEAM DATA LABS INC.	Undetermined	Funded Amount	\$8,675,000.00
LIMIT BREAK INC.	Undetermined	Funded Amount	\$1,000,997.36
MERGE HOLDINGS LTD	Undetermined	Funded Amount	\$475,965.00
MESSARI HOLDING INC.	Undetermined	Funded Amount	\$499,996.59
METALINK LABS, INC.	Undetermined	Funded Amount	\$300,000.00
M-LEAGUE PTE. LTD.	Undetermined	Funded Amount	\$15,000,000.11
MOJOVERSE, INC.	Undetermined	Funded Amount	\$250,000.00
NESTCOIN HOLDING LIMITED	Undetermined	Funded Amount	\$250,050.00
NOOM LIMITED	Undetermined	Funded Amount	\$2,073,965.69
O'LEARY PRODUCTIONS USA LLC	Undetermined	Funded Amount	\$1,000,000.00
ODYSSEY TECHNOLOGIES LIMITED	Undetermined	Funded Amount	\$1,969,205.08
OTC SERVICES LTD.	Undetermined	Funded Amount	\$6,826,000.00
OVEX PROPRIETARY LIMITED	Undetermined	Funded Amount	\$5,000,000.00
PARADIGM CONNECT HOLDINGS, LLC	Undetermined	Funded Amount	\$9,249,976.54
PINTU INVESTMENTS ONE PTE. LTD.	Undetermined	Funded Amount	\$2,000,000.00
PIONIC VENTURES LLC	Undetermined	Funded Amount	\$71,300,000.00
PIXELYNX, INC.	Undetermined	Funded Amount	\$500,000.00
PORTALS LABS, INC.	Undetermined	Funded Amount	\$200,057.14

Debtor Name: Maclaurin Investments Ltd.

Case Number: 22-11087 (JTD)

Debtor Name: Maclaurin Investments Ltd.

Case Number: 22-11087 (JTD)

Assets - Real and Personal Property

Assets - Real and Personal Property

Part 4, Question 15: Non-publicly traded stock interests in incorporated and unincorporated businesses, including any interest in an LLC, partnership, or joint venture. Part 4, Question 15: Non-publicly traded stock interests in incorporated and unincorporated businesses, including any interest in an LLC, partnership, or joint venture.

Non-publicly traded stock and interests in incorporated and unincorporated businesses, including any interest in an LLC, partnership, or joint venture (Name of entity:)	% of Ownership	Valuation method used for current value	Current value of debtor's interest
KABOMPO HOLDINGS, LTD.	Undetermined	Funded Amount	\$4,999,995.39
LIGHTBEAM DATA LABS INC.	Undetermined	Funded Amount	\$8,675,000.00
LIMIT BREAK INC.	Undetermined	Funded Amount	\$1,000,997.36
MERGE HOLDINGS LTD	Undetermined	Funded Amount	\$475,965.00
MESSARI HOLDING INC.	Undetermined	Funded Amount	\$499,996.59
METALINK LABS, INC.	Undetermined	Funded Amount	\$300,000.00
M-LEAGUE PTE. LTD.	Undetermined	Funded Amount	\$15,000,000.11
MOJOVERSE, INC.	Undetermined	Funded Amount	\$250,000.00
NESTCOIN HOLDING LIMITED	Undetermined	Funded Amount	\$250,050.00
NOOM LIMITED	Undetermined	Funded Amount	\$2,073,965.69
O'LEARY PRODUCTIONS USA LLC	Undetermined	Funded Amount	\$1,000,000.00
ODYSSEY TECHNOLOGIES LIMITED	Undetermined	Funded Amount	\$1,969,205.08
OTC SERVICES LTD.	Undetermined	Funded Amount	\$6,826,000.00
OVEX PROPRIETARY LIMITED	Undetermined	Funded Amount	\$5,000,000.00
PARADIGM CONNECT HOLDINGS, LLC	Undetermined	Funded Amount	\$9,249,976.54
PINTU INVESTMENTS ONE PTE. LTD.	Undetermined	Funded Amount	\$2,000,000.00
PIONIC VENTURES LLC	Undetermined	Funded Amount	\$71,300,000.00
PIXELYNX, INC.	Undetermined	Funded Amount	\$500,000.00
PORTALS LABS, INC.	Undetermined	Funded Amount	\$200,057.14

Non-publicly traded stock and interests in incorporated and unincorporated businesses, including any interest in an LLC, partnership, or joint venture (Name of entity:)	% of Ownership	Valuation method used for current value	Current value of debtor's interest
VOLUMEFI SOFTWARE, INC.	Undetermined	Funded Amount	\$500,000.00
VOYAGER DIGITAL HOLDINGS, INC.	Undetermined	Funded Amount	\$75,000,001.00
WENEW, INC.	Undetermined	Funded Amount	\$500,000.00
WIZARDSARDINE, LDA.	Undetermined	Funded Amount	\$500,000.00
WIZPACE	Undetermined	Funded Amount	\$100,323.97
WORLDSPARK STUDIOS, INC.	Undetermined	Funded Amount	\$250,000.00
WUM.BO INC.	Undetermined	Funded Amount	\$100,000.00
XDEFI TECHNOLOGIES LTD	Undetermined	Funded Amount	\$100,000.00
TOTAL			\$459,455,742.24 + Undetermined Amounts

Additional Page if Debtor Has More Executory Contracts or Unexpired Leases

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page.

List all contracts and unexpired leases

State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.76	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	NON-DISPARAGEMENT AGREEMENT DATED 2/22/2019	Kevin Kai Nielsen Garcia ADDRESS ON FILE
2.77	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	CHANGE IN EMPLOYMENT STATUS DATED 1/15/2019	Kevin Kai Nielsen Garcia ADDRESS ON FILE
2.78	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	PARTNERSHIP AND ENDORSEMENT SERVICES AGREEMENT DATED 8/6/2021	Kevin O'Leary ADDRESS ON FILE
2.79	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	MEDIA SERVICES AGREEMENT DATED 2/17/2021	Ledger and Cobie Enterprises 173 OXMOOR ROAD BIRMINGHAM, AL 35209
2.80	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	MEDIA SERVICES AGREEMENT DATED 2/15/2021	Ledger Status, LLC "Weekly Open" ADDRESS UNKNOWN
2.81	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	CONFIDENTIAL INFORMATION, INVENTION ASSIGNMENT AND ARBITRATION AGREEMENT DATED 6/14/2017	Logan Howard ADDRESS ON FILE
2.82	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	NONDISCLOSURE AGREEMENT DATED 2/18/2018	Marina Titova ADDRESS ON FILE

Additional Page if Debtor Has More Executory Contracts or Unexpired Leases

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page.

List all contracts and unexpired leases

State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.104	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	PROPRIETARY INFORMATION AND INVENTIONS AGREEMENT DATED 4/26/2018	Niki Shariri ADDRESS ON FILE
2.105	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	PARTNERSHIP AND ENDORSEMENT SERVICES AGREEMENT DATED 8/6/2021	O'Leary Productions Inc. c/o United Talent Agency 9336 Civic Center Drive Beverly Hills, CA 90210
2.106	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	NON-DISCLOSURE AGREEMENT DATED 3/19/2019	OPUS LABS N.V. Predikherenlei 1 bus 7 Gent, B-9000 BELGIUM
2.107	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	INVESTORS' RIGHTS AGREEMENT DATED 7/26/2018	Pantera Venture Fund II LP 3000 Sand Hill Road Suite 1-235 Menlo Park, CA 94025
2.108	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	INDEMNIFICATION AGREEMENT DATED 7/26/2018	Paul Veradittakit ADDRESS ON FILE
2.109	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	PROPRIETARY INFORMATION AND INVENTIONS AGREEMENT DATED 6/19/2018	Peter Lau ADDRESS ON FILE
2.110	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	CONFIRMATORY ASSIGNMENT AGREEMENT DATED 10/9/2020	Peter Lau ADDRESS ON FILE

Additional Page if Debtor Has More Executory Contracts or Unexpired Leases

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page.

List all contracts and unexpired leases

State the name and mailing address for all other parties with whom the debtor has an executory contract or unexpired lease

2.118	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	PROPRIETARY INFORMATION AND INVENTIONS AGREEMENT DATED 4/26/2018	Sheldon McLetchie ADDRESS ON FILE
2.119	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	MUTUAL NONDISCLOSURE AGREEMENT DATED 10/19/2019	Solana labs, Inc. 645 HOWARD STREET SAN FRANCISCO., CA 94105
2.120	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	PARTNERSHIP AND ENDORSEMENT SERVICES AGREEMENT DATED 8/11/2021	Stephen Curry c/o S30 Inc. Attn: Hilary Awad 1875 S. Grant Street, Suite 120 San Mateo, CA 94402
2.121	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	PARTNERSHIP AND ENDORSEMENT SERVICES AGREEMENT DATED 5/27/2021	TEB Capital Management, Inc. c/o: SCS Financial Services, LLC Attn: Peter H. Mattoon 888 Boylston Street Boston, MA 02199
2.122	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	PROPRIETARY INFORMATION AND INVENTIONS AGREEMENT DATED 4/26/2018	Thomas Kanschat ADDRESS ON FILE
2.123	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	SEPARATION AGREEMENT AND RELEASE	Thomas Kanschat ADDRESS ON FILE
2.124	State what the contract or lease is for and the nature of the debtor's interest State the term remaining List the contract number of any government contract	PROPRIETARY INFORMATION AND INVENTIONS AGREEMENT DATED 3/26/2018	Tobin Zikmund ADDRESS ON FILE

Part 2: Additional Page

Copy this page only if more space is needed. Continue numbering the lines sequentially from the previous page. If no additional NONPRIORITY creditors exist, do not fill out or submit this page.

Amount of claim

3.17	Nonpriority creditor's name and mailing address OLEARY PRODUCTIONS INC. C/O: UNITED TALENT AGENCY ATTN: JAY SURES / SAM STONE 9338 CIVIC CENTER DRIVE BEVERLY HILLS, CA 90210	As of the petition filing date, the claim is: Check all that apply. <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: PARTNERSHIP AND ENDORSEMENT SERVICES AGREEMENT	\$	Undetermined
	Date or dates debt was incurred 11/10/22	Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		
	Last 4 digits of account number			
3.18	Nonpriority creditor's name and mailing address Paul Voradittakit ADDRESS ON FILE	As of the petition filing date, the claim is: Check all that apply. <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input checked="" type="checkbox"/> Disputed Basis for the claim: Indemnity Agreement	\$	Undetermined
	Date or dates debt was incurred Undetermined	Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		
	Last 4 digits of account number			
3.19	Nonpriority creditor's name and mailing address PETER LAU ADDRESS ON FILE	As of the petition filing date, the claim is: Check all that apply. <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input checked="" type="checkbox"/> Disputed Basis for the claim: Indemnity Agreement	\$	Undetermined
	Date or dates debt was incurred Undetermined	Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		
	Last 4 digits of account number			
3.20	Nonpriority creditor's name and mailing address SHANDIE MARIE TUMALIWAN ADDRESS ON FILE	As of the petition filing date, the claim is: Check all that apply. <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Trade Payable	\$	176.37
	Date or dates debt was incurred Various	Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		
	Last 4 digits of account number			
3.21	Nonpriority creditor's name and mailing address Stephen Curry c/o S30 Inc. Attn: Hilary Awad 1875 S. Grant Street, Suite 120 San Mateo, CA 94402	As of the petition filing date, the claim is: Check all that apply. <input checked="" type="checkbox"/> Contingent <input checked="" type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Basis for the claim: Partnership and Endorsement Services Agreement	\$	Undetermined
	Date or dates debt was incurred 11/10/22	Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		
	Last 4 digits of account number			

Debtor Name: Alameda Research Ltd

Case Number: 22-11067 (JTD)

Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy

Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy

SOFA Question 4: Payments or other transfers of property made within 1 year before filing this case that benefited any insider

SOFA Question 4: Payments or other transfers of property made within 1 year before filing this case that benefited any insider

Creditor Name and Address	Relationship to Debtor	Total Amount or Value	Dates	Reason for Payment or Transfer
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$6,000,000.00	10/03/2022	Cash Payment
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$5,000,000.00	09/22/2022	Cash Payment
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$4,000,000.00	09/22/2022	Cash Payment
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$100,000,000.00	09/20/2022	Cash Payment
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$10,000,000.00	09/16/2022	Cash Payment
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$10,000,000.00	08/15/2022	Cash Payment
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$68,300,002.00	08/08/2022	Cash Payment
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$5,000,000.00	08/01/2022	Cash Payment
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$5,000,000.00	07/18/2022	Cash Payment
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$5,000,000.00	07/11/2022	Cash Payment
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$100,000,000.00	06/07/2022	Cash Payment
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$200,000,000.00	05/26/2022	Cash Payment
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$6,000,000.00	04/26/2022	Cash Payment
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$7,000,000.00	04/26/2022	Cash Payment
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$10,000,000.00	04/14/2022	Cash Payment
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$3,000,000.00	04/08/2022	Cash Payment
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$6,000,000.00	04/04/2022	Cash Payment
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$10,000,000.00	03/24/2022	Cash Payment
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$4,000,000.00	03/15/2022	Cash Payment
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$10,000,000.00	03/11/2022	Cash Payment

Creditor Name and Address	Relationship to Debtor	Total Amount or Value	Dates	Reason for Payment or Transfer
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$100,000,000.00	03/08/2022	Cash Payment
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$200,000,000.00	03/07/2022	Cash Payment
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$500,000.00	03/06/2022	Cash Payment
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$9,000,000.00	02/03/2022	Cash Payment
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$5,000,000.00	01/31/2022	Cash Payment
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$14,968,501.91	01/28/2022	Cash Payment
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$2,000,000.00	01/14/2022	Cash Payment
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$175,076,380.89	05/11/2022	Cash Transfer to Emergent Fidelity Technologies Ltd (Samuel Bankman-Fried 90% owner, Zixiao "Gary" Wang 10% owner) for the purchase of Robinhood shares.
Bankman-Fried, Samuel ADDRESS ON FILE	Founder	\$316,667,182.50	04/30/2022	Cash Transfer to Emergent Fidelity Technologies Ltd (Samuel Bankman-Fried 90% owner, Zixiao "Gary" Wang 10% owner) for the purchase of Robinhood shares.
Cheesman, Jonathan ADDRESS ON FILE	Director	\$1,000,000.00	02/03/2022	Cash Payment
Cheesman, Jonathan ADDRESS ON FILE	Director	\$772,100.00	01/11/2022	Cash Payment
Ellison, Caroline ADDRESS ON FILE	Director/Officer	\$3,500,000.00	09/09/2022	Cash Payment
Salame, Ryan ADDRESS ON FILE	Director/Officer	\$500,000.00	11/04/2022	Cash Payment
Salame, Ryan ADDRESS ON FILE	Director/Officer	\$1,500,000.00	10/12/2022	Cash Payment
Salame, Ryan ADDRESS ON FILE	Director/Officer	\$1,000,000.00	10/03/2022	Cash Payment
Salame, Ryan ADDRESS ON FILE	Director/Officer	\$4,993,520.55	01/28/2022	Cash Payment
Salame, Ryan ADDRESS ON FILE	Director/Officer	\$1,500,000.00	12/27/2021	Cash Payment
Singh, Nishad ADDRESS ON FILE	Director/Officer	\$23,000.00	03/25/2022	Cash Payment
Singh, Nishad ADDRESS ON FILE	Director/Officer	\$14,031,447.62	01/28/2022	Cash Payment

Debtor Name: Alameda Research Ltd

Case Number: 22-11067 (JTD)

Debtor Name: Alameda Research Ltd

Case Number: 22-11067 (JTD)

Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy

Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy

SOFA Question 4: Payments or other transfers of property made within 1 year before filing this case that benefited any insider

SOFA Question 13: Transfers not already listed on this statement

Creditor Name and Address	Relationship to Debtor	Total Amount or Value	Dates	Reason for Payment or Transfer
Singh, Nishad ADDRESS ON FILE	Director/Officer	\$2,534,068.52	12/31/2021	Cash Payment
Singh, Nishad ADDRESS ON FILE	Director/Officer	\$500,000.00	11/17/2021	Cash Transfer to People for the Progressive Governance, Inc in the name of Nishad Singh
Sun, Can ADDRESS ON FILE	General Counsel	\$2,339,590.86	12/29/2021	Intercompany Payable from Alameda Research Ltd. to FTX Digital Markets Ltd created for the benefit of Can Sun as a result of the payment from FTX Digital Markets Ltd to the sellers of Sandport property (titled in the name of Can Sun)
Trabucco, John Samuel ADDRESS ON FILE	Director/Officer	\$2,513,000.00	03/11/2022	Cash Transfer to the American Yacht Group for the benefit of John Samuel Trabucco
Wang, Zhe "Constance" ADDRESS ON FILE	Director/Officer	\$8,217,658.94	04/29/2022	Intercompany Payable from Alameda Research Ltd. to FTX Digital Markets Ltd created for the benefit of Constance Wang as a result of the payment from FTX Digital Markets Ltd to the sellers of Albany Bldg, 10 Unit 4B (titled in the name of Constance Wang)
Wang, Zixiao "Gary" ADDRESS ON FILE	Chief Technology Officer of the Debtors	\$2,685,867.25	01/28/2022	Cash Payment
Wang, Zixiao "Gary" ADDRESS ON FILE	Chief Technology Officer of the Debtors	\$19,452,931.21	05/11/2022	Cash Transfer to Emergent Fidelity Technologies Ltd (Samuel Bankman-Fried 90% owner, Zixiao "Gary" Wang 10% owner) for the purchase of Robinhood shares.
Wang, Zixiao "Gary" ADDRESS ON FILE	Chief Technology Officer of the Debtors	\$35,185,242.50	04/30/2022	Cash Transfer to Emergent Fidelity Technologies Ltd (Samuel Bankman-Fried 90% owner, Zixiao "Gary" Wang 10% owner) for the purchase of Robinhood shares.
Wong Jing Yu, Darren ADDRESS ON FILE	Director	\$667,632.78	02/24/2022	Cash Payment
Wong Jing Yu, Darren ADDRESS ON FILE	Director	\$300,000.00	12/09/2021	Cash Payment

Responses to this question do not currently include all transfers of cryptocurrency, other digital assets or other assets.

Creditor Name and Address	Description of Property	Relationship to Debtor	Date	Amount
Bankman-Fried, Samuel ADDRESS ON FILE	Cash Payment	Founder	08/01/2021	\$250,500.00
Bankman-Fried, Samuel ADDRESS ON FILE	Cash Payment	Founder	08/15/2021	\$500,000.00
Bankman-Fried, Samuel ADDRESS ON FILE	Cash Payment	Founder	08/27/2021	\$500,000.00
Bankman-Fried, Samuel ADDRESS ON FILE	Cash Payment	Founder	10/15/2021	\$301,298.00
Bankman-Fried, Samuel ADDRESS ON FILE	Cash Payment	Founder	11/05/2021	\$300,894.00
Bankman-Fried, Samuel ADDRESS ON FILE	Common Stock Purchase pursuant to the Purchase Agreement for Class B Common Stock of West Realm Shires Inc.	Founder	07/18/2021	\$170,394,453.00
Bankman-Fried, Samuel ADDRESS ON FILE	Intercompany Payable from Alameda Research Ltd. to FTX Trading Ltd created for the benefit of Samuel Bankman-Fried as a result of the payment from FTX Trading Ltd. to the sellers of One Cable Beach Unit 311 (titled in the name of Samuel Bankman-Fried)	Founder	06/03/2021	\$2,200,000.00
Deltec International Group ATTN: LEGAL DEPARTMENT DELTEC HOUSE LYFORD CAY NASSAU, WALLIS AND FUTUNA, BAHAMAS	Loan to Deltec arranged by Ryan Salame		10/25/2021	\$50,000,000.00
Ellison, Caroline ADDRESS ON FILE	Cash Payment	Director/Officer	05/14/2021	\$22,000.00
Ellison, Caroline ADDRESS ON FILE	Cash Payment	Director/Officer	05/25/2021	\$100,000.00
LayerZero Labs Ltd. P.O. Box 4301 Road Town, Tortola, BRITISH VIRGIN ISLANDS	Shares of LayerZero Labs Ltd. (LayerZero) owned by Alameda Research Ltd. and described in the Share Transfer Agreement between the Debtor and LayerZero transferred to LayerZero in exchange for the cancellation of a \$45MM payable from Alameda to LayerZero		11/08/2022	Undetermined
Mount Olympus Capital LP 9 LAGORCE CIR MIAMI BEACH, FL 33141-4519	Cash Investment in Mount Olympus Capital LP for the benefit of SGN Albany (100% owned by Sam, Gary, Nishad, and Alameda Research Ltd.)		05/26/2022	\$200,000,000.00
Mount Olympus Capital LP 9 LAGORCE CIR MIAMI BEACH, FL 33141-4519	Cash investment in Mount Olympus Capital LP for the benefit of SGN Albany (100% owned by Sam, Gary, Nishad, and Alameda Research Ltd.)		09/20/2022	\$100,000,000.00
Valdez K. Russell ADDRESS ON FILE	Intercompany Payable from Alameda Research Ltd. to FTX Digital Markets Ltd. created for the benefit of Valdez Russell as a result of the payment from FTX Digital Markets Ltd. to the sellers of Turnberry Lot #39 (titled in the name of Valdez Russell)	Former Employee	02/28/2022	\$1,068,046.00

Debtor Name: Alameda Research Ltd

Case Number: 22-11067 (JTD)

Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy

SOFA Question 13: Transfers not already listed on this statement

Creditor Name and Address	Description of Property	Relationship to Debtor	Date	Amount
Salame, Ryan ADDRESS ON FILE	Cash Payment	Director/Officer	05/07/2021	2000000
Salame, Ryan ADDRESS ON FILE	Cash Payment	Director/Officer	09/17/2021	2000000
Salame, Ryan ADDRESS ON FILE	Intercompany Payable from Alameda Research Ltd. to FTX Digital Markets Ltd. created for the benefit of Ryan Salame as a result of the payment from FTX Digital Markets Ltd. to the sellers of Albany Bldg. 10 Unit 3A (titled in the name of Ryan Salame)	Director/Officer	10/29/2021	8887568
Singh, Nishad ADDRESS ON FILE	Common Stock Purchase pursuant to the Purchase Agreement for Class B Common Stock of West Realm Shires Inc.	Director/Officer	07/18/2021	25174029
Singh, Nishad ADDRESS ON FILE	Intercompany Payable from Alameda Research Ltd. to FTX Trading Ltd. created for the benefit of Nishad Singh as a result of the payment from FTX Trading Ltd. to the sellers of One Cable Beach Unit 209 (titled in the name of Nishad Singh)	Director/Officer	06/30/2021	1045000
Trabucco, John Samuel ADDRESS ON FILE	Cash Payment	Director/Officer	03/15/2021	4500000
Trabucco, John Samuel ADDRESS ON FILE	Cash Payment	Director/Officer	03/29/2021	4000000
Trabucco, John Samuel ADDRESS ON FILE	Cash Payment	Director/Officer	09/28/2021	7000000
Wang, Zixiao "Gary" ADDRESS ON FILE	Common Stock Purchase pursuant to the Purchase Agreement for Class B Common Stock of West Realm Shires Inc.	Director/Officer	07/18/2021	54431521
Wang, Zixiao "Gary" ADDRESS ON FILE	Intercompany Payable from Alameda Research Ltd. to FTX Trading Ltd created for the benefit of Zixiao "Gary" Wang as a result of the payment from FTX Trading Ltd. to the sellers of One Cable Beach Unit 112 (titled in the name of Zixiao "Gary" Wang)	Director/Officer	06/14/2021	1502000
Weyi Xia (Iris) ADDRESS ON FILE	Intercompany Payable from Alameda Research Ltd. to FTX Digital Markets Ltd. created for the benefit of Weyi Xia (Iris) as a result of the payment from FTX Digital Markets Ltd. to the sellers of Goldwynn Unit 113 (titled in the name of Weyi Xia (Iris))	Director/Officer	04/03/2022	1222615

Debtor Name: Alameda Research Ltd

Case Number: 22-11067 (JTD)

Schedule D: Creditors Who Have Claims Secured by Property, Exhibit 1 - Loan Payables

Lender	Loan Currency	Outstanding Amount	Interest Rate	Interest Payment Currency	Maturity Date
Ashla International Inc	KNC	300,000	0.0%	N/A	Auto Renew
BitGo Prime, LLC	USD	3,500,000	7.5%	USD	None
BitGo Prime, LLC	USD	3,500,000	7.5%	USD	None
BitGo Prime, LLC	BTC	160	3.5%	BTC	None
BitGo Prime, LLC	BTC	160	3.5%	BTC	None
BitGo Prime, LLC	ETH	2,200	3.5%	ETH	None
BitGo Prime, LLC	ETH	2,200	3.5%	ETH	None
BitGo Prime, LLC	ETH	700	2.3%	ETH	None
BlockFi International Ltd	ETH	20,450	4.0%	ETH	None
BlockFi International Ltd	BTC	3,734	4.5%	BTC	None
BlockFi International Ltd	ETH	25,220	3.5%	ETH	None
BlockFi International Ltd	BTC	2,445	3.5%	BTC	None
BlockFi International Ltd	ETH	19,300	3.5%	ETH	None
BlockFi International Ltd	BTC	6,540	4.0%	BTC	None
BlockFi International Ltd	ETH	18,580	4.0%	ETH	None
BlockFi International Ltd	BTC	4,396	4.0%	BTC	None
BlockFi International Ltd	ETH	50,410	4.0%	ETH	None
BlockFi International Ltd	BTC	2,195	4.0%	BTC	None
BlockFi International Ltd	BTC	4,356	5.0%	BTC	11/10/2022
Celsius Network Ltd	EOS	1,303,482	9.5%	EOS	None
Celsius Network Ltd	MATIC	3,125,000	8.0%	MATIC	None
Celsius Network Ltd	LTC	83,553	3.5%	LTC	None
Celsius Network Ltd	ADA	10,000,000	7.0%	ADA	None
Galago Holdings Limited	WRX	2,000,000	0.0%	N/A	None
Genesis Global Capital, LLC	LINK	726,000	3.5%	N/A	None
Genesis Global Capital, LLC	LTC	116,000	4.0%	N/A	None
Genesis Global Capital, LLC	MATIC	7,000,000	9.0%	N/A	None
Genesis Global Capital, LLC	PAX	2,000,000	11.5%	N/A	None
Genesis Global Capital, LLC	ZEC	50,000	10.0%	N/A	None
Genesis Global Capital, LLC	USD	100,000,000	9.0%	N/A	None
Genesis Global Capital, LLC	BTC	3,400	3.8%	N/A	None
Ledn Inc.	BTC	5,035	4.0%	BTC	None
Ledn Inc.	USDC	20,000,000	9.8%	USDC	1/31/2023
Matrix Port Technologies (Hong Kong) Limited	USDC	6,000,000	5.0%	USDC	12/28/2022
Nexo Capital	BTC	484	3.9%	BTC	None
Nexo Capital	USDC	30,000,000	8.8%	USDC	None
Tesseract Group Oy	BTC	230	3.0%	BTC	None
Tesseract Group Oy	USDC	2,000,000	6.0%	ETH	None
VanEck ETP AG	SOL	169,963.648258	0.0%	N/A	None
VanEck ETP AG	SOL	99,966.405	0.0%	N/A	None

Responses to this question do not currently include all transfers of cryptocurrency, other digital assets or other assets.

Debtor Name: Alameda Research Ltd

Case Number: 22-11067 (JTD)

Debtor Name: Alameda Research Ltd

Case Number: 22-11067 (JTD)

Assets - Real and Personal Property

Assets - Real and Personal Property

Part 1, Question 3: Checking, savings, money market, or financial brokerage accounts

Part 4, Question 14: Mutual funds or publicly traded stocks not included in Part 1

Name of institution (bank or brokerage firm)	Type of account	Last 4 digits of account number	Current value of debtor's interest
Deitec	FBO	1115	\$13,091,488.97
ED&F Man	Brokerage Account	0055	\$79,453,105.18
ED&F Man	Brokers	0270	\$19,769,101.00
Interactive Brokers	Brokers	1808	\$341,697,157.89
Prime Trust	Corporate	2505	\$0.00
Prime Trust	Corporate	4016	\$1,224,675.68
Prime Trust	Unknown	1980	\$0.00
Prime Trust	Unknown	8382	\$1,000,001.00
San Juan Mercantile Bank & Trust	Unknown	1592	\$0.00
San Juan Mercantile Bank & Trust	Unknown	7198	\$0.00
Signature Bank	Corporate	9485	\$0.00
Signal	FBO	9485	\$3,880,616.07
Silvergate Bank	Corporate	4464	\$1,253,443.84
Silvergate Bank	FBO	4456	\$95,923.13
Silvergate Bank	FBO	4605	\$10,415,259.31
Silvergate Bank	Unknown	0006	\$15,062,046.20
Stanford Federal Credit Union	Unknown	9832	\$0.00
Western Alliance	FBO	2394	\$0.00
Western Alliance	FBO	3722	\$0.00

Mutual funds or publicly traded stocks not included in Part 1 (Name of fund or stock:)	Valuation method used for current value	Current value of debtor's interest
BITW: Bitwise 10 Crypto Index Fund	Market Price	\$21,419,443.50
BLK: BlackRock Inc	Market Price	\$77,475.00
GBTC: Grayscale Bitcoin Trust (BTC)	Market Price	\$196,618,806.40
GDLCF: Grayscale Digital Large Cap Fund LLC	Market Price	\$803,521.00
ETCG: Grayscale Ethereum Classic Trust (ETC)	Market Price	\$2,191,714.30
ETHE: Grayscale Ethereum Trust ETF	Market Price	\$45,365,997.12
LTCN: Grayscale Litecoin Trust (LTC)	Market Price	\$1,284,527.16
	TOTAL	\$267,761,484.48

Debtor Name: Alameda Research Ltd

Case Number: 22-11067 (JTD)

Assets - Real and Personal Property

Part 4, Question 16: Government bonds, corporate bonds, and other negotiable and non-negotiable instruments not included in Part 1

Government bonds, corporate bonds, and other negotiable and non-negotiable instruments not included in Part 1 (Describe:)	Valuation method used for current value	Current value of debtor's interest
ED&F Account - United States Treasury Bills	Net Book Value	\$97,833,097.20
ED&F Account - United States Treasury Bonds	Net Book Value	\$81,396,875.01
ED&F Account - United States Treasury Notes	Net Book Value	\$178,830,581.66
	TOTAL	\$358,060,553.87

Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy

SOFA Question 3: Certain payments or transfers to creditors within 90 days before filing this case

Creditor Name & Address	Check or Wire Number	Payment Date	Reason For Payment	Amount Paid
MYSTEN LABS 379 UNIVERSITY AVE STE 200 PALO ALTO, CA 94301-1717		09/06/2022	Other- Investments	\$31,261,056.63
			SUBTOTAL	\$31,261,056.63
THIRDVERSE KANDA SQUARE 11F, WEWORK KANDA NISHIKI-CHO 2-2-1 CHIYODA TOKYO SHINAGAWA-KU, 101-0054 JAPAN		10/31/2022	Other- Investments	\$500,000.00
			SUBTOTAL	\$500,000.00
XTERIO DAMMSTRASSE 16 ZUG, 6300 SWITZERLAND		09/22/2022	Other- Investments	\$2,000,000.00
			SUBTOTAL	\$2,000,000.00

Assets - Real and Personal Property

Part 4, Question 15: Non-publicly traded stock interests in incorporated and unincorporated businesses, including any interest in an LLC, partnership, or joint venture.

Non-publicly traded stock and interests in incorporated and unincorporated businesses, including any interest in an LLC, partnership, or joint venture (Name of entity:)	% of Ownership	Valuation method used for current value	Current value of debtor's interest
KTR GROUP CORPORATION	Undetermined	Funded Amount	\$3,000,000.00
KWIL INC.	Undetermined	Funded Amount	\$2,400,000.00
LEMON CASH INC.	Undetermined	Funded Amount	\$1,000,000.00
MOVE LABS INC.	Undetermined	Funded Amount	\$850,025.00
MYSTEN LABS, INC.	Undetermined	Funded Amount	\$100,249,741.66
NAS EDUCATION PTE. LTD.	Undetermined	Funded Amount	\$100,000.00
NOD LABS, INC.	Undetermined	Funded Amount	\$1,000,000.00
PACE HEALTH PTE. LTD.	Undetermined	Funded Amount	\$600,000.00
RECEIPTS DEPOSITARY CORPORATION	Undetermined	Funded Amount	\$1,800,000.00
SAMUDAI TECHNOLOGIES PTE LTD	Undetermined	Funded Amount	\$1,000,000.00
SINTRA LABS, INC.	Undetermined	Funded Amount	\$720,000.00
SOBA STUDIOS, INC.	Undetermined	Funded Amount	\$2,999,986.21
SOJ TRADING LTD.	Undetermined	Funded Amount	\$4,000,000.00
TALEVERSE ENTERTAINMENT STUDIOS, INC.	Undetermined	Funded Amount	\$3,325,000.00
TRIPLEDOT STUDIOS LIMITED	Undetermined	Funded Amount	\$50,000,000.30
TWENTY-SECOND CENTURY DORA TECHNOLOGY HOLDINGS, INC.	Undetermined	Funded Amount	\$5,000,000.27
VERIFYVASP PTE. LTD.	Undetermined	Funded Amount	\$2,000,000.00
VIBE LABS INC.	Undetermined	Funded Amount	\$1,000,000.00
VIRTUALNESS INC.	Undetermined	Funded Amount	\$250,000.00

Debtor Name: Alameda Research Ltd

Case Number: 22-11067 (JTD)

Debtor Name: Alameda Research Ltd

Case Number: 22-11067 (JTD)

Assets - Real and Personal Property

Part 11, Question 71: Notes receivable

Assets - Real and Personal Property

Part 11, Question 71: Notes receivable

Notes receivable Description (include name of obligor)	Total face amount	Doubtful or uncollectible amount	Current value of debtor's interest	Notes receivable Description (include name of obligor)	Total face amount	Doubtful or uncollectible amount	Current value of debtor's interest
Loan Receivable: A.J. Ferguson - Various Loans	250,000.00	Undetermined	Undetermined	Loan Receivable: Sam Trabucco - Various Loans	22,024,851.50	Undetermined	Undetermined
Loan Receivable: BTC Africa S.A. - Promissory Note, August 29, 2022	10,000,000.00	Undetermined	Undetermined	Loan Receivable: Samuel Bankman-Fried - Latona Bioscience Group Intercompany Loan Agreement, August 8 and 11, 2022	68,300,002.00	Undetermined	Undetermined
Loan Receivable: BTC Africa S.A. - Promissory Note, December 30, 2021	25,000,000.00	Undetermined	Undetermined	Loan Receivable: Samuel Bankman-Fried - Promissory Note July 15, 2021	20,805,911.08	Undetermined	Undetermined
Loan Receivable: BTC Africa S.A. - Promissory Note, March 14, 2022	11,000,000.00	Undetermined	Undetermined	Loan Receivable: Samuel Bankman-Fried - Promissory Note, April 30, 2022	316,667,182.50	Undetermined	Undetermined
Loan Receivable: Can Sun - Promissory Note: December 31, 2021	2,339,590.86	Undetermined	Undetermined	Loan Receivable: Samuel Bankman-Fried - Promissory Note, December 1, 2021	250,000,000.00	Undetermined	Undetermined
Loan Receivable: Caroline Ellison - Draw Notice, September 9, 2022	3,500,000.00	Undetermined	Undetermined	Loan Receivable: Samuel Bankman-Fried - Promissory Note, January 28, 2022	14,968,501.91	Undetermined	Undetermined
Loan Receivable: Caroline Ellison - Various Loans	122,000.00	Undetermined	Undetermined	Loan Receivable: Samuel Bankman-Fried - Promissory Note, July 18, 2021	170,394,453.07	Undetermined	Undetermined
Loan Receivable: Consensys Software - Convertible Note, February 18, 2021	750,000.00	Undetermined	Undetermined	Loan Receivable: Samuel Bankman-Fried - Promissory Note, July 22, 2022	141,000,000.00	Undetermined	Undetermined
Loan Receivable: Constance Wang - Various Loans	8,217,658.94	Undetermined	Undetermined	Loan Receivable: Samuel Bankman-Fried - Promissory Note, July 5, 2022	1,206,000.00	Undetermined	Undetermined
Loan Receivable: Keith Lennox - Various Loans	2,694,019.97	Undetermined	Undetermined	Loan Receivable: Samuel Bankman-Fried - Promissory Note, March 18, 2020	500,000.00	Undetermined	Undetermined
Loan Receivable: Nishad Singh - Promissory Note July 15, 2021	3,073,815.57	Undetermined	Undetermined	Loan Receivable: Samuel Bankman-Fried - Promissory Note, May 11, 2022	175,076,380.89	Undetermined	Undetermined
Loan Receivable: Nishad Singh - Promissory Note July 18, 2021	25,174,029.05	Undetermined	Undetermined	Loan Receivable: Samuel Bankman-Fried - Promissory Note, October 1, 2021	210,800,000.00	Undetermined	Undetermined
Loan Receivable: Nishad Singh - Promissory Note, January 28, 2022	14,031,447.62	Undetermined	Undetermined	Loan Receivable: Samuel Bankman-Fried - Promissory Note, September 28, 2022	42,341,900.00	Undetermined	Undetermined
Loan Receivable: Nishad Singh - Promissory Note, July 22, 2022	20,000,000.00	Undetermined	Undetermined	Loan Receivable: Samuel Bankman-Fried - Various Loans	836,424,685.73	Undetermined	Undetermined
Loan Receivable: Nishad Singh - Promissory Note, July 5, 2022	180,000.00	Undetermined	Undetermined	Loan Receivable: Valdez Russel - Various Loans	1,068,530.72	Undetermined	Undetermined
Loan Receivable: Nishad Singh - Promissory Note, May 3, 2021	16,500.00	Undetermined	Undetermined	Loan Receivable: Zixiao Wang - Promissory Note July 15, 2021	6,646,273.35	Undetermined	Undetermined
Loan Receivable: Nishad Singh - Promissory Note, November 15, 2021	477,840,000.00	Undetermined	Undetermined	Loan Receivable: Zixiao Wang - Promissory Note July 18, 2021	54,431,521.12	Undetermined	Undetermined
Loan Receivable: Nishad Singh - Promissory Note, October 1, 2021	31,000,000.00	Undetermined	Undetermined	Loan Receivable: Zixiao Wang - Promissory Note, April 30, 2022	35,185,242.50	Undetermined	Undetermined
Loan Receivable: Nishad Singh - Promissory Note, September 28, 2022	6,226,750.00	Undetermined	Undetermined	Loan Receivable: Zixiao Wang - Promissory Note, January 28, 2022	2,685,867.25	Undetermined	Undetermined
Loan Receivable: Nishad Singh - Various Loans	4,091,137.04	Undetermined	Undetermined	Loan Receivable: Zixiao Wang - Promissory Note, July 22, 2022	44,000,000.00	Undetermined	Undetermined
Loan Receivable: Ryan Salame - Promissory Note: December 31, 2021	8,164,068.71	Undetermined	Undetermined	Loan Receivable: Zixiao Wang - Promissory Note, July 5, 2022	414,000.00	Undetermined	Undetermined
Loan Receivable: Ryan Salame - Promissory Note: January 28, 2022 (OpEx)	4,993,520.55	Undetermined	Undetermined	Loan Receivable: Zixiao Wang - Promissory Note, May 11, 2022	19,452,931.21	Undetermined	Undetermined
Loan Receivable: Ryan Salame - Promissory Note: October 25, 2021 (Norton Hall)	50,000,000.00	Undetermined	Undetermined	Loan Receivable: Zixiao Wang - Promissory Note, October 1, 2021	68,200,000.00	Undetermined	Undetermined
Loan Receivable: Ryan Salame - Various Loans	6,926,000.00	Undetermined	Undetermined	Loan Receivable: Zixiao Wang - Promissory Note, September 22, 2022	13,698,850.00	Undetermined	Undetermined

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1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 UNITED STATES OF AMERICA,

4 v.

22 Cr. 240 (AKH)

5 SUNG KOOK (BILL) HWANG, et al,

7 Defendants.

8 Oral Argument

9 -----x

10 New York, N.Y.
March 21, 2023
2:30 p.m.

12 Before:

14 HON. ALVIN K. HELLERSTEIN,

District Judge

16 APPEARANCES

17 DAMIAN WILLIAMS

United States Attorney for the
Southern District of New York

18 BY: ANDREW M. THOMAS

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TIMOTHY M. HAGGERTY

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1 (Case called; appearances noted)

2 THE COURT: Let's start with the motion to dismiss,
3 and I guess you're going to be arguing, right, Mr. Lustberg?

4 MR. LUSTBERG: I'll be arguing. I'm not sure all the
5 issues that your Honor is interested in, but I'll be arguing in
6 regard to manipulation, *Rico*, and the government misconduct
7 motions, so happy to do it. Mr. Valen will argue with regard
8 to the securities fraud and mail fraud issues.

9 THE COURT: As you wish. Go ahead.

10 MR. LUSTBERG: Does the court wish them in any
11 particular order?

12 THE COURT: You take it, Mr. Lustberg, and I'll
13 interrupt you.

14 MR. LUSTBERG: Okay. Thank you, Judge. So, your
15 Honor, today before this Court are significant substantive
16 issues, which respectfully could really forever influence
17 whether and how trading in securities can be prosecuted. And
18 there are also significant procedural issues about how persons
19 under investigation can and should be treated going to the
20 obligations of federal prosecutors to be candid and fair.

21 THE COURT: Let's leave that for later. Let's do the
22 substantive issue first.

23 MR. LUSTBERG: You got it. Thank you, your Honor.
24 I'm going to start, your Honor, with the question of
25 manipulation. The question of whether the government adequately

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1 alleges securities fraud in terms of manipulation is a purely
2 legal question, and that question is, Is it illegal, and can it
3 be criminal to engage in real sales if the intent of doing so
4 is to affect the price of securities. Assuming for purposes of
5 this discussion that there is such intent, which of course we
6 have to do for purposes of this motion practice.

7 First, under both Section 10(b) and Section 9(a)(2),
8 the Supreme Court has made absolutely clear that
9 manipulation -- to quote the Court, connotes intentional or
10 willful conduct designed to deceive or defraud investors by
11 controlling or artificial affecting the price of securities.
12 That is, your Honor, it requires misleading practices,
13 practices that -- again quoting, artificially affect the
14 securities price in a deceptive matter. That is, that are
15 aimed at deceiving investors as to how other market
16 participants have valued a security. That is the standard.

17 And this occurs, your Honor, under the case law when a
18 transaction sends a false pricing signal to the market. That's
19 what the Second Circuit said in the *ATSI*, which I call *ATSI*
20 case. Which in turn requires some deceptive conduct that
21 results in the market receiving false information. That is,
22 that the defendant conveyed some sort of false impression to
23 the marketplace. At bottom as with all fraud, what is required
24 is a misrepresentation, an act of deception -- in the words of
25 the United States Supreme Court in the *Schreiber* case. In its

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1 decision in *Mulheren*, the Second Circuit stated that it
2 harbored doubt -- that its words -- as to whether it was
3 sufficient for a manipulation conviction that the purchase was
4 for the sole purpose of raising the price, rather than for
5 investment purposes.

6 The Court didn't reach that question there because
7 there was no proof that there had been, that that had been the
8 sole purpose as to what occurred, and it pointed out that it
9 was not enough that the defendant in that case, like the
10 defendant here, engaged in high volume trading; but did so
11 there in a way that concealed its trading.

12 THE COURT: The indictment alleges, among many other
13 things, that the effect of the swaps was to avoid disclosure
14 that would be required under Section 13(d) if more than 5
15 percent ownership of stock was obtained, was held. And it
16 alleges that through the particular swaps and the effect of the
17 swaps, particular to Mr. Hwang, that a great deal more control
18 was exercised by Mr. Hwang and his company without telling
19 anybody. So that the obtained positions that controlled a
20 significant percentage of the float, someone who wanted to buy
21 or sell would really want to know how much of a float there was
22 because it has a lot to do with the liquidity of the stock and
23 the free play of the market. Wouldn't you say that's an
24 adequate allegation of manipulation?

25 MR. LUSTBERG: Respectfully, your Honor, no, it isn't,

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1 and here's why. Just like many other of the allegations -- and
2 your Honor has said there were a number of allegation in this
3 indictment. The allegations regarding swaps go directly to
4 what is and is not lawful. That is that there's no question,
5 but that Mr. Hwang's swaps trading did not have to be disclosed
6 in the way that it would if it were actual securities. That
7 is, that's the effect of swaps, is that one does not have to
8 make the disclosures -- and by the way in his case, there's the
9 additional protection against disclosure that comes about
10 because he's working from a family office, which you've kind of
11 alluded to. But the truth is that his --

12 THE COURT: I don't think that makes a difference.
13 We're not talking about the Investment Advisers Act. We're
14 talking about manipulation.

15 MR. LUSTBERG: I understand. So the question you've
16 asked is whether he concealed his -- he somehow concealed his
17 investments in a way that deceived the market. Leaving aside
18 that everyone --

19 THE COURT: That's what's alleged.

20 MR. LUSTBERG: That's what's alleged. He didn't
21 because his actions in disclosing or non-disclosing were in
22 precise conformity with the law. It's interesting. Your
23 question is an interesting public policy question which as
24 you've seen is being debated at the SEC and in Washington as to
25 whether the statute should be changed to require a greater

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1 disclosure in situations where swaps are involved.

2 THE COURT: It will not be the first time that an
3 issue of fraud was also a subject of discussion whether or not
4 to issue a policy position.

5 I recall a case decided by Judge Friendly, who I think
6 very few people in this room will recognize -- but you and I
7 will.

8 MS. MULLIGAN: Thank you, your Honor.

9 THE COURT: -- with accountants, accountants fraud
10 where the accountants defense was that they did everything that
11 was permissible, but where the effect of what they did and the
12 intent of what they did was to have a material
13 misrepresentation of the books and records, and that was
14 considered a fraud.

15 And the question here is, Can acts that are legal in
16 and of themselves get perverted in a way that carries out a
17 scheme or artifice to defraud. And we could assume that if one
18 exercises sufficient control over a stock to command the price,
19 then there can be a manipulation. It may not be, doesn't have
20 to be, but it can be.

21 MR. LUSTBERG: Your Honor, you've stated the question
22 with precision.

23 THE COURT: Really. You're a good flatterer,
24 Mr. Lustberg.

25 MR. LUSTBERG: Well, you know that that's not my way.

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1 But an assignment case, which is what you're referring to --

2 THE COURT: Yes, right, an assignment.

3 MR. LUSTBERG: -- what Judge Friendly held there was
4 not simply that it was -- that doing something completely legal
5 could turn into something illegal if you had some sort of
6 mal-intent. In that case, it was an accountant, and the
7 accountant had certain disclosure obligations. He had to
8 certify, and that was the crime there. Here's the thing about
9 this case. This case is about trading. It's about huge
10 amounts of trading that was ultimately very unsuccessful. And
11 the question there is, Was that trading unlawful.

12 The government cites numerous cases for the
13 proposition that if you add, quote, unquote, manipulative
14 intent to the equation, then what was otherwise lawful suddenly
15 can become unlawful. But what I'm really requesting that your
16 Honor do very carefully is to look at each and everyone of
17 those cases. Because each of those cases, your Honor, are
18 cases in which there is classic securities fraud. There is
19 deception on the market. There are false signals being sent to
20 the market.

21 THE COURT: Isn't there an allegation of false signals
22 and deception? The government may not be able to prove them,
23 but they're alleged.

24 MR. LUSTBERG: They're not, your Honor. There really
25 are not allegations of false statements of deception. What

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1 there is, there's a number of allegations of fact that they say
2 amount to fraud. But each and everyone of those, every single
3 one of them is lawful conduct. So, for example, you yourself
4 just mentioned a few moments ago, high volume trading,
5 concentrated portfolios. Even if that's true, that is not
6 unlawful. And it's very clear that it's not unlawful to trade
7 in a big way, which is what Mr. Hwang did. They talk about the
8 trades were timed.

9 THE COURT: What was the purpose of the trading? Why
10 didn't he want to concentrate and buildup such large positions
11 and create an illiquidity that may have prevented him from ever
12 getting out? This is not in the indictment. I'm straying from
13 the indictment, but it's my curiosity.

14 MR. LUSTBERG: Sure. You're asking a fact question,
15 and here's what the facts would show. Mr. Hwang liked these
16 stocks. He traded in a very limited portfolio of names that he
17 studied well, and these particular names, these particular
18 securities were securities for companies that he believed in.
19 Not only did he believe in them, but he particularly believed
20 like every other investor in the world that the best time to
21 buy was when the number is low, is when the price is low. And
22 so as the price fell, he did as he had done for years, he
23 bought more.

24 But this goes to a proof question, and I think the
25 government would say the same thing that what I'm saying now to

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1 you is a proffer of what the evidence will show, but they have
2 to show, they have to allege that there's actual fraud, that
3 there's something that happened in the marketplace, the classic
4 indicia of securities fraud that the case law talked about.

5 THE COURT: They're talking about a fraud of using the
6 swaps as a way of building up the value of his position without
7 letting the market know that he really controlled more than 5
8 percent. That's fraud.

9 MR. LUSTBERG: So, your Honor, first of all, there is
10 a certain transparency in the marketplace because as the
11 government alleges each -- not every single time, but when
12 Mr. Hwang would buy sometimes, the counterparties would hedge
13 and buy those shares. All of which was readily disclosed to
14 the marketplace. But there's no allegation --

15 THE COURT: That's not so, is it?

16 MR. LUSTBERG: Pardon me.

17 THE COURT: How does the market know?

18 MR. LUSTBERG: Well, the market doesn't know it's
19 Mr. Hwang doing the trading, but they know that what's being
20 purchased in the market.

21 THE COURT: You can collect all that information, but
22 not very easily.

23 MR. LUSTBERG: Well, none of it is gathered very
24 easily, that's sort of not the point. But the question here is
25 whether in buying swaps which -- and remember, a swap is --

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1 your Honor knows what a swap is. You're essentially betting on
2 a stock. That doesn't have to be disclosed. And so what
3 you're saying is that -- what they're saying is that -- or if
4 they are saying this, and I'm not sure this allegation appears
5 anywhere in the indictment. In fact, I'm sure it doesn't
6 appear anywhere in the indictment. That by purchasing swaps
7 that he failed to disclose to the marketplace, he was obeying
8 something the law. The law does not -- and by the way --

9 THE COURT: I concede to you that entering into a swap
10 transaction is not forbidden by law.

11 MR. LUSTBERG: That's correct.

12 THE COURT: The issue whether is whether doing it in
13 such a way as to amass a control position over the trading of a
14 security for the purpose of inflating the value of its own
15 security in an artificial way cannot be illegal, cannot be a
16 fraud, cannot be a scheme or artifice to defraud. I take your
17 position. I understand what you're saying. May I ask a few
18 questions to Mr. Thomas.

19 MR. LUSTBERG: May I just respond to one thing that
20 your Honor just said, just one thing quickly.

21 THE COURT: Sure.

22 MR. LUSTBERG: I want to emphasize a word that you
23 just used when you summarized the allegation, and that summary
24 included the idea that his position was artificial. That there
25 was something artificial about the pricing.

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1 THE COURT: That's alleged.

2 MR. LUSTBERG: That's what's alleged. Well, yes and
3 no it's alleged. I mean the artificiality.

4 THE COURT: It's alleged that there was a false
5 inflation to the value of the stock.

6 MR. LUSTBERG: Well, the allegation is that that was
7 his intent. But artificiality requires a false statement to
8 the marketplace. That false statement comes about in cases of
9 spoofing or layering. It comes about in cases of wash sales.
10 It comes about in specific situations where false information
11 is injected into the marketplace.

12 THE COURT: You made that point somewhere earlier, and
13 I made the government give you a letter which outlined and will
14 give you more detail about the specific allegations and
15 misrepresentations.

16 MR. LUSTBERG: No, your Honor. That letter was on
17 something different. There's two sets of allegations in this
18 case. One set of allegations has to do with whether there were
19 false statements to the marketplace. The answer is, No, there
20 weren't. These were sales that the marketplace had the same
21 ability to understand as it would with regard to any other
22 swaps; and then if there was hedging, any other subsequent
23 transactions.

24 What you required the government to provide to us was
25 a list of the misrepresentations that Archegos allegedly made

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1 to the counterparties, to the banks. That's what you required
2 the government to provide.

3 THE COURT: This is responding to your point that
4 there was no misrepresentation involved regarding the swaps and
5 the intent of the swaps.

6 MR. LUSTBERG: So, your Honor --

7 THE COURT: You make a good point here. There are two
8 aspects of wrongdoing basically here. One is the conspiracy to
9 violate *Rico*, and the other is a securities fraud.

10 MR. LUSTBERG: There are two different securities
11 fraud violations that are alleged. One is manipulation, and
12 the other is fraud in connection with communications between
13 Archegos and the counterparties, the banks. Those are the two
14 different types of fraud allegations that are at issue. I'm
15 now only addressing the manipulation claim. And our argument,
16 your Honor, is that mere intent to influence the price is
17 insufficient to allege manipulation in a nutshell.

18 THE COURT: I think there's more than that, but let's
19 see what Mr. Thomas has to say on this.

20 MR. THOMAS: Your Honor, Mr. Podolsky is eager to
21 address this topic, so I'll turn it to him.

22 MR. PODOLSKY: Thank you, your Honor. Let me start
23 just by responding to a comment that Mr. Lustberg made several
24 times and led to the end of the colloquy that there must be
25 false statements made in connection with a market manipulation

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1 claim to proceed. I'm just going to quote now from the case
2 law, because this is not an open question. And I'll start with
3 *United States v. Royer*. This was Judge Rakoff sitting by
4 designation on the Second Circuit, and considering a market
5 manipulation claim. And what he pointed out was that in this
6 context 10(b)(5) prohibits not only conventional frauds brought
7 about by making materially false or misleading statements, but
8 also so-called constructive frauds; that is, other forms of
9 misconduct that have the same practical effect as a
10 conventional fraud. So that's 2008 in the Second Circuit.

11 And this point has actually been addressed more
12 recently by judges in this district, including Judge Cote in
13 *SEC v. Lek Securities*. And among other things she pointed out
14 that market manipulation can be accomplished through otherwise
15 legal means. As the Second Circuit has noted, and she goes on
16 to quote, *ATSI*, a Second Circuit decision; in some cases,
17 scienter is the only factor that distinguishes legitimate
18 trading from improper manipulation. And I'll point to one
19 other decision. This is Judge Holwell's decision in *Masri* in
20 2007. And Judge Holwell also stated, market manipulation can
21 also be accomplished through otherwise legal means, such as
22 short sales and large or carefully timed purchases or sales of
23 stock.

24 THE COURT: And that's what you allege?

25 MR. PODOLSKY: And that is exactly what we allege.

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1 And these are decisions of this district and this Circuit
2 stating clearly that the defendant's legal position is wrong,
3 and their view of what is required to be alleged is incorrect.

4 THE COURT: I think, Mr. Lustberg, that's what I hold.
5 I think that is what I hold. There is an adequate allegation
6 in the indictment just to that effect, that the entering into
7 the swaps along with the manipulative purpose that's alleged
8 and the misstatements that are alleged carry out a fraud. It
9 sufficiently alleges a conspiracy among the four to carry out
10 this manipulation.

11 Now, I want to ask this of Mr. Thomas. What is the
12 bright line, if any, between lawful trading in swaps, between
13 lawful placement of trades. The timing of trades at the close
14 or at the beginning of the market or after hours or before
15 hours, permissible activities and a manipulative activity, such
16 as you allege in the indictment? Is there a bright line?

17 MR. PODOLSKY: I think that's a great question, your
18 Honor. I think the best way to answer it is to point to the
19 elements that I expect the government will prove at trial which
20 is, first, as relevant to your question, that the defendant
21 engaged in practices that affected or controlled the price of
22 the securities. So those are the techniques that your Honor
23 was just adverting to.

24 And then second that the defendant did it knowingly
25 and willfully and with the intent to affect or control those

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1 prices. And so the government does --

2 THE COURT: Affect or control are different.

3 MR. PODOLSKY: That's right, your Honor. And I
4 believe the case law provides either one would be sufficient.
5 So in order to either control or increase or decrease the price
6 of the security.

7 THE COURT: It can be argued that every single sale or
8 purchase of a security can affect the price.

9 MR. PODOLSKY: That's right, your Honor. And that's
10 why that intent, that knowing and willful and intent to
11 manipulate are what distinguishes lawful from unlawful
12 manipulation.

13 THE COURT: How do you define manipulation?

14 MR. PODOLSKY: Your Honor, just as I said, and I'm
15 happy to pull up a citation here.

16 THE COURT: Tell me what you understand is
17 manipulation.

18 MR. PODOLSKY: Yes, your Honor. It's any technique,
19 in this case it's trading techniques that are carried out with
20 the intent, as I said, to create an artificial price; that is
21 to interfere with the natural interplay of supply and demand by
22 controlling, increasing or decreasing the price of the
23 security.

24 THE COURT: You agree with that definition,
25 Mr. Lustberg?

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1 MR. LUSTBERG: I really don't disagree with that
2 definition, your Honor, except that there's more to. And if I
3 might let me explain.

4 THE COURT: What more is there to it?

5 MR. LUSTBERG: The more to it has to be some
6 fraudulent conduct. This is securities fraud. And, your
7 Honor, I'm going to take --

8 THE COURT: I believe the Second Circuit has said
9 that, Mr. Thomas. It must be some fraudulent activity, some
10 deception. I think you allege it --

11 MR. PODOLSKY: We do extensively, your Honor.

12 THE COURT: -- to the things that were said and not
13 said to the counterparties for one, and perhaps in other ways
14 as well. But there does have to be some kind of fraudulent
15 activity.

16 MR. PODOLSKY: That's right, your Honor. What we've
17 alleged as we've stated, and I think your Honor adverted to
18 this several times, is that by using swaps to carry this out,
19 by timing the trades, by the size of the trades and so on, each
20 of those were techniques that were used to deceive the market,
21 to send a false pricing signal to the market.

22 THE COURT: Give me those incidents again.

23 MR. PODOLSKY: Sure. So, for example, your Honor, and
24 I believe this is alleged throughout the indictment including
25 at paragraph four, but your Honor referred to it. The use of

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1 swap counterparties to disguise and deceive the market as to
2 the extent of demand for these stocks. And at paragraph 35 of
3 the indictment, the indictment alleges manipulative and
4 deceptive trading techniques, such as purchasing or selling
5 securities at particular strategic times of day, transacting in
6 certain securities in large amounts or high volume.

7 THE COURT: Mr. Lustberg is going to answer, those are
8 conventional activities.

9 MR. PODOLSKY: That's right, your Honor. And that's
10 why I adverted to, for example, *Lek Securities*, Judge Cote's
11 decision, Judge Holwell's decision in *Masri*, that when those
12 activities, which as your Honor noted, can impact the price of
13 a stock are carried out with the intention to impact the price
14 of the stock, they become manipulative. As we've said in our
15 briefing and as I read a few moments ago, that's what the case
16 law in this circuit holds.

17 MR. LUSTBERG: Your Honor, I don't want to interrupt,
18 if I may.

19 THE COURT: One moment. Every purchase, every sale
20 can affect the market.

21 MR. PODOLSKY: That's correct, your Honor.

22 THE COURT: If it's a large purchase for sale, it can
23 affect the market. No one would say it's illegal to engage in
24 a large transaction. No one can say that it's illegal to enter
25 into a swap transaction. But you're saying the combination of

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1 these activities can be illegal?

2 MR. PODOLSKY: That's right, your Honor. As we note
3 both in the indictment, as I think your Honor said a few
4 moments ago, the way that these techniques were designed and
5 used was intentionally deceptive and designed to manipulate the
6 market. And as I pointed out, that's what the Second Circuit
7 as well as Judge Cote, Judge Holwell have held to be sufficient
8 to allege market manipulation.

9 THE COURT: Let me make this observation. At this
10 point, given the different contentions of the parties, the
11 difficulty in defining manipulation, the difficulty in drawing
12 a bright line between activity that is lawful in itself and
13 activities that taken together and with a malevolent purpose
14 can be unlawful, that's a mistake for a district judge to
15 dismiss the indictment.

16 The government may not prove its point. The
17 government may not be able to prove its manipulation, but I
18 think it needs to be done on a complete record; and then maybe
19 I can decide or more likely a jury can decide whether there is
20 or is not manipulation.

21 MR. LUSTBERG: We agree, your Honor.

22 THE COURT: Let's go over now the techniques of it.
23 First allegation, a conspiracy to commit a *Rico* fraud.
24 Mr. Lustberg points out that you never alleged a pattern. What
25 is the pattern? Does it have to be alleged or is it sufficient

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1 to say you conspired to commit a *Rico* fraud?

2 MR. THOMAS: Your Honor, I'll address this one if I
3 could. The indictment contains all the allegations that are
4 necessary to allege --

5 THE COURT: Where is the pattern?

6 MR. THOMAS: -- that there was an agreement to conduct
7 the affairs of Archegos through a pattern of racketeering.

8 THE COURT: You sufficiently allege an agreement.
9 Ms. Mulligan may disagree, but we'll have that later on.

10 MR. THOMAS: Yes, your Honor. I underscore this
11 distinction --

12 THE COURT: Listen to me. I'm not commenting on an
13 allegation of a conspiracy. I'm in agreement. I'm not at this
14 point commenting on the existence of an enterprise. I'm asking
15 you about a pattern of racketeering activity. Where in the
16 indictment do I find that; and is it necessary to allege that?

17 MR. THOMAS: Your Honor, the answer to the second
18 question is no. What needs to be alleged is that there was an
19 agreement to conduct the affairs of the enterprise through a
20 pattern of racketeering activity. The only charge under the
21 racketeering statute that is contained in the indictment is a
22 conspiracy charge. There is no substantive count. So all that
23 need be alleged is that the participants, the conspirators in
24 the scheme agreed to conduct the affairs through a pattern of
25 racketeering activity.

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1 THE COURT: So it's sufficient for an indictment to
2 allege the comprehensive fact or comprehensive theory, but not
3 the underlying facts?

4 MR. THOMAS: Yes, your Honor. Including --

5 THE COURT: It's not necessary for the indictment to
6 allege the specific acts that constitute a pattern?

7 MR. THOMAS: Your Honor, the indictment does do that.
8 The answer to the legal question that you're asking is, it is
9 sufficient for the government to allege for an indictment to
10 contain an allegation that there was an agreement to operate it
11 through a pattern of racketeering activity, and to provide no
12 further delineation of the pattern. As it happens here, the
13 indictment does contain specific allegations about the pattern.

14 THE COURT: I concede the first part, but not the
15 second part. Where is the second part?

16 MR. THOMAS: Your Honor, a couple of things. First of
17 all, if you look, for example, in paragraph 68 which is printed
18 page 48 as numbered of the indictment. Starting at the bottom
19 of the page the indictment alleges that the conspirators
20 agreed -- and I quote now, "To conduct and participate directly
21 and indirectly in the conduct of the affairs of the Archegos
22 enterprise through a pattern of racketeering activity, as that
23 term is defined in Title 18, United States Code, 1961(1) and
24 1961(5)."

25 THE COURT: I see subparagraphs A to C. They're not

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1 very helpful. It maybe sufficient I guess, but they're not
2 very helpful. They don't tell us anything.

3 MR. THOMAS: Your Honor, they're plainly sufficient
4 under the Second Circuit's decision in *Applins* which said for
5 conspiracy allegations of this sort where there are categories
6 of criminal conduct that are at the object of the scheme, it is
7 sufficient for the indictment to allege those categories. And
8 those categories are themselves a pattern of racketeering
9 activity if they are related to the enterprise. And those
10 allegations too are found more specifically in the paragraphs
11 that follow where it identifies in the indictment the purposes
12 of the racketeering conspiracy.

13 THE COURT: Where is that?

14 MR. THOMAS: Starting at paragraph 70, and then
15 continuing to paragraph 71, 72 and 73.

16 THE COURT: What pattern? I understand.
17 Mr. Lustberg, would you agree with Mr. Thomas that
18 subparagraphs A, B and C sufficiently allege for the purpose of
19 an indictment the pattern?

20 MR. LUSTBERG: Absolutely not, your Honor. Let me
21 start with his legal point. The agreement that they have to
22 allege under the Second Circuit cases of *Cain* and *Satinwood* is
23 they have to agree that the co-conspirators would further and
24 endeavor, which if completed would satisfy all of the elements
25 of a substantive *Rico* offense. That is, they want to say that

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1 just because this is a conspiracy charge and not a substantive
2 *Rico* charge that they don't have to adequately allege, as
3 you've asked, a pattern, but that isn't correct.

4 THE COURT: That's their allegation.

5 MR. LUSTBERG: That's their argument.

6 THE COURT: And they accuse you of importing civil
7 cases into the criminal law.

8 MR. LUSTBERG: Your Honor, their brief is replete with
9 civil cases, both in the manipulation context and in the *Rico*
10 context. It's not the least bit unusual to rely on civil
11 cases.

12 THE COURT: We take the law where we find them, but I
13 think Mr. Thomas is correct about the obligations of pleading.

14 MR. LUSTBERG: Except, your Honor, that the
15 agreement -- so, for example, Judge, if you were to say, there
16 was an agreement to violate -- to rob a bank, but there was no
17 bank involved, then you haven't adequately alleged a
18 conspiracy. Here, the agreement has to be to violate *Rico*;
19 that is, through a pattern of racketeering activity. So it's
20 perfectly appropriate -- and the case law does this -- looks to
21 whether a pattern is alleged. And a pattern, as we've set
22 forth, is not alleged here for two reasons:

23 Number one, there's not two predicate acts. There's
24 one in. And the one is mail fraud, which as we know is their
25 theory is under attack in the Supreme Court. But the second

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1 one --

2 THE COURT: Offenses involving fraud in the sale of
3 securities.

4 MR. LUSTBERG: Fraud in the sale of securities, and
5 under *Rico* uniquely it has to be fraud in the sale of
6 securities. But, your Honor, one looks not just to the
7 conclusory allegations of the indictment, but look at all the
8 allegations. And what these allegations are about has to do
9 with Mr. Hwang's purchase of securities, not sales.

10 THE COURT: I think you're requiring too much of an
11 indictment.

12 MR. LUSTBERG: Your Honor, I mean, it's not about
13 requiring too much. An indictment is measured -- one looks at
14 an indictment and says, Does this indictment allege a crime.
15 If everything they say is true, does it amount to a crime?
16 They do not in this indictment --

17 THE COURT: Let me ask Mr. Thomas, the allegation of
18 offenses involving fraud in the sale of securities, and that's
19 to "B" as well. Mr. Lustberg is arguing that if there's a
20 fraud here, it's involved in the purchase of securities, not in
21 the sale. And so these allegations contradict other
22 allegations in the indictment.

23 MR. THOMAS: Your Honor, Mr. Lustberg is wrong on this
24 point, both factually in terms of describing what's in the
25 indictment. The paragraph 35 that Mr. Podolsky referred the

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1 Court to talks about, for example, instances in which Archegos
2 used sales itself as the seller in order to further its
3 fraudulent scheme. And as the Court just observed in paragraph
4 68 --

5 THE COURT: Let me read 35. Just a minute.

6 (Pause)

7 THE COURT: Subparagraph B talks about purchases, as
8 does C, as does D.

9 MR. THOMAS: Your Honor, I direct the Court to the
10 introductory paragraph that says, "In particular Bill Hwang
11 influenced the prices of stocks by utilizing manipulative and
12 deceptive trading techniques, such as purchasing or selling
13 securities at particular strategic times of day."

14 THE COURT: I skip that because it's the generality.

15 MR. THOMAS: Your Honor, the indictment need not
16 contain more than a concise statement of the offense, and that
17 paragraph doesn't stand alone. It stands next to the paragraph
18 68 allegations which assert literally that there was fraud in
19 connection with the sale of securities. But Mr. Lustberg is
20 also wrong as a matter of law that these allegations about the
21 purchases are not themselves related to the sale of securities.
22 Obviously for every security --

23 THE COURT: How so?

24 MR. THOMAS: Every security that Archegos purchased
25 was sold to it by a deceived counter-party, so there's a sale

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1 of securities involved in every transaction.

2 THE COURT: The sale gave more benefit to the sellers
3 because of the manipulation of the price. In other words, the
4 sellers sold into an inflated price, and therefore made more
5 money.

6 MR. THOMAS: Your Honor, I'm referring to the
7 counterparties who loss billions of dollars because of their
8 reliance on Mr. Hwang's team's false statements.

9 THE COURT: Maybe because they built up their own long
10 position.

11 MR. THOMAS: Well, as Mr. Lustberg referred to, the
12 typical practice at the counterparties was to go into the
13 market and buy one share of the stock. And so when Mr. Hwang
14 wanted to take a particular bet, there would be a corresponding
15 echo in the equities market by the counter-party.

16 THE COURT: The counterparties are hedging. It's a
17 classic hedge. They have to sell back the security which is
18 the swap at a certain time and at a certain price. And so they
19 go into the market and buildup a long position. They hedge
20 against that. The problem here is that the buyer of the
21 counter-party, that is Archegos, didn't have the money to honor
22 the trade; and so the price collapsed and the counter-party was
23 left holding stock that didn't have the value it was supposed
24 to have.

25 MR. THOMAS: Your Honor is absolutely correct in

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1 assessing those dynamics. What I wanted to draw the Court to
2 was first a factual point, which is that Archegos's involvement
3 with the counterparties is an involvement in the counterparties
4 selling swaps to Archegos, so sales are involved. And Justice
5 O'Connor in a concurrence in the *Holmes* case observed that this
6 language best be read to require there to be conduct
7 sufficiently willful to constitute a crime and a sale of
8 securities; not that the seller be the one or the sale itself
9 be the thing that affected the fraud. That leads me to the
10 second point --

11 THE COURT: The consequences of the fraud would be for
12 selling the liquidation. It doesn't have to be part of the
13 fraud, it could be the consequence of the fraud. Is that what
14 you're saying?

15 MR. THOMAS: Your Honor, what we're saying is that the
16 law only requires there to be a sale somewhere in the scheme,
17 and here there are many sales, and judges in this Circuit have
18 so found.

19 THE COURT: I'm sure Mr. Hwang did not consider sales
20 as a part of his scheme.

21 MR. THOMAS: Your Honor, that also is factually
22 inaccurate in the sense that the indictment alleges that
23 Mr. Hwang took short positions in certain of the securities.
24 And there's a table at the beginning of the indictment that
25 identifies various tickers that Mr. Hwang manipulated through

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1 his trading, and includes in it a list of two tickers that he
2 manipulated on the short side.

3 THE COURT: I noticed that, but there are no
4 allegations to make me understand what they were and how they
5 did it. I know what they are. I saw the table, but I don't
6 know how that was part of a manipulative scheme. There's no
7 allegation regarding that.

8 MR. THOMAS: Respectfully, your Honor, we think that
9 paragraph 35 and paragraphs 68 do provide all that's required
10 under Rule 7 to describe there being a sale of securities in
11 connection with the fraud. And further as I pointed out,
12 judges in this Circuit, including Judge Cabranes when he was on
13 the district court have held essentially that any willful
14 violation of 10(b) is a *Rico* predicate. And so the suggestion
15 that there needs to be some very specific type of sale conduct
16 in the fact pattern is both wrong legally, but also ignores the
17 instances in the indictment in which sales are described.

18 THE COURT: Something with all of this is that this
19 case is different. I've never seen a swap case like this in
20 the literature. Bottom line is that you've alleged a
21 conspiracy. You've alleged the enterprise and you've
22 sufficiently alleged a pattern of racketeering activity by the
23 general allegations of the subparagraphs under paragraph 35.
24 that's your position?

25 MR. THOMAS: Yes, your Honor. And in our briefing we

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1 point --

2 THE COURT: And Mr. Lustberg points out that they
3 don't make sense. It maybe it's true, Mr. Lustberg. But
4 again, I think at this time on this record I cannot rule
5 against the government in the sufficiency of the indictment.

6 MR. LUSTBERG: Your Honor, I understand the Court's
7 ruling. I'm not quarreling with the Court, except that I sort
8 of am.

9 THE COURT: Well, sure you are. That's what you're
10 paid to do. You do it so well.

11 MR. LUSTBERG: Which is to say this: The government,
12 as Mr. Thomas has and Mr. Podolsky have both talked about
13 sufficiency of allegations and Rule 7 of the Federal Rules of
14 Criminal Procedure. And in fact in their brief they talk about
15 the fact that the elements of the crime is alleged in each
16 case, and that we are on notice of the allegations against us.
17 And when they talk about the notice, they talk about the
18 extensive factual allegations in this indictment.

19 And what we're saying to your Honor right now is that
20 those extensive allegations, to the extent that that is the
21 basis for them arguing to the Court that we have sufficient
22 notice should be taken seriously. And when one looks at this
23 indictment, one is left with the firm conviction that that the
24 fraud that's alleged here is that Mr. Hwang traded in order to
25 keep the price up or get the price to go up. That is the

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1 allegation of this indictment. And now suddenly they're saying
2 that, well, even though the language of the statute, that is
3 the *Rico* statute, requires a fraud in the sale of securities,
4 that a set of allegations that go purely to purchases of
5 securities is sufficient to allege the crime.

6 Congress could easily have said when it wrote *Rico*
7 that it went to purchase of sale of securities, the same way as
8 they said it under 10(b), but they didn't. They focused on the
9 sale of securities. And the government wants to read that out
10 of the statute today, and respectfully we don't think you
11 should. I hear your Honor when you say that there's enough to
12 get pass an indictment, that we should do this on a full
13 record, that we should do it at a trial. But a trial here,
14 Judge, with regard to this whole range of conduct, which is --
15 I thought Mr. Podolsky did a very good job of summarizing for
16 your Honor what was in the indictment with regard to what they
17 say shows fraudulent intent, the fraudulent intent that's
18 required for a securities fraud violation. He said three
19 things. He said that it's the use of swaps. It's timing, and
20 it's the size of the trades. None of those things is remotely
21 unlawful.

22 THE COURT: We've gone over that.

23 MR. LUSTBERG: I know you have, but I told you I was
24 going to quarrel.

25 THE COURT: We've gone over that.

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1 MR. LUSTBERG: Respectfully, Judge, I just think that
2 we're going to have a trial here on a set of allegations that
3 do not amount to a crime. And this is true in the *Rico*
4 context, and it's true in the securities fraud context, and
5 it's absolutely true in the manipulation context. Mr. Hwang's
6 trades were just that, trades. There's no spoofing. There's
7 no layering. There's no wash sales. There's none of the
8 traditional indicia of fraud.

9 And all of the cases that Mr. Podolsky cited to the
10 Court, *Lek Securities*, *Royer* and *Masri* all had indicia of
11 fraud, all had the same indicia of fraud that the Court
12 requires over and over. Respectfully, I think a careful
13 reading of the case law that's cited leads inexorably to the
14 conclusion that these allegations are insufficient. And we can
15 wait and have your Honor decide that on a Rule 29 motion, but
16 this is an apt time to decide it.

17 MS. MULLIGAN: I'm happy to wait until later in the
18 conference --

19 THE COURT: I heard everybody else, Ms. Mulligan. Let
20 me hear you.

21 MS. MULLIGAN: I'm hearing decisions and I'd like to
22 weight in.

23 THE COURT: Go ahead.

24 MS. MULLIGAN: First of all with respect to the
25 manipulative trading. The indictment alleges no role by my

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1 client Mr. Halligan with respect to the manipulative trades in
2 the indictment, and indeed he's not charged with the
3 substantive count of manipulative trading.

4 Now with respect to this *Rico* conspiracy, your Honor,
5 I think a decision that's directly on point is by your former
6 colleague the late great Judge Patterson, and that is discussed
7 in pages eight and nine of my reply brief which is *In re Par*
8 *Pharma*. In that case Judge Patterson is very clear. This *Rico*
9 statute, it requires more or every securities fraud would be
10 swept in, and you know that's not the case. This is a very
11 unusual securities *Rico*. It's not the type of *Rico* that the
12 Southern District typically charges. We would in fact have a
13 very different detailed allegations.

14 If this was a gangs *Rico* indictment, your Honor. We
15 would have may to wit clause where we would know when the
16 narcotic sales were, who they were sold to, and this is not
17 that type of indictment. But with respect to this issue of the
18 predicate act. As Judge Patterson said in that case, your
19 Honor, it has to be in relation to the sale of the security.
20 Congress meant that when they said it. They didn't hedge on
21 this language, and that's the law, your Honor. And that's just
22 not alleged here. And this *Rico* indictment it fails on
23 numerous grounds.

24 THE COURT: What are we talking about Section 1348?
25 What section of the criminal code?

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1 MS. MULLIGAN: This is 1961(d), the *Rico* conspiracy,
2 your Honor. And the predicate acts are defined in 1961, I
3 believe it's (1)(D). Congress was very clear, your Honor, in
4 delegating certain specific acts. In other parts of the law,
5 it uses the term "purchase or sale of securities." In other
6 specific parts of the criminal code it uses, "in connection
7 with." And, your Honor, precision is particularly required in
8 criminal cases where defendants have to have full and fair
9 notice.

10 THE COURT: I'm looking for that part of 1961.

11 MR. HAGGERTY: Your Honor, the reference appears at
12 18, U.S.C., 1961, Section 1, Subsection D. It's a long
13 somewhat rambling provision with multiple statutory references,
14 fraud in the sale of securities provision appears --

15 THE COURT: Where?

16 MR. HAGGERTY: It appears maybe 7/8 of the way down.

17 THE COURT: After biological weapons?

18 MR. HAGGERTY: Yes, it is. In the copy I have six
19 lines below biological weapons.

20 THE COURT: Fraud in the sale of securities.

21 MR. THOMAS: Your Honor, may I respond to
22 Ms. Mulligan's point?

23 THE COURT: Yes.

24 MR. THOMAS: In our responsive briefing on this at
25 page 20, we collect a number of authorities, including the

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1 Judge Cabranes' decision that I mentioned before that interpret
2 than phrase. They include, for example, a decision by Judge
3 Nickerson that rejects this very argument that that language
4 ought to be read in a cribbed and specific way, who held, "Any
5 violation of 10(b) sufficiently willful to trigger the criminal
6 penalties of Section 32(a) constitutes fraud in the sale of
7 securities."

8 Then there's the Judge Cabranes decision that I
9 mentioned, and other decisions that we collect too that
10 essentially support the idea that fraud in the sale of
11 securities is used in the *Rico* statute reaches a broader swath
12 of conduct than what Ms. Mulligan or Mr. Lustberg would have
13 the Court conclude here. And there is congressional reason to
14 believe that reading is accurate because when the PSLRA was
15 amended to strip from civil plaintiffs the ability to bring
16 *Rico* claims alleging securities fraud, Congress stripped from
17 them the right to bring any fraud actionable in the purchase or
18 sale of securities. And the citation for that Congressional
19 action is set forth in footnote three also on page 20. So the
20 notion that Congress could have spoken on this topic is of
21 course true and goes against --

22 THE COURT: The healing argument that this shorthand
23 reference in Section 1961 left out the typical phrase, in
24 connection with the purchase or sales. I understand that.
25 We're in error of a strict interpretation of law. Let me ask

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1 you a different question. What was the goal of Mr. Hwang
2 allegedly, claimedly? What did he want to do at the end of the
3 day?

4 MR. THOMAS: Your Honor, the indictment alleges that
5 his goal was to run Archegos through a pattern of criminal
6 conduct. But if you're asking me as someone familiar with the
7 facts what he had in his mind beyond that?

8 THE COURT: Yes.

9 MR. THOMAS: I think Mr. Hwang wanted to control the
10 markets, your Honor. I think he wanted to be an
11 extraordinarily wealthy person, that he wanted to be successful
12 beyond measure.

13 THE COURT: So it's a pump and dump scheme?

14 MR. THOMAS: I think it's a pump and brag scheme, your
15 Honor.

16 THE COURT: Pump and brag?

17 MR. THOMAS: Mr. Hwang decided that if he affected the
18 trades that we allege that he did, he could take over the
19 majority of multiple major U.S. corporations freely trading
20 stock. And as a result on paper claim absolutely unimaginable
21 wealth, and that's precisely what he did until his scheme
22 failed and it unraveled.

23 THE COURT: Is there any indication that he used it to
24 inflate his balance sheet to get personal loans or somehow get
25 distributions of money into his own pockets?

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1 MR. THOMAS: Your Honor, the indictment describes
2 multiple instances in which the very success of the fraud was
3 recycled in the form of further statements to the
4 counterparties to obtain yet additional trading capacity.

5 THE COURT: I understand that. I understand that
6 allegation. What I'm trying to figure out in my mind to what
7 end? A price can't stay artificially inflated. The bubble has
8 to be pierced at some point in time. And when that happens,
9 the position that Mr. Hwang built up would come to haunt him
10 which is what happened here. He lost his money. If he were
11 doing a certain amount of inflation to cover a larger amount of
12 short selling, I could understand it. But I'm trying to figure
13 out in my mind that I'm not succeeding, What was in it for him.
14 What did he want. What did he want to achieve. Being a big
15 shot, I suppose that's possible, but it doesn't seem to me that
16 that was his aim. I can't figure out his aim.

17 MR. THOMAS: We certainly appreciate the Court's
18 questions. I think there will be trial proof that would fill
19 in some of that context as to what Mr. Hwang had in mind.

20 THE COURT: Like what? You want to give me a hint.

21 MR. THOMAS: Yes, your Honor. One immediate object
22 was in order to achieve the kind of wealth and success that he
23 desired, they had to convince all of these counterparties to
24 give them sufficient trading quantity to make it happen. So
25 for a period of the scheme, the intention is just that, to

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1 achieve it's criminal object. Later on Mr. Hwang, we expect
2 there'll be witnesses to say, will describe the sort of king of
3 the universe type thinking that I was laying out for the Court,
4 and that he had visions of grandeur to put it bluntly. And
5 also there'll be evidence that Mr. Hwang did look for
6 profitable offramps, ways to close out of these positions and
7 lock in enormous gains; but that he was less successful at
8 doing that than he was at driving up the stock price.

9 THE COURT: What are we not covering in the form of
10 dismissal? I think we covered all the points? My ruling is
11 the indictment is legally sufficient at this point in time,
12 although it raises numerous questions in my mind.

13 MR. VALEN: Your Honor, if I may. I think the
14 arguments so far have addressed Counts One through Nine, but
15 not the counts that come after as to which we have different
16 arguments.

17 THE COURT: Let me check that. Ten seems to be a
18 repetition of one through nine.

19 MR. VALEN: I think, Judge, and as I read it, I
20 welcome the government's clarification, Count One is *Rico*.
21 Counts Two through Nine are securities fraud through market
22 manipulation. But Count Ten is more traditional securities
23 fraud through what alleges subsections A and C as well. The
24 last line of paragraph 80 makes clear that it's securities
25 fraud through false and misleading statements regarding

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1 Archego's business portfolio and assets.

2 THE COURT: We've gone over that before. The
3 misrepresentations that makeup part of a manipulation story. I
4 take it out and in and of themselves make the subject of Count
5 Ten. I rule, it's the same reasons I ruled before, legally
6 sufficient. Wire fraud, again it's the same thing since the
7 use of wires are involved, that's wire fraud, as well as
8 securities fraud.

9 MR. VALEN: Judge, with respect to Count Ten, we have
10 an argument regarding the Second Circuit's controlling
11 precedent in the *Charles Schwab* case and the "In connection
12 with" requirement that we briefed. If you have any questions
13 about it, I'd be happy to address them, but I think Count Ten
14 in particular is deficient in the regard.

15 THE COURT: Address it. Make sure I understand it.

16 MR. VALEN: Sure. Count Ten is charged under Section
17 10(b) and 10(b)(5) as the other fraud counts are. And the
18 Supreme Court and Court of Appeals, and the government I think
19 would not dispute that those claims require that the
20 misrepresentations were made in connection with the purchaser
21 sale of the security. That language is included in both
22 Section 10(b) and in 10(b)(5), and it applies to claims under
23 Subsections A, B and C of 10(b)(5). But the Court of Appeals
24 for the Second Circuit in particular has addressed the
25 requirement, the "In connection with" requirement in a bit more

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1 detail. And most recently in a 2018 decision, which is
2 described in our briefs, *Charles Schwab Corp v. Bank of America*
3 *Corp*, the Court of Appeals has described the "in connection
4 with" requirement as follows: A claim fails where the
5 plaintiff does not allege that a defendant misled him
6 concerning the value of the securities he sold or the
7 consideration he received in return?

8 THE COURT: Or the what?

9 MR. VALEN: Or the consideration he received in
10 return. Now I'm adding, for those securities, but I think
11 that's implicit in the quote. And one thing when you focus on
12 that language, it's important to recognize --

13 THE COURT: You think that's the language of
14 limitation or a language of description?

15 MR. VALEN: I think it's a language if -- it works
16 both ways. It's a language of description in the sense that
17 the Court of Appeals is telling us what the subject matter of
18 the misrepresentation has to be.

19 THE COURT: It describe that case. It doesn't
20 describe all kinds of fraud. That doesn't work. Okay. We're
21 finish with that.

22 MR. VALEN: Your Honor, we also have arguments with
23 respect to Count 11, the wire fraud count. Although our
24 argument is simply that there's a pending United States Supreme
25 Court case that's been fully argued. And I check this morning,

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1 the decision hasn't issued today, but it'll certainly issue on
2 a Tuesday between now and the end of June that promises to
3 impact that count. All we ask is that you give us leave to
4 file a future motion depending on the outcome of that decision.

5 THE COURT: Mr. Valen, it makes no difference. When
6 you go into the jury trial, this particular count doesn't
7 matter. Everything that is put into Counts One through Nine is
8 what matters. And the jury doesn't see this indictment, which
9 answers another part of the problem. I don't give the
10 indictment to the jury. It will be summarized and perhaps read
11 verbatim, though I hesitate to do that because I don't think
12 the jury will hear anything else. They'd be sleep by time you
13 finish. It will be summarized and then you'll argue. And I
14 don't think the arguments going to hang on wire fraud or not.

15 MR. VALEN: Thank you, Judge. With respect to what's
16 done with the indictment, we do have a motion to strike
17 references to some prior allegations.

18 THE COURT: Allegation four. Look, the question is,
19 Can you use it before a jury. You can argue you can't. And
20 the government said -- I don't know what the government is
21 going to say. I'll decide that issue, whether it's in the
22 indictment or not doesn't mean anything. It's public on
23 public, so it doesn't matter. That motion is denied as
24 academic.

25 MS. MULLIGAN: Your Honor, will your Honor be issuing

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1 a decision or are today's rulings the decision of the Court?

2 THE COURT: Thanks, I was going to say something about
3 that. My habit is to follow my oral rulings with a short
4 summary decision. It will not be as long as Judge Rakoff's
5 decisions, but it will be quite short and will hit the points.
6 Until that time, I reserve the right to change my mind, but I
7 thought it would be useful to you to give you my considered
8 judgments at this point in time.

9 MS. MULLIGAN: Thank you, your Honor.

10 THE COURT: I have now heard your arguments, and I'll
11 take them into consideration before I issue a written
12 statement.

13 MS. MULLIGAN: Your Honor, I'd just like to raise a
14 few additional points on behalf of Mr. Halligan.

15 THE COURT: Sure.

16 MS. MULLIGAN: As we mentioned in our brief with
17 respect to the *Rico* count, your Honor. We believe the *Rico*
18 count fails because it does not allege Mr. Halligan's agreement
19 to engage in manipulative trading.

20 THE COURT: It says they all conspired, agreed and
21 conspired.

22 MS. MULLIGAN: Right, your Honor. But they don't give
23 us any specific details. And under *United States v. Benjamin*
24 when these terms "conspire" are used, they need to descend into
25 the particulars. And we're sitting here right now not knowing

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1 what that is. Because as I opened with, and obviously there's
2 no dispute, Mr. Halligan did not participate or have a role in
3 the trades that are alleged in the indictment to be
4 manipulative.

5 THE COURT: He was the chief financial officer, and
6 it's alleged that he participated, and I suppose he
7 participated by supporting the documentation of all the
8 transactions. Each trade is reflected in some kind of a
9 record. The indictment does not specify. It says they
10 conspired and agreed, and that's sufficient.

11 MS. MULLIGAN: Thank you, your Honor. Obviously, I
12 think more is required because every CFO in the United States
13 would then be indicted if they're a company. But with respect
14 to individual, your Honor, there needs to be some showing of
15 the agreement, and that's just not here. But, your Honor, we
16 await your decision, and we rely on all of the arguments in the
17 opening brief and in our reply brief. Thank you very much.

18 THE COURT: Any matter of controversy given the rules
19 of pleading that exist in a criminal case, there's a danger you
20 talked about. It sweeps in criminal conduct and permissible
21 conduct. I can't cure that now. What's left, the bill of
22 particulars.

23 MR. THOMAS: Particulars and the defense misconduct
24 motion, your Honor.

25 THE COURT: Let's do the bill of particulars. The

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1 first aspect of this is the government should identify all
2 alleged misrepresentations, requests themselves as for every
3 and all. That's denied because it seeks evidence. A bill of
4 particulars is there just to give notice. The government has
5 done that in the indictment and by the supplemental letter of
6 August 18, 2022, and that's sufficient.

7 The government should identify uncharged
8 co-conspirators and others. That's an allegation in every
9 conspiracy case I've seen, and I think the cases are legion
10 that the unindicted co-conspirator did not have to be alleged.
11 Having said that, it may be something that I want the
12 government to be more specific about when we approach trial.

13 MR. THOMAS: Yes, your Honor.

14 THE COURT: And "C" is the government should identify
15 all acts and transactions alleged to comprise the purported
16 schemes. I think there is sufficient allegation to give notice
17 on that, and that is denied as well. "D", the government
18 should identify allegedly defrauded victims. That's not part
19 of the case. You don't have to -- withdrawn. One defrauded
20 victim is the counterparties. All the counterparties have been
21 allegedly defrauded. Anyone who lost money having a hedged
22 position and being able to liquidate the collateral that was
23 put up by the conspirators is a defrauded victim. I don't
24 think you need anything more specific than that. "E" the
25 government should identify the date of the alleged Archegos

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1 enterprise was formed and the alleged scheme to defraud began.
2 The government gave a span of a year of 2020 to what,
3 Mr. Thomas?

4 MR. THOMAS: Your Honor, let me read for you exactly
5 what's alleged. In or about 2020, up to March 2021.

6 THE COURT: That's sufficient for the dates. "F" the
7 government should identify all instances in which defendants
8 are alleged to have aid and abetted supposed misrepresentations
9 to counterparties. The instances do not all have to be alleged
10 in the indictment. There is sufficient notice to allow the
11 defendants to form a defense. I deny all these aspects of the
12 motion for bill of particulars.

13 The next is the *Brady* obligation. This is a claim
14 about the inadequacy in the *Brady* obligations is based on a
15 supposed on a part of the prosecutor to search the
16 investigative files of the SEC and of the Commodities Futures
17 Trade Commission, the CFTC, to see if there's anything that
18 would be of a *Brady* type of document and to produce it.
19 There's no indication that these were joint investigations.
20 The fact that representatives of the SEC and the CFTC may have
21 been present at the interviews of various witnesses,
22 particularly of the proffer given by Mr. Hwang doesn't show any
23 joint investigation. The SEC and the CFTC have not played a
24 part in this criminal prosecution. They have not appeared
25 before the grand jury. They have not appeared in any of the

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1 pretrial proceedings here, and there is no connection for
2 the -- if the prosecutor were required to search the immense
3 files that can be built up by the SEC and the CFTC, it would be
4 an impossible obligation. The motion is denied.

5 MS. MULLIGAN: Your Honor, if I just may. I think
6 this *Brady* issue is particularly significant to defense
7 counsel, and I would like to make a record on this because when
8 we were in court at our clients' arraignment on April 27, I was
9 very happy to hear the magistrate put an order on the record
10 advising the government of what their *Brady* obligations were.

11 THE COURT: Yes, it's an order in every case.

12 MS. MULLIGAN: And that order, your Honor, is in my
13 hand and I'm happy to hand it up to the Court.

14 THE COURT: Yes, it's in every case, Ms. Mulligan.

15 MS. MULLIGAN: But the order clearly says, your Honor,
16 that for purposes of this order, the government has an
17 affirmative obligation to seek all information subject to
18 disclosure under this order from all current or former federal,
19 state, sand local prosecutors, law enforcement officers and
20 other offices who have participated in the prosecution or
21 investigation that led to the prosecution of the offenses with
22 which the defendant has charged.

23 Reading this order, your Honor, which is very clear --
24 and again, the term "or" is used, and we all know as lawyers
25 what that means. The investigation is included. Reading this

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1 order in light of *United States v. Gupta*, your Honor, they're
2 under an obligation to search the records and the notes from
3 the interviews where the SEC and CFTC was present. That is not
4 a burden. That helps the integrity of the entire system, your
5 Honor.

6 THE COURT: The cases are to the contrary, and there
7 is no joint or association in the investigation. The SEC was
8 present at whatever interviews there were, some of them anyhow
9 for the purposes of its own investigation and not to help the
10 prosecution. Motion's denied.

11 The last motion I think is the motion of prosecutorial
12 misconduct, and I I'll hear you, Mr. Lustberg.

13 MR. LUSTBERG: Thank you, your Honor. I want to start
14 by talking about the limited relief that we're seeking with
15 regard to this motion right now, and that is the relief we're
16 seeking is a hearing. I hope that was very clear from our
17 reply brief. Let's be clear what the concern is here. I've
18 been a defense attorney for almost 40 years, and maybe that
19 means I should have been wearier of the government's conduct
20 here. But to the contrary I, like the Court and indeed like
21 our entire system of justice, depend upon prosecutors given the
22 tremendous power that they wheeled to do the right thing, to
23 turn square corners, to seek justice, to be candid.

24 This is embodied in doctrines like *Brady*, and in many
25 places in the criminal law where prosecutors are required to

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1 tell the truth. We argue in our motion that that did not occur
2 in two ways. First, the government told us -- and this is
3 undisputed -- that our client was a subject of the
4 investigation. They never corrected that record to tell us
5 when he became a target. I don't know when he became a target,
6 but I can tell you -- and I don't think that they disagree that
7 they never used the words "Now he's a target." They say that
8 they point to places where they say he was a concern. They
9 talked about how they wanted to get his passport. There's
10 other facts, but they never told us that. And that's okay.
11 They don't have to tell us that.

12 But when they're continuing at the same time to
13 interact with us, to ask us specific questions, to request that
14 we make presentations on particular subjects, then it's a
15 different thing.

16 And that leads to the second concern that we have.
17 The second concern that we have -- and I've never seen this
18 before ever is that we continued to interact with them in good
19 faith. We continued to make presentations. We produced our
20 client for interviews, and we did that because they purported
21 to have an open mind. There's a lot of evidence, your Honor,
22 that they didn't have an open mind. And we've tried to muster
23 that proof for the Court so you can see that this is a
24 colorable claim. But, I will admit that we don't know the
25 point at which their mind was closed. I can tell you that on

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1 the last day -- I'll wait till they finish consulting.

2 That on the last day when we went in and made a
3 presentation specifically directed to answering questions that
4 they posed as to Mr. Hwang's intent, a particularly important
5 and difficult piece of factual information for them to gather,
6 that within hours -- and we don't know exactly when, but within
7 hours of the conclusion of that meeting Mr. Hwang was indicted.

8 Look, if they had told me he was a target, that would
9 have been good information for me to have and I might have
10 behaved differently. But I can tell you that if they told us
11 that he was going to be indicted that afternoon, we would not
12 have provided all the information that we did. Now their
13 argument is, we didn't know until then. But, your Honor, I
14 think that that is a disputed fact. And what I'm asking the
15 Court to do is to hold an evidentiary hearing where we can
16 explore that, where we can find out when they made that
17 decision. There are indicia that it was made before.

18 We know, for example -- and maybe they didn't do this,
19 but under the department of justice's manual in order to bring
20 *Rico* charges, they had to get permission from Washington. We
21 know that they booked grand jury time for that day. I don't
22 know whether they knew at that time that they were going to
23 indict him. But if they knew that, just a matter of common
24 decency, of candor, of honesty would have encouraged them to
25 tell us where they were.

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1 What happened here, your Honor, was implicit, was an
2 implicit false statement by the government, and many ways
3 explicit. Because at the conclusion of that meeting on the day
4 that Mr. Hwang got indicted, the government raised a question
5 with us. It had to do with the issue that Mr. Valen raised a
6 little while ago about the 2013 investigation of Mr. Hwang.
7 And we said, we'll get you more information on it. And we
8 communicated with them as we were walking out the door, and we
9 communicated that with them on the next day.

10 And what occurred was that by that next day, we didn't
11 know this because it was sealed and Mr. Hwang was arrested the
12 next day, they had already indicted him. Your Honor, it's just
13 not turning square corners. It's just not candid. However,
14 maybe I'm wrong. Maybe the truth of the matter is that this
15 Court after listening to this will conclude that
16 notwithstanding all that, that they had an open mind an hour
17 before they indicted our client. Maybe that's what the Court
18 will conclude. But I think the Court in order to decide this
19 very serious issue, and I can tell you I really hesitate to
20 bring these sorts of allegations. We had extremely
21 professional ongoing communication with the government
22 throughout this process. It was something that I was proud of.
23 I was proud of the presentations we made. I was proud that we
24 made our client available or speak to them, all of which turned
25 on my clear understanding that they were listening. That they

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1 were considering our arguments.

2 I think the record would show that they weren't, and
3 that what they were doing was deceiving us. And we would
4 like -- we respectfully request that the Court -- and it can do
5 this in-camera. It can do this in open court. It can do this
6 under seal if there's confidential information, gather the
7 appropriate facts so that it can make that determination,
8 because this is not how a system of justice, your Honor is
9 suppose to work.

10 Our assistant U.S. Attorneys and U.S. Attorneys in
11 this country have particular obligations to be truthful. And
12 I'm disappointed to say, I don't think that was the case here,
13 but I could be wrong. And if I'm wrong, the Court should
14 hold -- the Court should hold a hearing to decide whether I'm
15 wrong. I can't imagine that the government would oppose the
16 opportunity to set forth why the facts are not what they seem
17 to be, which is that their minds were made up even as they were
18 eliciting information. But I think that the Court should in an
19 exercise of its obligation to make sure that our system of
20 justice is fair should require that type of showing in much
21 more detail than has occurred here.

22 What's occurred so far here is very vague, conclusory
23 affidavits that don't address the facts that we say
24 circumstantially show that they made up their mind even as they
25 elicited information from us. Let me say just two other things

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1 quickly. Your Honor, our position is not that the government
2 ever has to tell our client whether he's a witness, subject or
3 target. I have many cases where prosecutors refuse to give me
4 that information. Most times they do, but they're cases where
5 they don't. But what I'm saying is that when they tell us
6 something, that it has to be true. The representatives of our
7 government who are trying to put my clients in jail have to
8 tell us the truth. That's what this application respectfully is
9 all about. And truth can be not told in two different ways.
10 There can be affirmative lies, or there can be failures to
11 correct known misimpressions.

12 THE COURT: Before you had the first proffer, who
13 suggested the idea of a proffer?

14 MR. LUSTBERG: We did. I'll take responsibility for
15 that. I'm not sure whether that's true, but I'll say that for
16 purposes of this record, we wanted to open up a dialogue with
17 them. And that dialogue --

18 THE COURT: That's not uncommon.

19 MR. LUSTBERG: No. Let me tell you, this was
20 extensive, your Honor. We made a presentation to them.

21 THE COURT: If Mr. Hwang was not going to be the
22 subject or object of prosecution or investigation, who was?

23 MR. LUSTBERG: Well, so just for example --

24 THE COURT: Here's a heavy investigation by the
25 prosecutor of Mr. Hwang's company. So it's either a company or

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1 Mr. Hwang who's going to be the defendant if a case is brought.

2 MR. LUSTBERG: Your Honor, just so you're aware, there
3 are two co-defendants here who have pled guilty. With respect
4 to at least one of them, the allegations have to do with
5 statements that were made to the counterparties. There is a
6 disputed fact in this case as to whether Mr. Hwang had anything
7 to do with those statements. Our position -- and we think the
8 record will show at a trial, and what we argued to the
9 government -- was that he had nothing whatsoever to do with
10 those statements. Those were made by Mr. Becker.

11 THE COURT: It's not uncommon in complicated cases
12 like this, particularly in SEC type cases to have submissions
13 made and beyond in order to dissuade the government from
14 bringing a prosecution.

15 MR. LUSTBERG: 100 percent that's correct.

16 THE COURT: Let me hear from Mr. Thomas.

17 MR. LUSTBERG: Let me just say one last thing which
18 is, I also don't think that the government has an obligation to
19 tell us our client is being indicted --

20 THE COURT: You made the point. Once they say, it's
21 got to be true.

22 MR. LUSTBERG: But if they're not going to tell, then
23 it's not just that. They're doing that while they're
24 continuing a dialogue that results in our providing information
25 to them.

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1 THE COURT: I heard you. Mr. Thomas.

2 MR. THOMAS: Thank you, your Honor. The most
3 outrageous thing about this circumstance is the defense motion
4 itself. Throughout --

5 THE COURT: Let's not worry about outrageous. Just
6 respond to the point.

7 MR. THOMAS: The first and absolutely determinative
8 point is the Supreme Court's decision in the *Bank of Nova*
9 *Scotia* case which makes it clear that accusations of misconduct
10 cannot be the basis for the dismissal of an indictment, unless
11 the misconduct supposedly goes to the impairment of the grand
12 jury process itself. And I'm surprised to hear Mr. Lustberg
13 say that the relief they want is merely a hearing, because as
14 the Court will observe from the cover page of its motion, the
15 defense moved to dismiss the indictment, which is not relief
16 that this Court can lawfully provide.

17 Mr. Lustberg in the reply concedes that at no point
18 did the government impair the grand jury process which
19 basically ends the claim. And they further concede --

20 THE COURT: Can I feasibly have a hearing in this
21 case?

22 MR. THOMAS: Not on this issue, your Honor.

23 THE COURT: Everything that would be subject of
24 inquiry would be privileged.

25 MR. THOMAS: Your Honor, that's absolutely true. But

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1 it's also true that there's nothing that the outcome of a
2 hearing would do that would entitle Mr. Lustberg to relief
3 under the law.

4 THE COURT: Mr. Lustberg knows very well how to
5 protect his client if he wants that protection. I think it's
6 the calculation of the benefits and the burdens of going in and
7 talking with a prosecutor. And whatever the prosecutor says in
8 that regard is always subject to a change of mind or a change
9 of view. Since we're dealing with issues of intent, there's a
10 possibility of persuasiveness up to the last minute. Motion is
11 denied. All right. Where do we go from here?

12 MR. THOMAS: Your Honor, we're scheduled for trial now
13 at beginning of January 2024, and the parties have been
14 conferring about a potential agreeable pretrial schedule for
15 the filing of various notices and pretrial motions. If we can
16 hash that out, we'll submit a proposal to the Court.

17 THE COURT: Are you going to be using experts?

18 MR. THOMAS: We expect that we will, and the schedule
19 that we're discussing would contemplate deadlines by which each
20 side would file expert reports and submit any associated
21 briefing.

22 THE COURT: Where are you in your discussions?

23 MR. LUSTBERG: I can answer that. The government made
24 a proposal with regard to certain dates working backwards from
25 the trial date. We accepted parts of that, and we ask them to

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1 reconsider other parts. I believe we had a meet and confer,
2 counsel can correct me if I have the timing wrong, a few weeks
3 ago, and we have not heard back on their response to our
4 proposed changes to the schedule. We're happy to continue to
5 meet and confer and come up with a schedule if we can. And if
6 we can't agree, we'll bring those to the Court.

7 THE COURT: Have I set a final pretrial conference
8 date?

9 MR. THOMAS: I believe that you have. You did for the
10 first trial date. Let me just look at the docket to see if you
11 did.

12 THE COURT: Cause I can see this as a process.

13 MR. THOMAS: Yes, and the proposal advanced by the
14 government would have expert disclosures due more than two
15 months in advance of trial, and the defense has proposed even
16 earlier than that. All parties agree that we want to give the
17 Court time to deal with the expert issue among the other issues
18 well in advance of trial.

19 THE COURT: We have a *Daubert* hearing here or a
20 *Daubert* motion.

21 MR. LUSTBERG: Yes, your Honor.

22 THE COURT: This is a complicated case, folks. It's a
23 complicated case. I believe in disclosure. There should be an
24 absence of surprise at trial. It's going to be a difficult
25 enough trial to deal with not to be burdened by side issues

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1 that could have been ventilated beforehand. My rulings will be
2 bias in favor of disclosure. You should know that.

3 MR. THOMAS: Yes, your Honor.

4 THE COURT: And early rulings as well. Both of you
5 have a lot of technical difficulties to deal with. The
6 government in terms of ordering its proof and keeping the
7 attention of a jury in a long and complicated case. And the
8 defense in just knowing what's the best thing to do with their
9 clients, and they need time. Both sides need time to work this
10 out. And perhaps two final pretrial conference dates. One
11 early to rule on motions *in limine* and *Daubert* and that sort of
12 thing, and the next one is necessary to be a bar date for the
13 production of all -- the word escapes me. Not *Brady*.

14 MR. THOMAS: 3500 and *Giglio* material.

15 THE COURT: Not particularly witness material. What's
16 the Supreme Court case?

17 MR. LUSTBERG: Maybe *Jencks* or *Giglio*.

18 THE COURT: *Giglio* material. I'll be at your
19 disposal. Let me block it out as early as I can.

20 MR. THOMAS: Thank you, your Honor. I think we
21 probably all collectively share your aims.

22 THE COURT: Final pretrial conference date is January
23 3. We should keep it close to trial, see if there's any
24 lingering problems, but we need a date in December to argue
25 everything out.

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1 MR. THOMAS: Yes, your Honor. We'll confer with the
2 defense and propose a schedule including a date for motion
3 conference.

4 THE COURT: And call Bridgette and work it out.

5 MR. THOMAS: Yes, your Honor.

6 THE COURT: Is there anything else I can do today?

7 MR. THOMAS: Not from the government, your Honor.

8 THE COURT: Mr. Lustberg?

9 MR. LUSTBERG: No, your Honor.

10 THE COURT: Ms. Mulligan?

11 MS. MULLIGAN: No, your Honor. Thank you.

12 THE COURT: Thank you all.

13 (Adjourned)

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