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FinTech University

FinTech and Bankruptcy
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The Insolvent Cryptocurrency Platform and the Impact on Clients

- **The Treatment of Customer Deposits**

- **The Crypto does not belong to the Customer?**
 - Prior to the advent of the recent filings, customers and others assumed cryptocurrency placed on a market platform retained its ownership identity in the name of the customer, this assumption has largely been rejected by the platforms that have sought bankruptcy protection and the Courts that have interpreted the nature of those holdings;
 - In Re Celsius Network, LLC, 647 B.R. 631 (S.D.N.Y. 2023) – the governing document is the customer agreement, the Terms of Use are an enforceable contract
 - The broad scope of 11 USC 541, property of the estate
 - The viability of electronic, clickwrap contracts, clickwrap contracts are routinely enforced under New York law. Whitt v. Prosper Funding LLC, No. 15-00136 (GHW), 2015 WL 4254062, at *4 (S.D.N.Y. July 14, 2015)
 - The lack of regulatory guidance, contrast bank deposits and the FDIC
 - The paradox of blockchain and the abandonment of control through the use of crypto market platforms.

▪ Crypto Bankruptcies – Common Issues

- Recovery in kind versus US dollar recovery
- Tort and other claims directed against officers and directors
- The use of template bellwether litigation to reduce claims
- The standards for plan confirmation under 11 USC 1129 and their applicability in the crypto cases
- The substitution of a new market maker through a plan of reorganization
- The importance of establishing the date of valuation for crypto claims
- Likely forums for post bankruptcy litigation



The Insolvent Cryptocurrency Platform

- **Preference Litigation – the Crypto Wave?**
 - Net winners and losers
 - The basic predicates of preference recovery under 11 USC 547
 - Transfers within 90 days
 - The uniform fraudulent transfer act
 - Ordinary Course and New Value Exceptions
 - Jurisdictional Issues
 - Responding to the Preference Litigation
 - New issues for crypto cases



The Insolvent Cryptocurrency Platform

- **Advising the Crypto Client**
 - Safe storage
 - Insurance
 - Account Agreements
 - Crypto Claims Process
 - What happens next
 - Securities Law Issues
 - Risks and Opportunities
 - A look forward, the crypto platform in 5 years



Presenter Biographies

PETER J. HALEY

Peter is an experienced trial lawyer who also has substantial experience with bankruptcy reorganization, bankruptcy litigation, and corporate restructuring and is involved with a number of cryptocurrency cases.

MATTHEW G. LINDENBAUM

Matthew represents companies in high-stakes litigation with an emphasis on class action defense in the automotive and financial services industries, including the emerging crypto-currency industry. He also defends companies and individuals in government investigations and enforcement actions involving the United States Department of Justice, the Securities and Exchange Commission, the Consumer Financial Protection Bureau, the Office of Foreign Assets Control, and conducts internal investigations for companies and special board committees.

KEVIN TRAN

Kevin assists clients in matters related to financial regulatory, FinTech, corporate and securities issues. He gained experience at the Federal Reserve Board in Washington, D.C., where he was a Financial Policy Analyst in the Capital and Regulatory Policy group in the Division of Supervision and Regulation.



Moderator Biography

RICHARD B. LEVIN

Richard is chair of the FinTech and Regulation Practice and was one of the first lawyers to focus on the regulation of blockchain and digital assets. He is considered a thought leader in the FinTech space. Richard brings his experience as a senior legal and compliance officer on Wall Street and in London to bear in advising clients on corporate, FinTech, securities, and regulatory issues. A problem-solver by nature, he has been advising FinTech clients on legal and regulatory issues since the start of electronic trading in the late 1990s. His practice focuses on helping financial services and technology clients identify and address regulatory issues as they build their businesses.

Richard's practice focuses on the representation of early stage and publicly traded companies in the FinTech space, including investment banks, broker-dealers, investment advisers, peer-to-peer lending platforms, digital currency trading platforms, alternative trading systems (ATs), exchanges, and custodians. He represents these firms before the U.S. Securities and Exchange Commission (SEC), the U.S. Commodity Futures Trading Commission (CFTC), the Financial Industry Regulatory Authority (FINRA), the U.S. Department of the Treasury, Office of the Comptroller of the Currency (OCC), state regulators, and Congress. Richard has represented clients before regulators in Australia, Canada, France, Germany, Hong Kong, Ireland, Japan, Singapore, South Korea, and the United Kingdom. His current and past clients include leading national financial institutions, multinational financial services holding companies, leading firms in the FinTech space, and institutions engaging in global investment banking, investment management, securities, and other financial services with institutional clients.

Richard has been identified by Chambers and Partners as one of the leading lawyers in the Blockchain and Cryptocurrencies category since the inception of the category. He has been recognized by Chambers for his knowledge on regulatory matters, great relationships with regulators, for helping clients push the boundaries of the FinTech sector, and for his advice on matters such as broker-dealer licensing and alternative trading systems. Richard is routinely quoted by leading publications including Bloomberg, the New York Times, Reuters, and the Wall Street Journal and is a frequent speaker at conferences around the world on the regulation of FinTech, blockchain, and digital assets.



Contact Details

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