BUSINESS & COMMERCIAL LAW

FTX BANKRUPTCY

An empire brought to dust

FTX FAILURE

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TOOLKIT

what we are going to face

Which kind of assets are involved

- Shares
- Cryptocurrencies

Which kind of firm FTX is

- Exchanges

ASSETS

SHARES

CRYPTO

Common traits:

- Value (price)
- Demand/supply

Identitary traits (Shares)

- give ownership-related rights
- Securities -> SEC

Identitary traits (Crypto)

- Don't give any rights
- Not securities nor commodities -> SEC, CFTC

WHAT IS AN EXCHANGE?

Fiat currencies ⇄ Cryptocurrencies

Useful characteristics:

- It can issue both shares and proprietary cryptos ("exchange coins")
- cryptos are part / linked to the liquidity of the firm
- Who holds the propietary crypto is NOT a shareholder!

THE MAIN CHARACTERS

Sam Bankman-Fried

founder of FTX & Alameda

Caroline Ellison

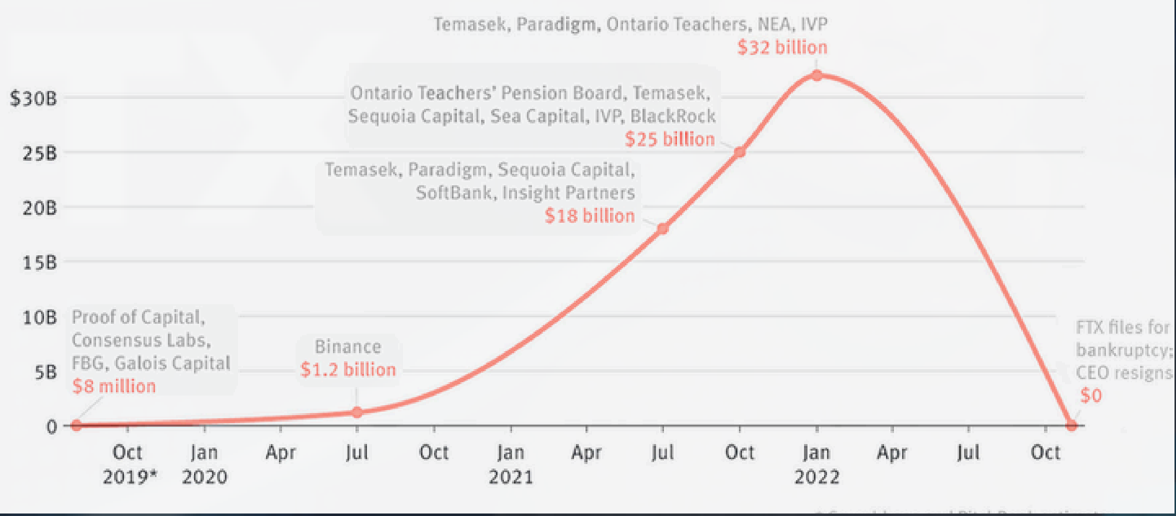
CEO of Alameda

Changpeng Zaho

CEO and founder of Binance

AN UNBELIEVABLE GROWTH

(FTX evaluation)



2 billions of total investments

WHY SO MUCH SUCCESS?

COMPLEX FINANCIAL PRODUCTS

- options
- featues
- tokenized stocks

THE CRYPTO SAVIOUR

- the altruistic billionaire
- the richest man under 30
- the cover of Forbes Magazine

PARTNERSHIP WITH INTERNATIONAL STARS

- Saquille O'Neal
- Steph Curry
- Tom Brady

BEHIND THE FAILURE

NOVEMBER 2022

Risk of intra-groups liabilities in order to help Alameda Research

02/11/2022

CoinDesk published a leaked balance sheet of Alameda

06/11/2022

ChangPeng Zaho said that Binance was going to sell all of its FTTs

08/11/2022

Changpeng Zhao said that Binance has signed a non binding LOI to aquire FTX

09/11/2022

Changpeng Zhao stated that Binance was not going to acquire FTX

11/11/2022

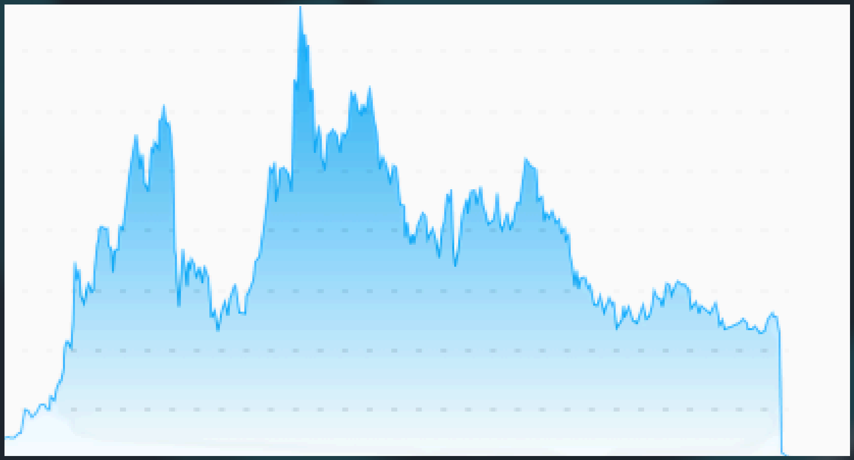
FTX failed for bankruptcy, Sam Bnakman-Fried resigned

THE SPEED

A FAILURE WITH NO PRECEDENTS

Nov. 1st 2022 = 60$ x FTT

FTT's price graph



Nov. 11th 2022 = 2$ x FTT

...WHAT'S NEXT?

Bankruptcy procedures in the U.S

- Chapter 7: liquidation
- Chapter 9: reorganization (with municipality)
- Chapter 11: reorganization
- Chapter 12-13
- Chapter 15: crossborder-cases

CHAPTER 11

Petition

- Voluntary
- Involuntary

DIP

"Debtor in possession"

CHAPTER 7

CHAPTER 11

FTX CASE

Sam Bankman-Fried

FTX CASE

Sam Bankman-Fried

Bahamas

FTX CASE

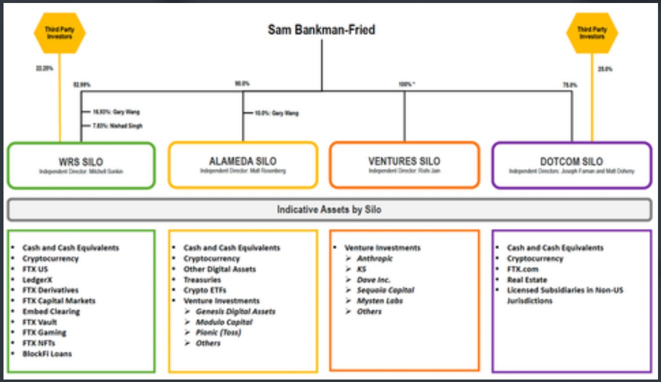
Sam Bankman-Fried

John Ray III

FTX CASE

Divide the FTX Group:

-FTX US
-Alameda Silo
-Venture Silo
-Dotcom Silo (non-U.S. clients)



FTX CASE

"Many of the companies in the FTX Group did not have appropriate corporate governance. I understand that many entities, for example, never had board meetings"

INDEPENDENT DIRECTORS

John Ray III

BODIES OF CONTROL

i) Bankruptcy court
ii) Debtor-in-possession (DIP): conduct business, act as a trustee, develop the reorganisation plan, avoid certain transactions
iii) U.S. trustee: supervise the DIP, monitor and approve reimbursement of fees
iv) Creditor's committee: composed of unsecured creditors with the seven largest claims on estate.
v) Case trustee: rarely appointed, only with cause (fraud, dishonesty, incompetence)
vi) Examiner: investigatory function on behalf of case trustee

BODIES OF CONTROL

v) Case trustee: rarely appointed, only with cause (fraud, dishonesty, incompetence)

“At any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States Trustee, and after notice and a hearing, the court shall order the appointment of a trustee—(1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case”

U.S.C. § 1104(A):

FTX CASE

Judge John T. Dorsey

ANDREW R. VARA: U.S TRUSTEE

APPOINTED THE COMMITTEE OF UNSECURED CREDITORS (OR UCC) ON 19/12/2022

↓

NINE CREDITORS,
THREE INDIVIDUAL CREDITORS

BANKRUPCTY COURT

CHAPTER 11 PROCEDURE

- Supervise the case
- Approve the disclosure statement
- Confirm the reorganization plan
- Resolve Disputes
- Approve Asset Sales or Financing
- Appoint Trustees or Committees
- Approve Fee Requests

FTX CASE

- 02/12/22: Andrew R. Vara asked for a neutral examiner to be appointed to supervise the FTX case
- 19/12/22: The court appointed the Creditor's committee
- 15/02/23: Judge John T. Dorsey rejected call for neutral examiner to be involved, since this investigation would cost an additional $100 million

↓

FTX case reached high levels of expenditures for administrative expenses (more than $300 million, $50 million monthly expenditure)

REORGANIZATION PLAN

IT OUTLINES HOW A COMPANY AIMS TO RESTRUCTURE ITS DEBTS, OPERATIONS, AND ASSETS TO EMERGE FROM BANKRUPTCY AS A VIABLE AND SUSTAINABLE ENTITY.

- Developed initially by the debtor, who has a 120-day window in which they enjoy exlusive rights on filing a plan
- It must be approved by the bankruptcy court and accepted by creditors
- Involves different aspects:

1. Debt Restructuring
2. Division of creditors into different classes
3. Description on Asset Disposition
4. Defines voting and acceptance

REORGANIZATION PLAN

1. The reorganization plan is usually preceded by a **disclosure statement** concerning the debtor's affairs to enable the creditors to make an informed judgement about the plan.
2. The court must hold a **hearing** to determine whether the disclosure statement should be approved
3. After the court approval the debtors and creditors may solicit **acceptances** or **rejections of the plan.**
4. If the reorganization plan is passed by the creditors, then the court must approve it to ensure its **feasibility**, and that no creditor is unfairly favored over the others.

FTX CASE

31/07/2023

- Divides classes of creditors, specifying whether or not they will receive any payment under the plan and the priority for repayment.

Creditors: "require a plan that (i) places control of the post-reorganization entities in the hands of qualified parties with relevant experience in the cryptocurrency markets, and who are selected by the Committee (as the representative of the creditors) and not the Debtors, (ii) creates a regulatory-compliant recovery token (or tokens) and facilitates a re-started FTX exchange to enhance creditor recoveries, and (iii) properly allocates value to the creditors most injured by the fraud that occurred".

REORGANIZATION PLAN

↓

CLASSES OF CREDITORS

- **Secured creditors:** hold a claim secured by collateral, mortgages
- **Unsecured creditors entitled to priority:** tax claims, unpaid wages, benefits owed to employees, administrative expenses incurred in the bankruptcy process
- **General unsecured creditors:** largest share of creditors, creditors, suppliers, vendors
- **Equity security holders:** they own a share in a corporation, rights to purchase, sell, subscribe to a share in a corporation, required to file a proof of interest

FTX CASE

CLASSES OF CREDITORS

Secured and priority creditors

U.S. and Foreign customers deposits and general unsecured creditors

Class	Claims and Interests	Status	Voting Rights
1	Other Priority Claims	Unimpaired	Not Entitled to Vote, Deemed to Accept
2	Other Secured Claims	Unimpaired	Not Entitled to Vote, Deemed to Accept
3	Separate Subsidiary Claims	Unimpaired	Not Entitled to Vote, Deemed to Accept
4A	Dotcom Customer Entitlements	Impaired	Entitled to Vote
4B	U.S. Customer Entitlements	Impaired	Entitled to Vote
4C	NFT Entitlements	Impaired	Entitled to Vote
5	General Unsecured Claims	Impaired	Entitled to Vote
6A	Dotcom Convenience Class	Impaired	Entitled to Vote
6B	US Convenience Class	Impaired	Entitled to Vote
6C	General Convenience Class	Impaired	Entitled to Vote

FTX CASE

CLASSES OF CREDITORS

Intragroup claims and interests

Class 9: subordinated claims (taxes and general administrative expenses)

Equity security holders

7	Intercompany Claims	Impaired	Not Entitled to Vote, Deemed to Reject
8	Intercompany Interests	Impaired	Not Entitled to Vote, Deemed to Reject
9	Subordinated Claims	Impaired	Entitled to Vote
10	FTT Claims	Impaired	Not Entitled to Vote, Deemed to Reject
11	Preferred Equity Interests	Impaired	Not Entitled to Vote, Deemed to Reject
12	Section 510(b) Claims	Impaired	Not Entitled to Vote, Deemed to Reject
13	Other Equity Interests	Impaired	Not Entitled to Vote, Deemed to Reject

FTX CASE

CLASSES OF CREDITORS

VOTING RIGHTS:

UNIMPAIRED

Notwithstanding any other provision of this section, a class that is not impaired under a plan, and each holder of a claim or interest of such class, are conclusively presumed to have accepted the plan, and solicitation of acceptances with respect to such class from the holders of claims or interests of such class is not required.

U.S.C 1126(F)

IMPAIRED

Notwithstanding any other provision of this section, a class is deemed not to have accepted a plan if such plan provides that the claims or interests of such class do not entitle the holders of such claims or interests to receive or retain any property under the plan on account of such claims or interests.

U.S.C 1126(G)

CONCLUSIONS

current situation and future perspectives

April 2023

- FTX attorney Andy Diedterich declared a recoverd capital of $7.3 billions

31 july 2023

- Debtors' draft plan of reorganization

September 2023

- Creditors' recovery expectetions all time high (37%)

17 october 2023

- Amended plan proposal (Customers' shortfall settlment)

16 december 2023

- Court decision on the october's proposal

2nd quarter 2024

- Filing of the "final" amended plan and start of the whole procedure

"KEY OPEN ITEMS"

6* pending issues to be reviewed by the court:

1.- What's the real size (%) of each class claim?

2.- "Quantifying" the priority of the shortfall claims against the general pool

3.- So... is FTX.com sold, or reorganized? Which is the relationship with future entities?

4.- How will people be actually payed? ..."recovery tokens"?

5.- Defining the firm and just-born entities' governance changes and creditors' involvement

6.- Once point 4. is clear, is what will be decided still in creditors' interest?

***7. – Other rise in agency costs**

8. – Infrastructures were not considered -> very probable litigations will arise!

THANK YOU!

Doubts, questions & discussions are welcome

SOURCES LIST:

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