

## Your Crypto Platform Filed for Bankruptcy. Now What?

By **Jeffrey Cohen, Andrew Behlmann, and Phillip Khezri**

The recent bankruptcy filings of Voyager Digital Holdings, Inc. (Voyager) and Celsius Network LLC (Celsius) have abruptly introduced many customers to the bankruptcy process for the first time. Lowenstein Sandler's experienced bankruptcy and crypto practices are monitoring these cases—and the entire crypto market—to help keep crypto customers and other interested parties educated and informed with respect to the bankruptcy process and what to expect going forward.

### Who Is Protecting Your Rights?

At the outset of a Chapter 11 bankruptcy petition, the Office of the United States Trustee, the federal government's bankruptcy watchdog, will solicit interest from the largest unsecured creditors to form an official committee of unsecured creditors. The committee will then retain counsel, a financial advisor, and other professionals to ensure that the debtor is administering the bankruptcy case in a manner that protects its general unsecured creditors' interests. The committee represents the collective interests of a debtor's entire body of unsecured creditors. A committee does not represent the individual interests of its members or other specific unsecured creditors, but may, in certain cases, field inquiries and concerns from individual creditors.

Among many important rights, the committee will have the right to:

- Consult with the debtor concerning administration of the case;
- Be heard by the Bankruptcy Court on any issue arising in the case;
- Investigate the debtor's acts, conduct, financial condition, business operations, and any other matters relevant to the case or formulation of a plan;
- Participate in the formulation of the plan and advise its constituents about the desirability of

- any proposed plan;
- Request the appointment of a trustee or examiner; and
- Be heard in connection with any relief sought in a case and perform such other services as are in the interests of its constituents

Once appointed, a committee will almost immediately engage with debtor's counsel regarding the administration of the case, proposed exit strategy, and any pending motions to ensure that the debtor is maximizing the value of its assets, not merely executing the whims of entrenched management, and not overreaching in any relief being sought from the Bankruptcy Court. Additionally, the committee's professionals will usually begin investigating the debtor's actions leading up to the bankruptcy to determine if general unsecured creditors, the estate, or both have viable causes of action to assert against the debtor, management, third parties, insurance carriers, and others. With respect to crypto bankruptcies, an investigation may focus on marketing practices (especially with respect to risk exposure), mismanagement or fraud by insiders, market manipulation, and the terms of service for customer accounts.

The committee plays an important role in setting the direction of the bankruptcy case, whether the ultimate outcome of the case is a sale or a reorganization. In a sale process, the committee's role is to ensure the bidding procedures are fair and drafted with the ultimate goal of maximizing the value of the debtor's assets. Additionally, the committee will oversee bids and the auction process to ensure the debtors are treating all bidders fairly and equally and that no bidders are being frozen out of the sale process to benefit a single bidder preferred by management. The committee will also be involved in evaluating bids in conjunction with the debtor and selecting the bid that provides the best recovery for general

unsecured creditors. In a crypto bankruptcy, the review of bids may include: (i) whether the bidder plans to assume customer obligations, or whether the bid is just cash (to then be distributed to creditors in order of priority); (ii) whether the bid provides for payment to customers in cash or crypto; and (iii) whether a bid that assumes customer deposit obligations includes a holding period or otherwise restricts customers from trading their crypto assets for a certain time period or in other ways.

In a reorganization through confirmation of a Chapter 11 plan, a committee is essential to negotiating provisions that favor general unsecured creditors and fighting for recoveries for its constituents. The first step is to determine the distribution unsecured creditors would receive in a liquidation, which is the minimum distribution required by the bankruptcy code, a baseline that ensures, absent their consent, creditors are no worse off in Chapter 11 than they would be in a Chapter 7 liquidation. Similarly, the committee must weigh the proposed return in a plan of reorganization against the recovery general unsecured creditors would receive if the debtor conducted a sale process for its assets. The committee must also assess the feasibility of the plan, particularly if the plan contemplates payment over a long period of time, or whether such payments are conditioned on performance

or the value of crypto assets as of a certain date. Most importantly, to the extent general unsecured creditors are not being paid in full, the committee must ensure that potential causes of action are preserved for the benefit of unsecured creditors. In crypto bankruptcies, a committee must also negotiate whether creditors will be repaid in cash or in kind, whether certain customers are secured creditors based on the manner in which their funds were held, and what restrictions government agencies will place on the reorganized debtor in certain jurisdictions.

A debtor has the exclusive right to file a plan during the first 120 days of a bankruptcy case, during which period the committee may propose a plan jointly with the debtor. However, a debtor's exclusivity period can also be shortened for "cause." After the debtor's exclusivity period has expired or terminated, the creditors' committee may propose and file a competing plan. A debtor's exclusivity period can also be extended, for cause, to a total of 18 months from the date of the bankruptcy filing.

Lowenstein continues to monitor crypto bankruptcy cases, and the entire crypto market, for new developments, and will be publishing additional articles providing more detail regarding the issues summarized above.

## Contacts

Please contact the listed attorneys for further information on the matters discussed herein.

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