

United States Senate

WASHINGTON, DC 20510-0609

January 9, 2023

The Honorable Judge John Dorsey
U.S. Bankruptcy Court for the District of Delaware
824 N Market St # 500
Wilmington, DE 19801

Re: Motion to Appoint Independent Examiner, *In re FTX Trading Ltd., et al.* (No. 22-11068-JTD)

Dear Your Honor:

We write regarding the investigation surrounding FTX and its case in your court. In recent years, many Americans have followed the explosive growth of the digital asset industry, as well as the recent and highly-publicized collapse of several of its major players. While many factors precipitated these collapses, including poor strategic and business management decisions, as well as – in some cases – outright apparent fraud, these events continually occurred in an environment with weak compliance by the industry and little oversight from agencies that otherwise protect US retail investors. The damage FTX and other mismanaged digital asset firms have caused is considerable: they have destroyed the life savings of tens of thousands of customers in the U.S. and all over the world.

Regarding FTX specifically, we believe it is critical that a strong, objective, and disinterested examiner is appointed in this case to conduct a searching investigation of FTX, FTX US and its related entities in order to uncover the facts needed to assure FTX's customers – and the broader public – that justice is served and to inform Congress' consideration of future digital asset legislation.

FTX's advisers and gatekeepers have generally been their lawyers. While the company had both in-house legal and compliance staff, it also spent tens of millions of dollars on advice from outside counsel. Indeed, the law firm of Sullivan & Cromwell advised FTX for years leading up to its collapse and one of its partners even served as FTX's general counsel. This same firm, Sullivan & Cromwell, is conducting the investigation into the apparent fraud and criminal activity that current FTX CEO John Ray identified during his December 13, 2022 testimony to the House Financial Services Committee. Mr. Ray pointed to an absence of corporate controls and oversight, limitless borrowing of FTX funds by Alameda Research – FTX's sister trading company, which is also experiencing a solvency crisis – for its own trading and investments, and

the commingling of customer assets as significant breaches of commonly-held “good governance” standards. Furthermore, Mr. Rey written testimony stated FTX lacked centralized banking documentation, daily reconciliation of digital assets, adequate insurance, personnel and financial risk management functions, audited or reliable financial statements, an independent board or business owners, segregation of people’s money, rules and limits for senior management, and independent governance throughout the FTX group. ¹Mr. Ray agreed that a financial firm of this size needs dedicated accounting, human resources, **legal compliance**, and risk departments to prevent this sort of catastrophe².

Despite these glaring and long-standing issues with the management of FTX, Sullivan & Cromwell requests (Doc. 270) to be approved as Debtor’s Counsel to this Court and admits that it charged over \$8,500,000 in legal fees to FTX prior to bankruptcy for advising FTX on a variety of legal matters including “acquisition transactions and specific regulatory inquiries related to certain U.S. business lines” - the very issues that may be considered by this Court and certainly will be considered in related criminal and civil matters.³

Additionally, somewhat shockingly, Sullivan & Cromwell claims it is “disinterested” within the meaning of the U.S. Bankruptcy Code.⁴ Yet significant questions about the firm’s involvement in the operations of FTX remain unanswered, including the extent to which Sullivan & Cromwell attorneys had questions or suspected fraud or the absence of appropriate legal controls, the actual scope of Sullivan & Cromwell’s representation of FTX and if not Sullivan & Cromwell, which law firm actually served as “primary external counsel” to the Debtors.⁵

As legal counsel is often central to major financial scandals, given their role in drafting financial agreements, risk management compliance practices, and corporate controls, it is perfectly reasonable to have concerns about the impartiality and manner that Sullivan & Cromwell will approach any investigation of FTX with. To name just one challenge: will the firm’s lawyers be able to effectively investigate their current and former partners who were central in FTX’s conduct? Additionally, given their longstanding legal work for FTX, they may well bear a measure of responsibility for the damage wrecked on the company’s victims. Put bluntly, the firm is simply not in a position to uncover the information needed to ensure confidence in any investigation or findings.

Accordingly, we urge you to support the U.S. Trustee’s Motion (Doc. 176) to Appoint an Independent Examiner to have full authority and resources to conduct a thorough, objective, investigation of the activities that led to the collapse of FTX. Financial markets, and our

¹ *Investigating the Collapse of FTX, Part I*, Hearing Before the H. Comm. on Financial Services, 117th Cong.; See <https://docs.house.gov/meetings/BA/BA00/20221213/115246/HHRG-117-BA00-Wstate-RayJ-20221213.pdf>

² *Investigating the Collapse of FTX, Part I*, Hearing Before the H. Comm. on Financial Services, 117th Cong., 2d Sess. (Dec. 16, 2022), available at <https://www.youtube.com/watch?v=zqIa6ccn3Bw>.

³ See Doc. 270.

⁴ Doc. 270, at *8; Doc. 270-3, at *10. See also 11 U.S.C. 101(14).

⁵ Doc. 270-3, at *9.

economy writ-large, depends on the trust of the American people. In the case of FTX, that trust has been broken, and it is critical that we take steps to restore it.

With Warm Regards,

A handwritten signature in blue ink that reads "John Hickenlooper". The signature is written in a cursive style with a large initial "J".

John Hickenlooper
United States Senator

A handwritten signature in blue ink that reads "Thom Tillis". The signature is written in a cursive style with a large initial "T".

Thom Tillis
United States Senator

A handwritten signature in black ink that reads "Elizabeth Warren". The signature is written in a cursive style with a large initial "E".

Elizabeth Warren
United States Senator

A handwritten signature in black ink that reads "Cynthia Lummis". The signature is written in a cursive style with a large initial "C".

Cynthia Lummis
United States Senator