



LOWENSTEIN BANKRUPTCY LOWDOWN



Lowenstein Bankruptcy Lowdown Video 13 – Additional Implications for Cryptocurrency Companies in Bankruptcy

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Phillip Khezri: Welcome to the second installment of the Lowenstein Lowdown video series on crypto bankruptcies. Today, we are discussing crypto considerations and plans of reorganization.

Andrew Behlmann: The recent bankruptcies of Voyager and Celsius raise some unique questions that will need to be addressed in connection with confirmation of any Chapter 11 plan in those cases.

Phillip Khezri: One of the most important questions is classification of customers by account type. If a customer is found to be the beneficial owner of crypto assets that a debtor merely holds in trust, those crypto assets are not property of the state and would likely need to be turned over to customers.

If a customer is found to have a valid and perfected security interest in crypto assets held by a debtor, then the customer must receive, at a minimum, the “indubitable equivalent” of such collateral under a plan—meaning the return of the collateral, distribution no less than the value of the collateral, or a lien on the sale proceeds of such collateral.

If a customer is classified as a general unsecured creditor, then any plan of reorganization merely must provide such creditors no less than what they would receive in a Chapter 7 liquidation, which can be as little as zero.

Andrew Behlmann: Another issue is whether customers will be paid back in cash or in kind, and if customers are paid in cash, will their claims be impaired under the plan? If a plan provides for distributions in cash, will the debtor value the claims as of the petition date, the effective date of the plan, or when distributions are made? Those dates can potentially be years apart and result in wildly different distribution percentages based on the condition of the crypto markets at the time.

Finally, with respect to feasibility, how much weight should a court give to customers’ trust of current management and any pending or potential governmental or other regulatory actions?

Phillip Khezri: Celsius customers have alleged that current management, including the

CEO, engaged in massive fraud prior to freezing customer accounts and filing bankruptcy petitions. Whether true or not, the court must determine if a plan relying on reorganization of business operations is feasible where a “run on the bank” is likely to follow confirmation.

Andrew Behlmann: Additionally, if governmental entities assert that the debtor is violating applicable laws and cannot continue to operate, bankruptcy courts may find themselves at the forefront of determining the legality of crypto token offerings in various jurisdictions.

Stay tuned for future Lowenstein Lowdown videos in this special Crypto Bankruptcy & Restructuring Series, as well as client alerts and articles on topics of interest to the crypto community.

Thank you for watching.