

NOTE

PREVENTING ANOTHER FTX: LESSONS FROM LEHMAN

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The ongoing legal crises surrounding the cryptocurrency firm FTX and its founder, Sam Bankman-Fried, stunned the cryptocurrency industry. Mr. Bankman-Fried, colloquially known as SBF, carried out an estimated eleven-billion-dollar fraud. Many investors will never recover their money.

This Note will chart FTX's rapid ascent and dramatic collapse, explaining the cryptocurrency industry norms and governance practices that led to FTX's failure. Cryptocurrency was still a nascent industry when FTX catapulted to a thirty-two billion-dollar valuation as the face of the field. Undoubtedly, this crisis stemmed in part from the nature of cryptocurrency: globalized, difficult to track, and susceptible to speculation. But it was also just the latest in a long line of institutional failures caused by corporate mismanagement. Each time, many eagerly backed the darling of a burgeoning space, overlooking risk factors that might have given them more pause for a different company. This Note will compare FTX to Lehman Brothers, another "too big to fail" failure that featured heavily in the 2008 financial crisis and propose solutions to the cryptocurrency-specific and

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industry-wide problems that plagued FTX. These solutions are applicable to cryptocurrency and its underlying technology, the blockchain, but also include legislation similar to the Dodd-Frank Wall Street Reform and Consumer Protection Act, enacted following the 2008 financial crisis. Long-term solutions that will prevent another FTX-like crisis while fostering cryptocurrency innovation and ensuring consumer protection will require a combination of technology, legislation, and regulation.

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INTRODUCTION

There once was a dominant financial institution valued at billions of dollars. Its leaders were widely admired for their risky investments that somehow always paid off. Every college student wanted to work there, every competitor wanted to emulate it, and every investor wanted a piece of it. Then, just as suddenly as it had risen, it collapsed, was possibly saved—and then went bankrupt.

This is the story of Lehman Brothers, whose 2008 collapse is often faulted for triggering the Great Recession. It is also the story of FTX, the cryptocurrency exchange whose 2022 collapse disrupted the booming cryptocurrency industry and led to a

twenty-five-year federal prison sentence for its wunderkind founder, Sam Bankman-Fried (“SBF”). These companies suffered strikingly similar fates, but understanding the fall of FTX requires understanding the unique nature of cryptocurrency as a financial asset.

In Part I, this Note will explain the rise, power, downfall, and collapse of FTX, as well as the impact of that failure. In Part II, this Note will explain the collapse of Lehman Brothers, the similarities between Lehman and FTX, and the regulatory responses to the 2008 financial crisis. In Part III, the Note will discuss how another FTX could be prevented. Part III.A will explain the current state of federal cryptocurrency regulations. Part III.B will propose a comprehensive set of federal regulations for the cryptocurrency industry based on FTX’s corporate governance failures, while also incorporating cryptocurrency-specific solutions.

I. FTX

Understanding FTX requires understanding its founder, SBF.¹ After a three-year stint at Jane Street Capital, he founded Alameda Research, a cryptocurrency trading firm.² In May 2019,³ dissatisfied with existing cryptocurrency exchanges, he decided to build his own: FTX.⁴ Within a year, FTX had a billion-dollar valuation,⁵ and by 2021, SBF appeared on the cover of *Forbes* as

1. See Harry Robertson, FTX’s Sam Bankman-Fried Explains How He Built a \$32 Billion Crypto Exchange In 3 years After Growing Annoyed With ‘Crappy’ Platforms – Making Him a Multibillionaire, *BUS. INSIDER* (Feb. 20, 2022, at 04:00 ET), <https://markets.businessinsider.com/news/currencies/sam-bankman-fried-ftx-crypto-exchange-valuation-billionaire-bitcoin-ethereum-2022-2> [<https://perma.cc/477X-R3NU>].

2. See *id.*

3. See Press Release, FTX Int’l, FTX Celebrates Two Year Anniversary (May 10, 2021, at 20:30 ET), <https://www.prnewswire.com/news-releases/ftx-celebrates-two-year-anniversary-301288001.html> [<https://perma.cc/7EWC-UHKP>].

4. See *supra* Robertson note 1 (“By 2018, he’d come to the realization that the existing crypto exchanges simply weren’t very good: they were glitchy, unsafe, and had next to no customer support.”).

5. See Sam Bourgi, *FTX Smashes Crypto Funding Record With \$900M Raise to Become Exchange Decacorn*, *COINTELEGRAPH* (July 20, 2021), <https://cointelegraph.com/news/ftx-smashes-crypto-funding-record-with-900m-raise-to-become-exchange-decicorn> (“Just one year ago, the derivatives exchange had a valuation of \$1.2 billion.”) [<https://perma.cc/CFV8-D9P5>].

“the world’s richest 29-year old.”⁶ Then, almost in the blink of an eye, FTX went from a thirty-two billion-dollar valuation⁷ to bankruptcy court,⁸ and the crypto king found himself in handcuffs.⁹ Although the fall seemed shocking, in hindsight it is clear that while FTX and SBF were being lauded by the media and the industry, concerns were mounting—just not heeded.

FTX had a number of advantages from its inception. Jane Street’s prestigious reputation validated SBF and FTX.¹⁰ The cryptocurrency giant Binance was FTX’s first investor,¹¹ providing both capital and credibility¹²—but FTX’s biggest asset was Alameda. Would Binance have invested “tens of millions” into the then-six-month-old exchange if it wasn’t “Alameda Research-backed”?¹³ Would FTX have grown so quickly without Alameda’s “deep liquidity”?¹⁴ Alameda inspired FTX’s creation, propelled its

6. Steven Ehrlich & Chase Peterson-Withorn, *Meet the World’s Richest 29-Year-Old: How Sam Bankman-Fried Made A Record Fortune in the Crypto Frenzy*, FORBES (Oct. 6, 2021, at 06:30 ET), <https://www.forbes.com/sites/stevenehrlich/2021/10/06/the-richest-under-30-in-the-world-all-thanks-to-crypto/?sh=39d2f8903f4d> [https://perma.cc/874H-DERR].

7. See Jamie Crawley, *FTX Acquires Naming Rights to Esports Organization TSM in \$210M Deal*, COINDESK (June 4, 2021, at 11:15 EDT), <https://www.coindesk.com/business/2022/01/31/ftx-reaches-32b-valuation-with-400m-fundraise> [https://perma.cc/P6W5-5Z23].

8. See David Yaffe-Bellany, *Embattled Crypto Exchange FTX Files for Bankruptcy*, N.Y. TIMES (Nov. 11, 2022), <https://www.nytimes.com/2022/11/11/business/ftx-bankruptcy.html> [https://perma.cc/F24P-ZUDA].

9. See Peter Hoskins, *Sam Bankman-Fried: FTX Founder Arrested in Bahamas*, BBC (Dec. 13, 2022), <https://www.bbc.com/news/business-63953096> [https://perma.cc/C5LN-VC46].

10. See Joe Weisenthal & Tracy Alloway, *The Ex-Jane Street Trader Who’s Building A Multi-Billion Crypto Empire*, BLOOMBERG (Apr. 1, 2021, at 04:00 ET), <https://www.bloomberg.com/news/articles/2021-04-01/the-ex-jane-street-trader-who-s-building-a-multi-billion-crypto-empire> [https://perma.cc/SDS8-CLP6].

11. See Yogita Khatri, *Binance Invests ‘Tens of Millions’ in Alameda Research-Backed Crypto Derivatives Platform FTX*, THE BLOCK (Dec. 20, 2019, at 01:45 ET), <https://www.theblock.co/post/51206/binance-invests-tens-of-millions-in-alameda-research-backed-crypto-derivatives-platform-ftx> [https://perma.cc/5XFE-JD32].

12. See Paddy Baker, *Binance-Backed FTX Exchange Seeks Billion-Dollar Valuation in Equity Token Sale*, COINDESK (Feb. 25, 2020, at 08:36 ET), <https://www.coindesk.com/business/2020/02/25/binance-backed-ftx-exchange-seeks-billion-dollar-valuation-in-equity-token-sale/> [https://perma.cc/5TSE-GKSW] (referring to FTX as “Binance-backed”).

13. See Khatri, *supra* note 11.

14. William Foxley, *Crypto Exchange Launches ‘Shitcoin Futures Index,’ Offering New Way to Short Alts*, COINDESK (Aug. 1, 2019, at 11:00 ET), <https://www.coindesk.com>

rise, and silently supported its success. FTX became FTX because of its connection to Alameda, but in the end, those connections would cause its demise.

A. *The Rise*

FTX entered the cryptocurrency community as the exchange known for its “Shitcoin Futures Index”¹⁵ and election-inspired futures contracts.¹⁶ In late 2019, Binance bought twenty percent of FTX for \$100 million¹⁷ and FTX quickly became the fifth-largest cryptocurrency exchange in the world by volume,¹⁸ though it was not available to those based in the United States.¹⁹ That problem was quickly solved with the launch of FTX.US, a trading platform for U.S. users, with “10 times leverage, ‘tons of liquidity,’ and competitive fees.”²⁰ In a matter of months, FTX acquired the naming rights to the esports organization TSM for \$210 million, the largest deal in esports history;²¹ finalized its deal with the

/markets/2019/08/01/crypto-exchange-launches-shitcoin-futures-index-offering-new-way-to-short-alt/ [https://perma.cc/T9JC-VUWK].

15. *Id.*

16. See Yogita Khatri, *Following TRUMP, FTX Adds Futures Contracts for Five More Presidential Candidates*, YAHOO! FINANCE (Feb. 10, 2020), <https://finance.yahoo.com/news/following-trump-ftx-adds-futures-105511468.html> [https://perma.cc/ZQ2Q-3TN5].

17. See Angus Berwick & Tom Wilson, *Exclusive: Behind FTX's Fall, Battling Billionaires and a Failed Bid to Save Crypto*, REUTERS (Nov. 10, 2022, at 17:46 ET), <https://www.reuters.com/technology/exclusive-behind-ftxs-fall-battling-billionaires-failed-bid-save-crypto-2022-11-10/> [https://perma.cc/6XZ7-9SSL].

18. Priyeshu Garg, *FTX Joins Top 5 Crypto Exchanges by Volume*, CRYPTO BRIEFING (Feb. 21, 2020), <https://cryptobriefing.com/ftx-top-5-crypto-exchanges-volume/> [https://perma.cc/8DV8-LMBJ].

19. See Declaration of John J. Ray III in Support of Chapter 11 Petitions and First Day Pleadings at 12, *In re FTX Trading Ltd. et al.*, No. 22-11068 (JTD) (Bankr. D. Del. Nov. 17, 2022), Dkt. No. 24 (“The FTX.com platform is not available to U.S. users.”).

20. Yogita Khatri, *FTX.US Goes Live, CEO Says the Crypto Exchange Has ‘Tons of Liquidity’ to Offer*, THE BLOCK (May 22, 2020, at 07:00 ET), <https://www.theblock.co/post/66157/ftx-us-goes-live-ceo-says-the-crypto-exchange-has-tons-of-liquidity-to-offer> [https://perma.cc/7N2U-DKMJ].

21. See Jamie Crawley, *FTX Acquires Naming Rights to Esports Organization TSM in \$210M Deal*, COINDESK (June 4, 2021, at 11:15 ET), <https://www.coindesk.com/markets/2021/06/04/ftx-acquires-naming-rights-to-esports-organization-tsm-in-210m-deal/> [https://perma.cc/34CF-PVZM].

Miami Heat for \$135 million and opened the new FTX Arena;²² became the MLB's first official cryptocurrency partner;²³ and signed Tom Brady and Gisele Bündchen as part-owners and brand ambassadors.²⁴ The exchange broke cryptocurrency funding records with a \$900 million funding round and an eighteen-billion-dollar valuation,²⁵ up from \$1.2 billion a year earlier,²⁶ that cemented its place as one of the world's "highest-valued crypto companies . . . [and] provided a measure of mainstream acceptance."²⁷

As FTX established itself as a cryptocurrency mainstay, SBF became a public persona. He was a vegan billionaire cryptocurrency genius whose two-year-old exchange processed \$10.7 billion in trades a day,²⁸ worth ten billion dollars after only three years in the industry,²⁹ a modern-day "Robin Hood," making billions just to give them away.³⁰ However, several days after the record-breaking funding round, SBF found himself explaining

22. See Anthony Chiang, *Miami Heat's Home Arena Becomes FTX Arena. Also, Details on Name Change and Transition*, MIAMI HERALD (June 5, 2021, at 07:18 AM), <https://www.miamiherald.com/sports/nba/miami-heat/article251869818.html> [<https://perma.cc/H99G-VVNT>].

23. See Timothy Craig, *Major League Baseball Has Adopted FTX As Official Crypto Partner*, CRYPTO BRIEFING (June 23, 2021), <https://cryptobriefing.com/major-league-baseball-has-adopted-ftx-as-official-crypto/> [<https://perma.cc/LX76-GP2S>].

24. See Zack Seward, Tom Brady, *Gisele Bündchen Become Part Owners of FTX*, COINDESK (June 29, 2021, at 08:27 ET), <https://www.coindesk.com/business/2021/06/29/tom-brady-gisele-bundchen-become-part-owners-of-ftx/> [<https://perma.cc/U8BQ-LY84>].

25. See Alexander Osipovich, *Crypto Exchange FTX Valued at \$18 Billion in Funding Round*, WALL ST. J. (July 20, 2021, at 13:00 ET), <https://www.wsj.com/articles/crypto-exchange-ftx-valued-at-18-billion-in-funding-round-11626800455> [<https://perma.cc/S8TD-2SV3>].

26. See Bourgi, *supra* note 5.

27. See Osipovich, *supra* note 25.

28. See Alexander Osipovich, *This Vegan Billionaire Disrupted the Crypto Markets. Stocks May Be Next*, WALL ST. J. (Apr. 16, 2021, at 05:30 ET), <https://www.wsj.com/articles/this-vegan-billionaire-disrupted-the-crypto-markets-stocks-may-be-next-11618565408> [<https://perma.cc/CTF8-YZSM>].

29. See Benjamin Wallace, *The Mysterious Cryptocurrency Magnate Who Became One of Biden's Biggest Donors*, N.Y. MAG. (Feb. 2, 2021), <https://nymag.com/intelligencer/2021/02/sam-bankman-fried-biden-donor.html> [<https://perma.cc/QRQ3-GDY9>].

30. See Andrew Fenton, *Sam Bankman-Fried: The Crypto Whale Who Wants to Give Billions Away*, COINTELEGRAPH (Feb. 24, 2021), <https://cointelegraph.com/magazine/sam-bankman-fried-the-crypto-whale-who-wants-to-give-billions-away/> [<https://perma.cc/KJ4F-H7QW>].

why Binance, FTX's key first investor, was no longer involved³¹ and why the exchange had cut its leverage from 101 to twenty times.³² Concerns about FTX's close ties to Alameda grew, with some accusing SBF of "strategic manipulation,"³³ and a Wall Street Journal article noting that "[s]ome traders privately gripe about the fact that Mr. Bankman-Fried runs both FTX and a crypto-trading firm, Alameda Research, which is a significant trader on FTX—an arrangement that wouldn't be permitted in other markets, such as U.S. stocks."³⁴ Near-simultaneous Forbes articles heralded SBF as both an "Icon"³⁵ and the "biggest loser" of a \$15.5 billion crash.³⁶ Meanwhile, FTX reported that its market share had nearly doubled in a matter of weeks³⁷ as its native token, FTT, was hitting record highs,³⁸ while FTX.US announced record daily trading volumes.³⁹ Given this flood of positivity, news of the

31. See Adriana Hamacher, *Sam Bankman-Fried: Why I Bought Back Binance's Shares in FTX*, DECRYPT (July 22, 2021), <https://decrypt.co/76584/ftx-ceo-sam-bankman-fried-why-bought-out-binance-investment-shares-exit> [<https://perma.cc/73WE-EDFS>].

32. See Ephrat Livni & Eric Lipton, *Leaders in Cryptocurrency Industry Move to Curb the Highest-Risk Trades*, N.Y. TIMES (Aug. 19, 2021), <https://www.nytimes.com/2021/07/25/us/politics/cryptocurrency-ftx-high-risk-trade.html> [<https://perma.cc/9XE8-HJ5Q>].

33. See Dana Sanchez, *The Most Influential Trader In Crypto, Sam Trabucco, Works With FTX Exchange: Some See Manipulation*, MOGULDOM NATION (Aug. 2, 2021), <https://moguldom.com/365562/the-most-influential-trader-in-crypto-sam-trabucco-works-with-ftx-exchange-some-see-manipulation/> [<https://perma.cc/M35Z-B8LA>].

34. See Osipovich, *supra* note 28.

35. Brendan Doherty, *Icon: The Untold Story Of Crypto Billionaire Sam Bankman-Fried*, FORBES (Dec. 10, 2021, at 08:30 ET), <https://www.forbes.com/sites/bdoherty/2021/05/16/icon-the-untold-story-of-crypto-billionaire-sam-bankman-fried/?sh=446e60d05dcf> [<https://perma.cc/A4CY-KN5T>].

36. See Jennifer Wang, *Crypto Billionaires Have Lost \$15.5 Billion In Nine Days Amid Crash*, FORBES (May 20, 2021, 08:25 ET), <https://www.forbes.com/sites/jenniferwang/2021/05/19/crypto-billionaires-have-lost-155-billion-in-nine-days-amid-crash/?sh=3e85ccb2981> [<https://perma.cc/6QCN-DZXY>].

37. See Lyllah Ledesma, *FTX Market Share in Bitcoin Futures Nearly Doubled Since June*, COINDESK (Mar. 6, 2023, at 15:26 ET), <https://www.coindesk.com/markets/2021/08/10/ftx-market-share-in-bitcoin-futures-nearly-doubled-since-june/> [<https://perma.cc/QH87-SKB U>].

38. See Yashu Gola, *FTX Token Hits New Record Up 50% So Far in September — What's Driving FTT Price Higher?*, COINTELEGRAPH (Sep. 6, 2021), <https://cointelegraph.com/news/ftx-token-hits-new-record-up-50-so-far-in-september-what-s-driving-ftt-price-higher> [<https://perma.cc/PPG4-3978>].

39. See Jamie Crawley, *FTX US Affiliate Sees Record Daily Trading Volume in First Half of 2021*, COINDESK (July 29, 2021, at 09:15 ET), <https://www.coindesk.com/markets/>

exchange's move from Hong Kong to the Bahamas due to "increasingly hostile regulator[s]" went largely unnoticed.⁴⁰

In October, SBF covered Forbes' 2021 flagship print issue.⁴¹ Despite his \$22.5 billion fortune,⁴² Forbes described him as "remarkably cash-poor," since nearly all of his wealth was in FTX and FTT.⁴³ After FTX's second funding round, the barely two-year-old startup was worth approximately twenty-five billion dollars,⁴⁴ a nearly forty percent increase from its last valuation three months earlier. Before the end of the year, FTX completed a sports trifecta, adding NBA and MLB superstars Steph Curry and Shohei Ohtani to its roster of brand ambassadors,⁴⁵ announcing partnerships with the Mercedes Formula One team⁴⁶ and the Golden State Warriors,⁴⁷ and buying the naming rights to UC Berkeley's football stadium.⁴⁸ It was only after all of this success

2021/07/29/ftx-us-affiliate-sees-record-daily-trading-volume-in-first-half-of-2021/ [https://perma.cc/PPG4-3978].

40. Sam Reynolds, *Bankman-Fried Says FTX No Longer Calls Hong Kong 'Home'. Here's Why*, BLOCKWORKS (Sep. 23, 2021, at 15:10 ET), <https://blockworks.co/news/bankman-fried-says-ftx-no-longer-calls-hong-kong-home-heres-why> [https://perma.cc/XU69-QG9K].

41. See Steven Ehrlich, *Forbes 400 Cover Story - Sam Bankman-Fried*, FORBES (Oct. 6, 2021, at 09:54 ET), <https://www.forbes.com/newsletters/forbescryptoassetadvisor/2021/10/06/forbes-400-cover-storysam-bankman-fried/?sh=79f6f879475a> [https://perma.cc/G7RV-HLKM].

42. See Ehrlich & Peterson-Withorn, *supra* note 6.

43. *Id.*

44. See Alexander Osipovich, *Crypto Exchange FTX Reaches \$25 Billion Valuation*, WALL ST. J. (Oct. 21, 2021, at 08:00 ET), <https://www.wsj.com/articles/crypto-exchange-ftx-reaches-25-billion-valuation-11634817601> [https://perma.cc/X6K6-YLUR].

45. See *MLB All-Star Player Shohei Ohtani Joins FTX as Brand Ambassador*, LEDGER INSIGHTS (Nov. 17, 2021), <https://www.ledgerinsights.com/mlb-player-shohei-ohtani-joins-ftx-crypto-as-brand-ambassador/> [https://perma.cc/ER26-TNHT].

46. See Georgina Yomans, *Mercedes F1 Pens FTX Crypto Partnership*, SPORTSPRO (Sep. 24, 2021), <https://www.sportspromedia.com/news/mercedes-f1-ftx-crypto-sponsorship/> [https://perma.cc/GGJ7-V9SA].

47. See Rikta Mandel, *FTX And The Golden State Warriors Signs NFT Deal*, CRYPTO TIMES (Dec. 15, 2021, at 09:43), <https://www.cryptotimes.io/2021/12/15/ftx-and-the-golden-state-warriors-signs-nft-deal/> [https://perma.cc/DJ3L-KLPD].

48. See Vildana Hajric & Joanna Ossinger, *FTX Crypto Exchange Buys Cal Memorial Stadium Naming Rights*, BLOOMBERG (Aug. 23, 2021, at 08:00 ET), <https://www.bloomberg.com/news/articles/2021-08-23/ftx-crypto-exchange-buys-cal-memorial-stadiumnaming-rights> [https://perma.cc/P9JM-LHM4].

that SBF finally ceded control of Alameda,⁴⁹ just before he testified before Congress “about the growing importance of crypto and the industry’s desire for regulation.”⁵⁰

B. World Domination

In January 2022, FTX launched a two-billion-dollar venture capital fund⁵¹ and also announced a partnership with Visa to create a cryptocurrency-based debit card.⁵² Its third funding round raised another \$400 million, for a total of nearly two billion dollars in funding over six months, at a thirty-two billion-dollar valuation,⁵³ beating Twitter, NASDAQ, and Deutsche Bank.⁵⁴ Meanwhile, FTX.US completed its first funding round at an eight-billion-dollar valuation.⁵⁵ In February, FTX gave away millions in Bitcoin through its Super Bowl commercial⁵⁶ and also expanded

49. See Danny Nelson, *Sam Bankman-Fried Hands Control of Crypto Trading Firm Alameda to Two Deputies*, COINDESK (Oct. 12, 2021, at 8:00 ET), <https://www.coindesk.com/business/2021/10/12/sam-bankman-fried-hands-control-of-crypto-trading-firm-alameda-to-two-deputies/> [https://perma.cc/A9UB-ARNX].

50. Jeff John Roberts, *Crypto CEOs Went to Congress—And Got a Warm Welcome*, DECRYPT (Dec. 8, 2021), <https://decrypt.co/87855/crypto-ceos-congress> [https://perma.cc/6XKZ-CSXC].

51. See Yuliya Chernova, *Crypto Exchange FTX Sets Up \$2 Billion Venture Fund*, WALL ST. J. (Jan. 14, 2022, at 07:30 ET), <https://www.wsj.com/articles/crypto-exchange-ftx-sets-up-2-billion-venture-fund-11642163402> [https://perma.cc/U5R7-HMTN].

52. See Ammara Mubin, *FTX Exchange Launches FTX Visa Cards That Will Enable Users To Spend Their Balances At Merchants Worldwide*, CRYPTO BASIC (Jan. 21, 2022), <https://thecryptobasic.com/2022/01/21/ftx-launches-ftx-visa-cards-that-will-enable-users-to-spend-their-balances-at-merchants-worldwide/> [https://perma.cc/AY8D-D2MM].

53. See Jamie Crawley, *FTX Reaches \$32B Valuation With \$400M Fundraise*, COINDESK (Jan. 31, 2022, at 08:00 ET), <https://www.coindesk.com/business/2022/01/31/ftx-reaches-32b-valuation-with-400m-fundraise> [https://perma.cc/9RAA-7TKH].

54. See Robertson, *supra* note 1.

55. See Abdelaziz Fathi, *FTX.US Hits \$8 Billion Valuation After \$400 Million Series A Funding Round*, FINANCEFEEDS (Jan. 26, 2022), <https://financefeeds.com/ftx-us-hits-8-billion-valuation-400-million-series-funding-round/> [https://perma.cc/7T2Z-P9WT].

56. See Nitasha Tiku, *A 29-Year-Old CEO Is Pushing Crypto During the Super Bowl by Giving Away Millions in Bitcoin*, WASH. POST (Feb. 8, 2022), <https://www.washingtonpost.com/technology/2022/02/08/29-year-old-ceo-pushes-crypto-company-during-super-bowl-by-giving-away-millions-bitcoin/> [https://perma.cc/MG7X-HZ56].

into Japan.⁵⁷ Apparently unsatisfied with its existing efforts to expand cryptocurrency adoption, FTX hired a beauty entrepreneur as part of a plan to expand into the luxury goods market⁵⁸ and entered the gaming field.⁵⁹ FTX also gave back through the launch of “Future Fund” under the umbrella of the FTX Foundation, which notably counted “major contributions from Alameda Research.”⁶⁰

In the span of two weeks in March, FTX announced a license from Cyprus’ financial regulator and plans to expand into Europe,⁶¹ a license from the United Arab Emirates and new regional headquarters in Dubai,⁶² a partnership with a Kenyan cryptocurrency firm,⁶³ and a license from Australian Financial Services and the opening of its Australian office.⁶⁴ That same month, FTX converted cryptocurrency-donations into fiat for the

57. See Akayla Gardner, *FTX to Buy Liquid in Push to Reach Japanese Traders*, BLOOMBERG (Feb. 2, 2022), <https://www.bloomberg.com/news/articles/2022-02-02/ftx-to-acquire-fintech-liquid-in-push-to-reach-japanese-traders> [<https://perma.cc/6Z22-QUC8>].

58. See Adam Morgan McCarthy, *FTX Takes Aim at the \$300 Billion Luxury Goods Market and Hires a Beauty Entrepreneur to Head the Push*, YAHOO! FINANCE (Feb. 23, 2022), <https://finance.yahoo.com/news/ftx-takes-aim-300-billion-164551513.html> [<https://perma.cc/CA9Z-6WN9>].

59. See Emily Nicolle, *FTX Enters Gaming as Backlash Grows Against Crypto’s Incursion*, BLOOMBERG (Feb. 21, 2022), <https://www.bloomberg.com/news/articles/2022-02-21/ftx-enters-gaming-as-backlash-grows-against-crypto-s-incursion> [<https://perma.cc/2M3H-DZCW>].

60. Jacquelyn Melinek, *FTX Launches Philanthropic Fund With Plans To Deploy at Least \$100M*, BLOCKWORKS (Feb. 28, 2022, at 15:46 ET), <https://blockworks.co/news/ftx-launches-philanthropic-fund-with-plans-to-deploy-at-least-100m?ref=crypto-top-5.ghost.io> [<https://perma.cc/CR5F-TLGA>].

61. See Carla Mozee, *Sam Bankman Fried’s FTX Crypto Exchange to Expand Into Europe After Winning Cyprus License*, YAHOO! FINANCE (Mar. 7, 2022), <https://uk.style.yahoo.com/finance/news/sam-bankman-frieds-ftx-crypto-141951330.html> [<https://perma.cc/EZY3-RQGD>].

62. See Yueqi Yang & Ben Bartenstein, *Crypto Exchange FTX Wins License, Plans Regional HQ In Dubai*, BLOOMBERG (Mar. 14, 2022, at 15:09 ET), <https://www.bloomberg.com/news/articles/2022-03-14/crypto-exchange-ftx-wins-license-and-plans-regional-hq-in-dubai> [<https://perma.cc/VM3Z-MF7A>].

63. See Antony Sguazzin, *Crypto Exchange FTX Partners With Kenya Firm to Expand in Africa*, BLOOMBERG (Mar. 16, 2020), <https://www.bloomberg.com/news/articles/2022-03-16/crypto-exchange-ftx-partners-with-kenya-firm-to-expand-in-africa> [<https://perma.cc/Y7Y7-PP74>].

64. See Charles Thuo, *Cryptocurrency Exchange FTX Opens Office In Australia*, COINJOURNAL (Mar. 21, 2022), <https://coinjournal.net/news/cryptocurrency-exchange-ftx-opens-office-in-australia> [<https://perma.cc/3AD6-CKGB>].

National Bank of Ukraine to support Ukraine in its war against Russia⁶⁵ and criticized other cryptocurrency companies for refusing to cut off Russian users,⁶⁶ opened FTX Access as a “one-stop shop” for large investors,⁶⁷ and added tennis star Naomi Osaka to its roster of brand ambassadors.⁶⁸ That winter, FTX expanded further into Africa⁶⁹ and co-hosted the inaugural Crypto Bahamas conference with the Bahamian government.⁷⁰ SBF’s influence was evident, as he was named one of Time’s 100 Most Influential People of 2022.⁷¹ Seemingly, anything this wunderkind touched turned to gold.

C. *The Beginning of the End*

“Crypto Winter” set in as summer began, during which the industry experienced an extended period of declining

65. See Danny Nelson, *Ukraine Partners With FTX, Everstake to Launch New Crypto Donation Website*, COINDESK (Mar. 14, 2022, at 13:13 ET), <https://www.coindesk.com/policy/2022/03/14/ukraine-partners-with-ftx-everstake-to-launch-new-crypto-donation-website/> [https://perma.cc/WLL2-XV62].

66. See John McCrank, *Crypto Firm FTX Founder Slams Crypto Industry Messaging on Russia Sanctions*, REUTERS (Mar. 18, 2022, at 09:19 ET), <https://www.reuters.com/technology/crypto-firm-ftx-founder-slams-crypto-industry-messaging-russia-sanctions-2022-03-18/> [https://perma.cc/MUM9-ZMHJ].

67. See Yueqi Yang, *Crypto Exchange FTX Launches New Unit in Institutional-Investor Push*, BLOOMBERG (Mar. 9, 2022, at 11:00 ET), <https://www.bloomberg.com/news/articles/2022-03-09/crypto-exchange-ftx-launches-unit-in-institutional-investor-push> [https://perma.cc/LV88-6F5C].

68. See Adam Morgan McCarthy, *Tennis Champion Naomi Osaka Signs Up to FTX’s Sports Celebrity Roster to Help Get More Women Into Crypto*, BUS. INSIDER (Mar. 21, 2022, at 01:44 PM ET), <https://markets.businessinsider.com/news/currencies/ftx-crypto-blockchain-technology-partnership-tennis-tom-brady-gisele-nfts-2022-3> [https://perma.cc/64KG-MURA].

69. See Antony Sguazzin, *Bankman-Fried’s Crypto Exchange FTX to Launch in West Africa*, BLOOMBERG (Apr. 6, 2022, at 09:57 ET), <https://www.bloomberg.com/news/articles/2022-04-06/bankman-fried-s-crypto-exchange-ftx-to-launch-in-west-africa> [https://perma.cc/UC5S-P89Z].

70. See Nina Bambysheva, *Crypto Bahamas Kicks Off As Country Solidifies Plans To Become ‘Leading Digital Asset Hub’ Amidst Market Uncertainty*, FORBES (Apr. 27, 2022, 09:34 ET), <https://www.forbes.com/sites/ninabambysheva/2022/04/27/crypto-bahamas-kicks-off-as-country-solidifies-plans-to-become-leading-digital-asset-hub-amidst-market-uncertainty/?sh=1741a13c5a> [https://perma.cc/H9L9-EAGA].

71. See Andrew R. Chow, *Sam Bankman-Fried*, TIME (May 23, 2022, at 6:06 ET), <https://time.com/collection/100-most-influential-people-2022/6177770/sam-bankman-fried> [https://perma.cc/BH97-446H].

cryptocurrency values. In an effort to fight inflation, the U.S. Federal Reserve was aggressively hiking interest rates.⁷² At around the same time, TerraUSD (“UST”), the world’s largest decentralized stablecoin once worth fifteen billion dollars,⁷³ depegged from the U.S. dollar, causing the value of LUNA, its sister coin and primary backing asset, to drop by billions of dollars.⁷⁴ The UST-LUNA collapse reverberated through the cryptocurrency industry, taking down one of the biggest cryptocurrency hedge funds.⁷⁵ SBF appeared unshaken by the downturn, initially defending UST and LUNA⁷⁶ and keeping both coins available to trade on FTX,⁷⁷ even after major exchanges such as Binance delisted them.⁷⁸ He also doubled down on his political spending⁷⁹

72. See Dominic Rushe, *Federal Reserve Announces Biggest Interest Rate Hike Since 2000*, *GUARDIAN* (May 4, 2022, at 15:30 ET), <https://www.theguardian.com/business/2022/may/04/fed-rate-increase-inflation> [<https://perma.cc/WJ4D-RJKZ>].

73. See Muyao Shen, *Terra’s Promise of 20% Return Raises Sustainability Concern*, *BLOOMBERG L.* (Mar. 23, 2022, at 14:43 ET), <https://news.bloomberglaw.com/crypto/terra-as-promise-of-20-defi-return-raises-sustainability-concern> [<https://perma.cc/4BUW-J223>].

74. See Protos Staff, *Here’s How Crypto’s Third Largest Stablecoin Terra (UST) Collapsed*, *PROTOS* (May 10, 2022), <https://protos.com/heres-how-cryptos-third-largest-stablecoin-terra-ust-collapsed/> [<https://perma.cc/3D49-WZER>].

75. See Ekta Mourya, *Three Arrows Capital Reportedly Facing Insolvency, Crypto Bubble Is Bursting*, *FXSTREET* (June 15, 2022, at 12:09 GMT), <https://www.fxstreet.com/cryptocurrencies/news/three-arrows-capitals-zhu-su-speaks-out-after-400-million-liquidation-due-to-celsius-and-terras-luna-fiasco-202206150841> [<https://perma.cc/6KZS-5MHP>].

76. See Oluwapelumi Adejumo, *FTX Sam Bankman-Fried Defends Terra’s Founder, Says ‘Most Bad Investments Aren’t Ponzi Schemes’*, *BEINCRYPTO* (May 15, 2022, at 10:13 GMT), <https://beincrypto.com/ftx-sam-bankman-fried-defends-terras-founder-says-most-bad-investments-arent-ponzi-schemes/> [<https://perma.cc/7E4A-JSB4>].

77. See Sam Reynolds, *LUNA, UST Still Available on FTX and Other Exchanges Despite Terra Blockchain Halt*, *COINDESK* (May 13, 2022, at 00:19 ET), <https://www.coindesk.com/markets/2022/05/13/luna-ust-still-available-on-ftx-and-other-exchanges-despite-terra-blockchain-halt/> [<https://perma.cc/AXN3-FYFQ>].

78. See Corin Faife, *Major Exchanges Delist Terra Stablecoin As Price Collapse Continues*, *THE VERGE* (May 13, 2022, at 11:59 ET), <https://www.theverge.com/2022/5/13/23070853/crypto-exchanges-delist-terra-stablecoin-luna-binance> [<https://perma.cc/FV46-LZBP>].

79. See Cam Thompson, *FTX’s Bankman-Fried Is Already a Political Mega-Donor. He’s Doubling Down*, *COINDESK* (May 24, 2022, at 16:25 ET), <https://www.coindesk.com/policy/2022/05/24/ftxs-bankman-fried-is-already-a-political-mega-donor-hes-doubling-down/> [<https://perma.cc/WYZ3-Y7HC>].

and continued FTX's expansion, this time into stock and equities trading⁸⁰ and further into the Japanese⁸¹ and Canadian markets.⁸²

The “next Warren Buffett”⁸³ claimed to be willing to take losses to stabilize the market and protect customers while simultaneously warning that more failures were coming.⁸⁴ FTX.US helped out cryptocurrency lender BlockFi to the tune of hundreds of millions of dollars,⁸⁵ while Alameda lent cryptocurrency broker Voyager approximately \$500 million.⁸⁶ However, it seems that SBF may not have been motivated solely by altruism: after Voyager filed for bankruptcy, reports surfaced that the brokerage had rejected “a buyout offer from FTX and its subsidiary Alameda Research, calling it a ‘low-ball bid.’”⁸⁷ Despite

80. See Alexander Osipovich, *Crypto Exchange FTX Expands Into Stock Trading*, WALL ST. J. (May 19, 2022, at 17:31 ET), <https://www.wsj.com/articles/crypto-exchange-ftx-expands-into-stock-trading-11652954400> [<https://perma.cc/HQ28-3DSW>].

81. See Sebastian Sinclair, *Crypto Exchange FTX Launches in Japan Following Domestic Acquisition*, BLOCKWORKS (June 2, 2022, at 20:27 ET), <https://blockworks.co/news/crypto-exchange-ftx-launches-in-japan-following-domestic-acquisition> [<https://perma.cc/4BTF-L6NC>].

82. See Stephanie Hughes, *FTX Exchange Plans Launch in Canada Through Bitvo Acquisition*, FIN. POST (June 17, 2022), <https://financialpost.com/fp-finance/cryptocurrency/ftx-exchange-launch-canada-through-bitvo-acquisition> [<http://perma.cc/ZV4F-2SKH>].

83. See Jeff John Roberts, *Exclusive: 30-Year-Old Billionaire Sam Bankman-Fried Has Been Called the Next Warren Buffett. His Counterintuitive Investment Strategy Will Either Build Him An Empire—Or End in Disaster*, FORTUNE (Aug. 1, 2022, at 05:30 ET), <https://fortune.com/2022/08/01/ftx-crypto-sam-bankman-fried-interview/> [<https://perma.cc/46Z5-H7FA>].

84. See Steven Ehrlich, *Bankman-Fried Warns: Some Crypto Exchanges Already “Secretly Insolvent”*, FORBES (June 28, 2022, at 16:06 ET), <https://www.forbes.com/sites/steven-ehrich/2022/06/28/bankman-fried-some-crypto-exchanges-already-secretly-insolvent/?sh=544aec0847f7> [<https://perma.cc/65RQ-HSRJ>].

85. See *FTX US Gains ‘Option to Acquire’ BlockFi for Up to \$240M*, COINDESK (July 1, 2022, at 14:16 ET), <https://www.coindesk.com/business/2022/07/01/blockfi-reaches-deal-with-ftx-us/> [<https://perma.cc/A74R-PS5Z>].

86. See Emily Nicolle, *Bankman-Fried’s Alameda Lends \$485 Million to Crypto’s Voyager*, BLOOMBERG (June 18, 2022, at 06:09 ET), <https://www.bloomberg.com/news/articles/2022-06-18/bankman-fried-s-alameda-lends-485-million-to-crypto-s-voyager> [<https://perma.cc/97LL-44N7>].

87. See Bhushan Akolkar, *Voyager Digital Outrightly Rejects FTX’s Buyout Offer Calling It A “Low-Ball Bid”*, COINGAPE (July 25, 2022), <https://coingape.com/voyager-digital-outrightly-reject-ftxs-buyout-offer-calling-it-a-low-ball-bid/> [<https://perma.cc/GAH2-FZ23>].

claiming that FTX had “a few billion” for further bailouts⁸⁸ and reportedly raising another round of capital,⁸⁹ neither FTX nor any of its subsidiaries or affiliates provided any further assistance. As “Crypto Winter” warmed,⁹⁰ rumors again swirled that FTX was in talks to do another round of funding at the same thirty-two billion-dollar valuation it had in January.⁹¹

But as the leaves began to fall, things quickly took a downward turn. Within the span of a few weeks, Binance CEO and one-time FTX ally, Changpeng “CZ” Zhao, called out FTX as a “bad player” linked to “illicit trade activities,”⁹² and the president of FTX.US⁹³ and the co-CEO of Alameda both stepped down.⁹⁴ Investigative reports by Bloomberg News announced that FTX had “absorbed the venture capital operations of Alameda Research,” a move with significant implications for the cryptocurrency startup industry,⁹⁵ and concluded that “a significant amount of digital

88. See John McCrank & Megan Davies, *Crypto Exchange FTX Has “A Few Billion” To Support Industry: Bankman-Fried*, REUTERS (July 6, 2022, at 13:04 ET), <https://www.reuters.com/technology/crypto-exchange-ftx-has-few-billion-support-industry-bankman-fried-2022-07-06/> [<https://perma.cc/F59V-GCGN>].

89. See Saritha Rai, Yueqi Yang, & Ben Bartenstein, *Bankman-Fried’s Crypto Exchange FTX Is in Talks to Raise Funds After Buying Spree*, BLOOMBERG (July 20, 2022, at 09:39 ET), <https://www.bloomberg.com/news/articles/2022-07-20/crypto-giant-ftx-in-talks-to-raise-more-funds-after-buying-spree?> [<https://perma.cc/F2FS-3QPW>].

90. See Derek Andersen, *SBF: Crypto Winter Winding Down, FTX to Turn A Profit As It Serves As Lender of Last Resort*, COINTELEGRAPH (July 21, 2022), <https://cointelegraph.com/news/sbf-crypto-winter-winding-down-ftx-to-turn-a-profit-as-it-serves-as-lender-of-last-resort> [<https://perma.cc/8NRM-9UWB>].

91. See Kate Rooney, *FTX in Talks to Raise Up to \$1 Billion at Valuation of About \$32 Billion, In-Line With Prior Round*, CNBC (Sept. 21, 2022, at 19:09 ET), <https://www.cnbc.com/2022/09/21/ftx-in-talks-to-raise-1-billion-at-valuation-of-about-32-billion.html> [<https://perma.cc/X5GW-UDMP>].

92. See Arijit Sarkar, *Binance vs. FTX: CZ Calls Out ‘Bad Players’ for Crypto Exchange Jitters*, COINTELEGRAPH (Aug. 20, 2022), <https://cointelegraph.com/news/binance-vs-ftx-cz-calls-out-bad-players-for-crypto-exchange-jitters> [<https://perma.cc/N7Y7-QJTJ>].

93. See Nelson Wang & Cheyenne Ligon, *Crypto Exchange FTX.US President Brett Harrison Stepping Down*, COINDESK (Sept. 27, 2022, at 11:41 ET), <https://www.coindesk.com/business/2022/09/27/crypto-exchange-ftxs-president-brett-harrison-stepping-down/> [<https://perma.cc/YX9E-YADZ>].

94. See Hannah Miller, *Alameda Co-CEO Trabucco Steps Down from Crypto Trading Firm*, BLOOMBERG (Aug. 24, 2022, at 15:42 ET), <https://www.bloomberg.com/news/articles/2022-08-24/alameda-co-ceo-trabucco-steps-down-from-crypto-trading-firm> [<https://perma.cc/4VD8-RWXE>].

95. See Hannah Miller, *Sam Bankman-Fried’s FTX and Alameda Merge Their VC Operations*, BLOOMBERG (Aug. 25, 2022, at 15:45 ET), <https://www.bloomberg.com/news>

assets continue to flow between FTX and Alameda,” contradicting SBF’s own statements.⁹⁶ Worst of all, regulators were swarming, as the U.S. Federal Deposit Insurance Corporation (“FDIC”) demanded FTX.US cease and desist making “false and misleading statements” implying that its assets were FDIC-insured,⁹⁷ the United Kingdom’s Financial Conduct Authority accused FTX of offering unregistered securities,⁹⁸ and the Texas State Securities Board began investigating both SBF and FTX for offering unregistered securities.⁹⁹

D. The Implosion

On November 2, 2022, CoinDesk reported that most of Alameda’s net equity was “actually FTX’s own centrally controlled and printed-out-of-thin-air token,” as FTT comprised nearly six billion dollars of Alameda’s total assets, then worth fourteen billion dollars.¹⁰⁰ Four days later, Binance CEO CZ declared on Twitter that his company was liquidating its remaining FTT

/articles/2022-08-25/sam-bankman-fried-s-ftx-and-alameda-merge-their-vc-operations [https://perma.cc/CTX6-FQPQ].

96. See Annie Massa, Anne Irrera & Hannah Miller, *Crypto Quant Shop with Ties to FTX Powers Bankman-Fried’s Empire*, BLOOMBERG (Sept. 14, 2022, at 08:02 ET), <https://www.bloomberg.com/news/articles/2022-09-14/trading-firm-alameda-research-powers-ftx-ceo-sam-bankman-fried-s-crypto-empire> [].

97. See Pete Shroeder & Hannah Lang, *Crypto Exchange FTX Ordered to Halt ‘False and Misleading’ Claims by U.S. Bank Regulator*, REUTERS (Aug. 19, 2022, at 15:13 PM ET), <https://www.reuters.com/markets/us/crypto-exchange-ftx-ordered-halt-false-misleading-claims-by-us-bank-regulator-2022-08-19/> [https://perma.cc/NT4R-GNYQ].

98. See Alexander Osipovich, *Crypto Exchange FTX Says ‘Scammer’ Led to UK Regulator’s Warning*, WALL ST. J. (Sept. 19, 2022, at 12:45 ET), <https://www.wsj.com/livecoverage/stock-market-news-today-09-19-2022/card/ftx-says-scammer-led-to-uk-regulator-s-warning-5M2RiHdXjKKVU8koD2QY> [https://perma.cc/KJ93-AVNE].

99. See Nikhilesh De, *Crypto Exchange FTX US Under Investigation by Texas Regulator Over Securities Allegations*, COINDESK (Oct. 17, 2022, at 11:49 ET), <https://www.coindesk.com/policy/2022/10/17/crypto-exchange-ftx-us-under-investigation-by-texas-regulator-over-securities-allegations/> [https://perma.cc/2FJN-R7S3].

100. See Ian Allison, *Divisions in Sam Bankman-Fried’s Crypto Empire Blur on His Trading Titan Alameda’s Balance Sheet*, COINDESK (Nov. 2, 2022, at 10:44 ET), <https://www.coindesk.com/business/2022/11/02/divisions-in-sam-bankman-frieds-crypto-empire-blur-on-his-trading-titan-alamedas-balance-sheet/> [https://perma.cc/FC73-BKAF].

holdings “due to recent revelations.”¹⁰¹ In an apparent attempt to stabilize the token that comprised much of her balance sheet, Alameda’s CEO Caroline Ellison offered to buy back Binance’s holdings at twenty-two dollars each.¹⁰² But CZ hit back hard, comparing FTT to the defunct coin LUNA¹⁰³ and making his feelings about FTX clear: “We gave support before, but we won’t pretend to make love after divorce. We are not against anyone. But we won’t support people who lobby against other industry players behind their backs. Onwards.”¹⁰⁴ Investors immediately began withdrawing millions from FTX¹⁰⁵ as the value of FTT plummeted.¹⁰⁶

Nevertheless, SBF dismissed concerns about FTX’s insolvency as “false rumors,” claiming “FTX is fine. Assets are fine.”¹⁰⁷ But FTX was not fine.¹⁰⁸ By the morning of November 8, investors had withdrawn approximately six billion dollars from

101. Tracy Wang & Oliver Knight, *Binance to Sell Rest of FTX Token Holdings as Alameda CEO Defends Firm’s Financial Condition*, COINDESK (Nov. 6, 2022, at 11:55 ET), <https://www.coindesk.com/business/2022/11/06/binance-sells-holdings-of-ftx-token-as-alameda-ceo-defends-firms-financial-condition/> [<https://perma.cc/74EC-468J>].

102. *Id.*

103. See *Did a Reference to Terra’s LUNA Crypto Spark a Mini-Run on FTX Exchange?*, LEDGER INSIGHTS (Nov. 7, 2022), <https://www.ledgerinsights.com/ftx-exchange-mini-run-binance-withdrawals/> [<https://perma.cc/2KDG-2JGS>].

104. See Tracy Wang & Nick Baker, *FTX Agrees to Sell Itself to Rival Binance Amid Liquidity Scare at Crypto Exchange*, COINDESK (Nov. 8, 2022, at 11:10 ET), <https://www.coindesk.com/business/2022/11/08/ftx-reaches-deal-with-binance-amid-liquidity-scare-sam-bankman-fried-says/> [<https://perma.cc/2EK7-G9U6>].

105. See Andrew Asmakov, *Investors Withdraw Millions From FTX as Binance Begins Liquidating FTT Token*, DECRYPT (Nov. 7, 2022), <https://decrypt.co/113723/investors-withdrawal-millions-from-ftx-binance-begins-liquidating-ftt-token> [<https://perma.cc/6D G6-LCWQ>].

106. See Sam Reynolds, *FTX Token Plummets on Withdrawal Concerns as Contagion Hits Broader Crypto Markets*, COINDESK (Nov. 7, 2022, at 20:28 ET), <https://www.coindesk.com/markets/2022/11/08/ftt-plummets-as-market-fears-possible-alameda-contagion/> [<https://perma.cc/2D9M-Y4M3>].

107. Britney Nguyen, *Sam Bankman-Fried Deleted His Tweet Saying FTX ‘Assets Are Fine’ On the Day He Announced His Binance Deal*, BUS. INSIDER (Nov. 9, 2022, at 13:36 ET), <https://www.businessinsider.com/ftx-sam-bankman-fried-deleted-assets-fine-tweet-binance-deal-2022-11> [<https://perma.cc/A52K-3NY7>].

108. Bob Van Voris, Ava Benny-Morrison & Yueqi Yang, *Gary Wang Says His Friend SBF Lied in Tweet: ‘FTX Was Not Fine’*, BLOOMBERG (Oct. 6, 2023, at 15:08 ET), <https://www.bloomberg.com/news/articles/2023-10-06/gary-wang-avoids-eye-contact-with-sbf-and-recounts-tale-of-lies> [<https://perma.cc/6KLU-ULTH>].

the exchange,¹⁰⁹ which soon seemed to stop processing withdrawals.¹¹⁰ SBF's personal fortune dropped by ninety-four percent in two days, from sixteen to one billion dollars.¹¹¹

In an unexpected twist, CZ announced that Binance would be acquiring FTX and covering its "liquidity crunch," appearing to rescue the exchange from a collapse he had helped initiate—but not for long.¹¹² The next day, Binance announced that it would not be purchasing FTX, as its issues were "beyond [its] control or ability to help,"¹¹³ and reports broke that FTX, FTX.US, and Alameda were being investigated by the Securities and Exchange Commission ("SEC") and the Commodity Futures Trading Commission ("CFTC").¹¹⁴ Users attempting to access FTX.com that evening were greeted with a bright red banner: "FTX is currently unable to process withdrawals. We strongly advise against depositing."¹¹⁵

109. See Tom Wilson & Angus Berwick, *Crypto Exchange FTX Saw \$6 Bln in Withdrawals in 72 Hours*, REUTERS (Nov. 8, 2022, at 13:10 ET), <https://www.reuters.com/business/finance/crypto-exchange-ftx-saw-6-bln-withdrawals-72-hours-ceo-message-staff-2022-11-08/> [<https://perma.cc/23YT-AGL7>].

110. See Yogita Khatri, *FTX Appears to Have Stopped Processing Withdrawals, On-Chain Data Show*, THE BLOCK (Nov. 8, 2022, at 08:52 ET), <https://www.theblock.co/post/184176/ftx-appears-to-have-stopped-processing-withdrawals-on-chain-data-show> [<https://perma.cc/E65C-7Z3X>].

111. See Tom Maloney, *Sam Bankman-Fried's \$16 Billion Fortune Is Eviscerated in Days*, BLOOMBERG (Nov. 8, 2022, at 16:52 ET), <https://www.bloomberg.com/news/articles/2022-11-08/sbf-net-worth-is-eviscerated-in-days-with-binance-set-to-buy-ftx> [<https://perma.cc/VDM4-JPZ5>].

112. See Wang & Baker, *supra* note 104.

113. Kevin Reynolds, *Binance Walks Away From Deal to Acquire FTX*, COINDESK (Nov. 9, 2022, at 15:50 ET), <https://www.coindesk.com/business/2022/11/09/binance-walks-away-from-ftx-deal-wsj/> [<https://perma.cc/2UAH-WHQS>].

114. See Lydia Beyoud, Yueqi Yang & Olga Kharif, *Sam Bankman-Fried's FTX Empire Faces US Probe into Client Funds, Lending*, BLOOMBERG (Nov. 9, 2022, at 11:11 ET), <https://www.bloomberg.com/news/articles/2022-11-09/us-probes-ftx-empire-over-handling-of-client-funds-and-lending> [<https://perma.cc/MD8T-T7VP>].

115. Cheyenne Ligon, *FTX Website Experiences Temporary Outage, Warns Users Not to Make Deposits*, COINDESK (Nov. 9, 2022, at 17:00 ET), <https://www.coindesk.com/business/2022/11/09/ftx-site-experiences-temporary-outage-warns-users-not-to-deposit/> [<https://perma.cc/F7SZ-YX2M>].

By November 10, SBF was willing to “give anything” for capital,¹¹⁶ announcing that he was shutting down Alameda¹¹⁷ as reports surfaced that employees were trying to sell assets behind his back¹¹⁸ and Bahamian regulators froze FTX’s assets.¹¹⁹ In another blow, FTX’s legal and financial crises spread to FTX.US, and the U.S.-based exchange warned that trading could be halted in the coming days and advised users to close down their positions,¹²⁰ despite previously claiming that it would not be impacted.¹²¹

On the morning of November 11, 2022, less than a year after being valued at thirty-two billion dollars,¹²² FTX and 130 affiliated entities, including FTX.US and Alameda Research, filed for Chapter 11 bankruptcy in Delaware.¹²³

E. The Aftermath

In the days following its bankruptcy filing, reports surfaced that FTX had loaned ten billion dollars of its customers’ money to

116. Annie Massa, *Bankman-Fried Vows to ‘Give Anything’ for Capital as FTX Flails*, BLOOMBERG (Nov. 10, 2022, at 10:02 ET), <https://www.bloomberg.com/news/articles/2022-11-10/bankman-fried-vows-to-give-anything-for-capital-as-ftx-flails> [https://perma.cc/FW54-R3VR].

117. See Philip Lagerkranser, *Bankman-Fried Shuts Down Alameda Research as FTX Hangs in Balance*, BLOOMBERG (Nov. 10, 2022, at 12:09 ET), <https://www.bloomberg.com/news/articles/2022-11-10/bankman-fried-s-alameda-research-is-winding-down-trading> [https://perma.cc/669F-VAZB].

118. See Annie Massa, *Inside FTX.US, Employees Are Trying to Sell Assets With Sam Bankman-Fried Away*, BLOOMBERG (Nov. 10, 2022, at 14:20 ET), <https://www.bloomberg.com/news/articles/2022-11-10/inside-ftx-us-employees-are-trying-to-sell-assets-with-sbf-away> [https://perma.cc/75AL-4PTL].

119. See Angus Berwick & Anirban Sen, *FTX Looks for \$9.4 Bln in Rescue Funds, Bahamas Freezes Some Assets*, REUTERS (Nov. 10, 2022, at 19:45 ET), <https://www.reuters.com/markets/currencies/crypto-markets-teeter-with-ftx-after-binance-abandons-bailout-2022-11-10/> [https://perma.cc/8X6P-KZHJ].

120. See Yueqi Yang, *FTX’s US Crypto Exchange Says Trading May Be Halted in a Few Days*, BLOOMBERG (Nov. 10, 2022, at 13:34 ET), <https://www.bloomberg.com/news/articles/2022-11-10/ftx-us-says-trading-may-be-halted-in-a-few-days-labetc40> [https://perma.cc/WJ3Q-794M].

121. See Kia Kokalitcheva & Crystal Kim, *FTX’s U.S. Subsidiary Says It’s Not Impacted by Liquidity Crunch*, AXIOS (Nov. 8, 2022), <https://www.axios.com/2022/11/09/ftx-us-american-subsidiary-impact-liquidity-crunch> [https://perma.cc/S7CL-LAHR].

122. See Crawley, *supra* note 53.

123. See Yaffe-Bellany, *supra* note 8.

Alameda to cover losses from risky bets,¹²⁴ up to two billion dollars of which had seemingly “vanished,”¹²⁵ and that senior officials, including Caroline Ellison, were “aware of the decision to send [FTX] customer funds to Alameda.”¹²⁶ FTX officials separately confirmed that more than \$600 million had been stolen in an apparent hack.¹²⁷ A leaked balance sheet dated November 10 revealed that FTX had nine billion dollars in liabilities, \$900 million in liquid assets, five billion dollars in less-liquid assets, and \$3.2 billion in illiquid investments.¹²⁸ SBF, still in the Bahamas,¹²⁹ continued to unsuccessfully fundraise for his bankrupt companies.¹³⁰

124. See Vicky Ge Huang, Alexander Osipovich & Patricia Kowsmann, *FTX Tapped Into Customer Accounts to Fund Risky Bets, Setting Up Its Downfall*, WALL ST. J. (Nov. 11, 2022, at 12:16 ET), https://www.wsj.com/articles/ftx-tapped-into-customer-accounts-to-fund-risky-bets-setting-up-its-downfall-11668093732?mod=hp_lead_pos1 [<https://perma.cc/4U85-LP8V>].

125. Angus Berwick, *Exclusive: At Least \$1 Billion of Client Funds Missing at Failed Crypto Firm FTX*, REUTERS (Nov. 13, 2022, at 17:00 ET), <https://www.reuters.com/markets/currencies/exclusive-least-1-billion-client-funds-missing-failed-crypto-firm-ftx-sources-2022-11-12/> [<https://perma.cc/5JZZ-AREL>].

126. Dave Michaels, Elaine Yu, & Caitlin Ostroff, Alameda, *FTX Executives Are Said to Have Known FTX Was Using Customer Funds*, WALL ST. J. (Nov. 12, 2022, at 14:42 ET), <https://www.wsj.com/articles/alameda-ftx-executives-are-said-to-have-known-ftx-was-using-customer-funds-11668264238?> [<https://perma.cc/2HCF-5DNX>].

127. See Cheyenne Ligon et al., *‘FTX Has Been Hacked’: Crypto Disaster Worsens as Exchange Sees Mysterious Outflows Exceeding \$600M*, COINDESK (Nov. 11, 2022, at 23:20 ET), <https://www.coindesk.com/business/2022/11/12/ftx-crypto-wallets-see-mysterious-late-night-outflows-totalling-more-than-380m/> [<https://perma.cc/K8HL-PW6L>].

128. See *FTX Balance Sheet, Revealed*, FIN. TIMES (Nov. 12, 2022), <https://www.ft.com/content/0c2a55b6-d34c-4685-8a8d-3c9628f1f185> (on file with the *Fordham Journal of Corporate & Financial Law*).

129. See *FTX Founder Sam Bankman-Fried Says He Is in the Bahamas*, REUTERS (Nov. 12, 2022, at 09:38 ET), <https://www.reuters.com/technology/ftx-founder-bankman-fried-says-he-is-bahamas-2022-11-12/> [<https://perma.cc/FHU8-LHXM>].

130. See Caitlin Ostroff, Vicky Ge Huang & Berber Jin, *FTX Founder Sam Bankman-Fried Attempts to Raise Fresh Cash Despite Bankruptcy*, WALL ST. J. (Nov. 15, 2022, at 08:56 ET), <https://www.wsj.com/articles/ftx-founder-sam-bankman-fried-attempts-to-raise-fresh-cash-despite-bankruptcy-11668520573> [<https://perma.cc/KD32-CC7M>].

The defunct exchange was quickly abandoned by the sports world, as the Miami Heat,¹³¹ the Mercedes Formula One team,¹³² the Golden State Warriors,¹³³ TSM,¹³⁴ and UC Berkeley¹³⁵ rushed to announce the end of their respective corporate partnerships. FTX's collapse also reverberated throughout the cryptocurrency industry.¹³⁶ BlockFi, saved just a few months earlier, paused withdrawals on November 10¹³⁷ and filed for bankruptcy by the end of the month.¹³⁸ Cryptocurrency lender Genesis, with \$175 million trapped in FTX and seven million dollars in losses “across all counterparties, including Alameda,”¹³⁹ similarly paused

131. See Jacob Lev, *NBA's Miami Heat to Terminate Relationship with FTX, Will Get New Arena Name*, CNN (Nov. 11, 2022, at 22:32 ET), <https://www.cnn.com/2022/11/11/business/ftx-arena-miami-heat-name-change-nba-spt> [<https://perma.cc/D8RH-XQ9K>].

132. See *Mercedes F1 Team Suspends Partnership with FTX*, ESPN (Nov. 11, 2022, at 09:39 ET), https://www.espn.com/f1/story/_/id/35001911/mercedes-f1-team-suspends-partnership-ftx [<https://perma.cc/FU5C-39VL>].

133. See Ryan Young, *Warriors Join Heat, Suspend Deal With FTX After Cryptocurrency Company Declares Bankruptcy*, YAHOO! SPORTS (Nov. 14, 2022), <https://sports.yahoo.com/warriors-join-heat-suspend-deal-with-ftx-after-cryptocurrency-company-declares-bankruptcy-030218434.html> [<https://perma.cc/L5S2-HBYR>].

134. See Eli Tan, *Esports Giant TSM Suspends \$210M Partnership with FTX*, COINDESK (Nov. 16, 2022, at 14:07 ET), <https://www.coindesk.com/web3/2022/11/16/esports-giant-tsm-suspends-210m-partnership-with-ftx> [<https://perma.cc/2H6Q-7WLE>].

135. See Eli Tan, *UC Berkeley Suspends Stadium Naming Rights Deal With FTX*, COINDESK (Nov. 17, 2022, at 13:01 ET), <https://www.coindesk.com/business/2022/11/17/uc-berkeley-suspends-stadium-naming-rights-deal-with-ftx/> [<https://perma.cc/9MHQ-WKPV>].

136. See Vildana Hajric, *Crypto Markets Buckle as FTX Bankruptcy Spurs Search for Casualties*, BLOOMBERG (Nov. 11, 2022, at 11:05 ET), <https://www.bloomberg.com/news/articles/2022-11-11/crypto-markets-buckle-as-ftx-filing-spurs-search-for-casualties> [<https://perma.cc/7BSZ-G7CC>].

137. See Nikhilesh De, *Crypto Lender BlockFi Pauses Withdrawals in Wake of FTX Collapse*, COINDESK (Nov. 10, 2022, at 20:28 ET), <https://www.coindesk.com/business/2022/11/10/crypto-lender-blockfi-pauses-withdrawals-in-wake-of-ftx-collapse/> [<https://perma.cc/F393-WK9V>].

138. See Nikhilesh De, *BlockFi Files for Bankruptcy as FTX Contagion Spreads*, COINDESK (Nov. 28, 2022, at 10:20 ET), <https://www.coindesk.com/policy/2022/11/28/ftx-fallout-continues-as-crypto-lender-blockfi-declares-bankruptcy/> [<https://perma.cc/P9EK-ZMZZ>].

139. Caitlin Ostroff & Vicky Ge Huang, *Crypto Lender Genesis Suspends Withdrawals After FTX Collapse*, WALL ST. J. (Nov. 16, 2022, at 12:44 ET), <https://www.wsj.com/articles/crypto-lender-genesis-suspends-withdrawals-after-ftx-collapse-11668607332> [<https://perma.cc/R9NS-L8AT>].

withdrawals and filed for bankruptcy two months later.¹⁴⁰ Gemini, a cryptocurrency exchange, also paused withdrawals after its lender, Genesis, revealed its FTX exposure,¹⁴¹ despite Gemini's founders having previously claimed no exposure to FTX.¹⁴²

The legal situation deteriorated just as quickly, as federal prosecutors in New York announced a criminal investigation into the collapse¹⁴³ and investors filed an eleven-billion-dollar class action lawsuit against SBF and FTX's brand ambassadors.¹⁴⁴ In a preliminary court filing, FTX's new CEO John J. Ray III stated that he had never before "seen such a complete failure of corporate controls and such a complete absence of trustworthy financial information as occurred here."¹⁴⁵ SBF then took to Twitter to reveal that "roughly 25% of customer assets were withdrawn each day—\$4b" and that he had overestimated FTX's leverage by eight billion dollars.¹⁴⁶ On December 12, SBF was arrested in the

140. See Ryan Lawler, *Crypto Lender Genesis Files for Bankruptcy*, AXIOS (Jan. 20, 2023), <https://www.axios.com/pro/fintech-deals/2023/01/20/crypto-lender-genesis-files-for-bankruptcy> [https://perma.cc/LB98-5MWH].

141. See *Gemini Crypto Pauses Withdrawals, Fallout Continues from FTX Collapse*, FORBES (Nov. 30, 2022, at 11:58 ET), <https://www.forbes.com/sites/qai/2022/11/30/gemini-crypto-pauses-withdrawals-fallout-continues-from-ftx-collapse/> [https://perma.cc/M2PB-TV2K].

142. See *Crypto Exchange Gemini Co-Founder Says No Exposure to FTX, Alameda*, REUTERS (Nov. 9, 2022, at 15:56 ET), <https://www.reuters.com/technology/crypto-exchange-gemini-co-founder-says-no-exposure-ftx-alameda-2022-11-09/> [https://perma.cc/M6T8-FBDH].

143. See Ava Benny-Morrison, *FTX Collapse Probed by Federal Prosecutors in Manhattan*, BLOOMBERG (Nov. 14, 2022, at 16:09 ET), <https://www.bloomberg.com/news/articles/2022-11-14/ftx-collapse-probed-by-federal-prosecutors-in-manhattan> [https://perma.cc/H9U8-VLZ9].

144. See Jody Godoy, *FTX's Bankman-Fried, Tom Brady and Other Celebrity Promoters Sued by Crypto Investors*, REUTERS (Nov. 17, 2022, at 03:58 ET), <https://www.reuters.com/legal/ftx-founder-bankman-fried-sued-us-court-over-yield-bearing-crypto-accounts-2022-11-16/> [https://perma.cc/U6D4-9G4F].

145. Yueqi Yang, *FTX's Bankman-Fried Received \$1 Billion Loan from Alameda*, BLOOMBERG (Nov. 17, 2022, at 23:39 ET), <https://www.bloomberg.com/news/articles/2022-11-17/ftx-s-bankman-fried-received-1-billion-loan-from-alameda> [https://perma.cc/7RL9-ZLP5].

146. Turner Wright, *Sam Bankman-Fried Updates Investors: 'We Got Overconfident and Careless,' Claims \$13B Leverage*, COINTELEGRAPH (Nov. 16, 2022), <https://cointelegraph.com/news/sam-bankman-fried-updates-investors-we-got-overconfident-and-careless-claims-13b-leverage> [https://perma.cc/2MAT-Y6AL].

Bahamas¹⁴⁷ on charges of securities and wire fraud on customers and lenders.¹⁴⁸

Nearly a year later, on November 2, 2023, SBF was convicted of all charges in the U.S. District Court for the Southern District of New York, including wire fraud, conspiracy to commit wire fraud, conspiracy to commit securities fraud, conspiracy to commit commodities fraud, and conspiracy to commit money laundering.¹⁴⁹ At his sentencing, U.S. District Judge Lewis Kaplan estimated that FTX's equity investors lost \$1.7 billion, Alameda's lenders lost \$1.3 billion, and FTX's customers lost eight billion dollars, totaling an estimated eleven-billion-dollar fraud, the true losses of which may never be known.¹⁵⁰ Equity investors, who sunk nearly two billion dollars into the company over the course of its three funding rounds, are not likely to be repaid.¹⁵¹ Although customers will be repaid in full, their claims will be valued as of November 11, 2022, "when the value of cryptocurrencies was 400 percent lower than today."¹⁵²

II. LESSONS FROM LEHMAN

In 2008, Lehman Brothers ("Lehman"), the fourth-largest investment bank in the U.S. filed for bankruptcy, triggering the

147. See Alexander Saeedy et al., *Former FTX CEO Sam Bankman-Fried Arrested in Bahamas*, WALL ST. J. (Dec. 12, 2022, at 21:26 ET), <https://www.wsj.com/articles/ftx-founder-samuel-bankman-fried-arrested-in-bahamas-11670890250> [https://perma.cc/RF3G-FDQW].

148. See Sealed Indictment, *United States v. Samuel Bankman-Fried*, No. 22-cr-00673, 2022 WL 1765772 (S.D.N.Y. Dec. 13, 2022).

149. See *id.*; see also David Yaffe-Bellany, Matthew Goldstein & J. Edward Moreno, *Sam Bankman-Fried Is Found Guilty of 7 Counts of Fraud and Conspiracy*, N.Y. TIMES (Nov. 2, 2023), <https://www.nytimes.com/2023/11/02/technology/sam-bankman-fried-fraud-trial-ftx.html> [https://perma.cc/6ZJH-6RNY].

150. Luc Cohen & Jody Godoy, *Bankman-Fried Sentenced to 25 years for Multi-billion Dollar FTX Fraud*, REUTERS (Mar. 28, 2024, at 15:38 ET), <https://www.reuters.com/technology/sam-bankman-fried-be-sentenced-multi-billion-dollar-ftx-fraud-2024-03-28/>.

151. See Dietrich Knauth, *FTX Expects US to Reduce Bankruptcy Claim to \$3 Billion to \$5 Billion*, REUTERS (Mar. 21, 2024, at 16:56 ET), <https://www.reuters.com/technology/ftx-expects-us-reduce-bankruptcy-claim-3-billion-5-billion-2024-03-21/>.

152. Larry Neumeister, *FTX Chief Executive Blasts Sam Bankman-Fried for Claiming Fraud Victims Will Not Suffer*, ASSOC. PRESS (Mar. 20, 2024, at 18:11 ET), <https://apnews.com/article/sam-bankmanfried-court-ftx-27f8a623fdcc9e56e56f2b23e298a1e> [https://perma.cc/DS6A-MGLP].

largest financial crisis seen in the U.S. since the Great Depression in the 1930s.¹⁵³ After the crisis subsided, a reckoning began, and Lehman was scrutinized for corporate governance failures that led to the largest bankruptcy in American history.¹⁵⁴ Despite Lehman's numerous failings, the nature of the problem was systemic, not inherent to the failures of any one institution. The Great Recession arguably resulted from insufficient governmental oversight of the massive financial institutions that safeguard the nation's wealth.

Two years after Lehman's bankruptcy kicked off the Great Recession, the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") was passed in response.¹⁵⁵ In the aftermath of FTX's collapse, many called for similar legislation for the cryptocurrency industry to prevent a similar crisis from reoccurring.¹⁵⁶ The cryptocurrency community deserves the same regulations and financial protections afforded to the greater financial community through Dodd-Frank.

A. *Too Big to Fail*

In response to the Great Depression, Congress passed the Glass-Steagall Act ("Glass-Steagall"), which separated investment

153. See LAURENCE M. BALL, *THE FED AND LEHMAN BROTHERS X* (2018) (noting comparators between the 2008 financial crisis and the Great Depression); Christian Reller, *Lehman Brothers Bankruptcy: Reasons, Effects, and Outcomes*, SCHOLARKWORKS U. ARK. (2022).

154. See Stuart C. Gilson, Kristin Mugford & Sarah L. Abbott, *The Rise and Fall of Lehman Brothers*, HARV. BUS. SCH. (Jan. 2019) <https://www.hbs.edu/faculty/Pages/item.aspx?num=52147> [<https://perma.cc/YD3M-PNLD>].

155. See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 11-203, 124 Stat. 1376 (2010) (codified at 12 U.S.C. § 5518).

156. See, e.g., Marc Jones & Huw Jones, *FTX Collapse Shows Need to Regulate Crypto, Says Bank of England*, REUTERS (Nov. 21, 2022, at 05:37 ET), <https://www.reuters.com/markets/currencies/ftx-shows-need-regulate-crypto-before-it-gets-big-says-bank-england-2022-11-21/> [<https://perma.cc/W9NM-PJMS>]; see also Nelson Wang, *FTX Collapse Highlights Need for Global Crypto Regulations, Says US Treasury's Adeyemo: Reuters*, COINDESK (Dec. 1, 2022, at 12:38 ET), <https://www.coindesk.com/policy/2022/12/01/ftx-collapse-highlights-need-for-global-crypto-regulations-says-us-treasurys-adeyemo-reuters/> [<https://perma.cc/HJ7X-9T8C>]; Brian Armstrong, *Crypto Markets Need Regulation to Avoid More Washouts Like FTX, Says Coinbase CEO Brian Armstrong*, CNBC (Nov. 11, 2022, at 19:15 ET), <https://www.cnbc.com/2022/11/11/op-ed-crypto-markets-need-regulation-to-avoid-ftx-type-situations.html> [<https://perma.cc/V689-SMNW>].

and commercial banking activities and created the FDIC.¹⁵⁷ Eventually, memories of Hoovervilles¹⁵⁸ and bank runs faded¹⁵⁹ and in 1999, Congress partially repealed Glass-Steagall through the Gramm-Leach-Bliley Act,¹⁶⁰ knocking down the firewall between risky investment and public-facing retail banking activities and allowing for the creation of super-banks.¹⁶¹ At around the same time, many banks began providing subprime mortgages to borrowers who could not afford to pay them.¹⁶² Investment banks had long bought mortgage-backed securities¹⁶³—bundles of home loans that pay investors from borrowers' monthly mortgage payments¹⁶⁴—but the mortgages underlying those securities were increasingly becoming subprime.

Lehman was one of the first investment banks to venture into mortgage origination,¹⁶⁵ an area it and its peers had previously stayed out of. Lehman quickly became a force in the subprime market: by 2003 Lehman ranked third in the market¹⁶⁶; by 2004

157. See Banking Act of 1933 (Glass-Steagall Act), ch. 89, 48 Stat. 162 (codified as amended in scattered sections of 12 U.S.C.).

158. See *Hoovervilles*, HISTORY, <https://www.history.com/topics/great-depression/hoovervilles> [<https://perma.cc/ZB8S-RTEX>] (last visited Nov. 9, 2024).

159. See *Bank Run*, HISTORY, <https://www.history.com/topics/great-depression/bank-run> [<https://perma.cc/C9YM-RER9>] (last visited Nov. 9, 2024).

160. See Gramm-Leach-Bliley Act of 1999, §§ 101(a)–(b), Pub. L. No. 106-102, 113 Stat. 1338.

161. See Damian Paletta & Kara Scannell, *Ten Questions for Those Fixing the Financial Mess*, WALL ST. J. (Mar. 10, 2009, at 00:01 ET), <https://www.wsj.com/articles/SB123665023774979341> [<https://perma.cc/H4HB-TGU8>].

162. See *Lehman Brothers 1850-2008, Bankruptcy*, HARV. BUS. SCH., <https://www.library.hbs.edu/hc/lehman/exhibition/bankruptcy> [<https://perma.cc/G58G-CSC4>] (“Subprime mortgages, which became popular in the 1990s, were loans offered to borrowers with low credit ratings.”) (last visited Nov. 9, 2024).

163. See Elisa C. Clark, *The Role of Investment Banks in the Mortgage Meltdown: Did Investors Slip Through the Holes in SOX?*, 29 ST. LOUIS UNIV. PUB. REV. 273, 283–84 (2009).

164. See *What Are Mortgage-Backed Securities?*, FIDELITY, <https://www.fidelity.com/learning-center/investment-products/fixed-income-bonds/mortgage-backed-securities> [<https://perma.cc/P5AM-RFQQ>] (last visited Nov. 9, 2024).

165. See Laura Rodini, *What Happened to Lehman Brothers? Why Did It Fail?*, THE STREET (July 14, 2023, at 17:19 PM ET), <https://www.thestreet.com/personal-finance/what-happened-to-lehman-brothers> [<https://perma.cc/UYP5-PNXV>].

166. See Troy Brownfield, *The Company that Nearly Bankrupted America*, SATURDAY EVENING POST (Jan. 15, 2019), <https://www.saturdayeveningpost.com/2019/01/lehman-brothers-the-company-that-nearly-bankrupted-america/> [<https://perma.cc/H8WR-87PK>].

Lehman owned six subprime lenders¹⁶⁷; and by 2007, the year the subprime mortgage crisis really began, Lehman was the largest holder of mortgage-backed securities,¹⁶⁸ with \$111 billion in primarily subprime mortgages.¹⁶⁹ Lehman funded these already risky investments through hundreds of billions in loans, essentially taking on debt to buy other people's debt.¹⁷⁰ As low interest rates and easy access to mortgages incentivized home buying in the early 2000s, Lehman's gamble seemed to have paid off.¹⁷¹

But the increased demand for homes had pushed housing prices to unsustainable levels, and the Federal Reserve began raising interest rates to cool the overinflated housing market.¹⁷² The higher rates worked as expected and home prices began to fall, suggesting the housing crisis was averted. Not so, however, for subprime borrowers, who had taken out primarily variable-rate mortgages¹⁷³ they could barely afford. These borrowers became trapped as the higher interest rates increased their monthly payments and decreased the value of their homes,¹⁷⁴ and began defaulting on their mortgages at increasingly high rates.¹⁷⁵

167. See Rodini, *supra* note 165, at 5.

168. See *Lehman Brothers*, CORP. FIN. INST., <https://corporatefinanceinstitute.com/resources/career-map/sell-side/capital-markets/lehman-brothers/> [<https://perma.cc/7P3M-WVNM>] (last visited Nov. 9, 2024).

169. See Rosalind Z. Wiggins, Thomas Piontek & Andrew Metrick, *The Lehman Brothers Bankruptcy A: Overview*, 1 J. FIN. CRISES 39, 44 (2019).

170. See Karen Berman and Joe Knight, *Lehman's Three Big Mistakes*, HARV. BUS. REV. (Sep. 16, 2009), <https://hbr.org/2009/09/lessons-from-lehman> [<https://perma.cc/W2AT-YX4D>] (“They borrowed money in order to invest in mortgage-backed securities.”).

171. See David Chang & Robin Hartill, *The Subprime Mortgage Crisis of 2008: A Beginner's Guide*, MOTLEY FOOL MONEY (Sept. 23, 2024), <https://www.fool.com/money/mortgages/subprime-mortgage-crisis/> [<https://perma.cc/B3VX-WHVL>] (“Low interest rates provided cheap credit, and more people borrowed money to purchase homes. This demand helped lead to the increase in housing prices.”).

172. See *id.* (“Home prices were rapidly rising, and the Fed under Alan Greenspan raised interest rates to cool the overheated market over a dozen times.”).

173. See Adam Hayes, *Variable-Rate Mortgage: What It Is, Benefits and Downsides*, INVESTOPEDIA (Oct. 18, 2024), <https://www.investopedia.com/terms/v/variable-rate-mortgage.asp> [<https://perma.cc/UX5Z-3TCC>] (explaining that a “variable-rate mortgage is a home loan with no fixed interest rate. Instead, interest payments are adjusted at a level above a specific benchmark or reference rate, such as the Prime Rate + 2 points”).

174. See *id.* (“Home prices fell for the first time in 11 years in the fall of 2006.”).

175. See *id.* (“A wave of subprime mortgage lender bankruptcies began in early 2007 as more homeowners began to default.”).

As the subprime mortgage crisis spread, mortgage-backed securities quickly became worthless, hitting Lehman, who owned hundreds of billions of dollars' worth of these securities particularly hard. Investors stopped receiving monthly payments from borrowers and the homes collateralizing these mortgages dropped in value.¹⁷⁶ The crisis compounded when subprime lenders filed for bankruptcy,¹⁷⁷ and large banks began announcing losses from their mortgage-backed security investments.¹⁷⁸

Lehman closed one of its subprime lending subsidiaries,¹⁷⁹ but the larger problem was the liquidity crisis it was facing for the billions it owed for its now-worthless mortgage-backed securities.¹⁸⁰ Without borrowers' monthly payments, Lehman could not pay its own loans—so it borrowed more.¹⁸¹ By the middle of 2008, Lehman was in dire straits, announcing \$2.8 billion in losses and raising money from stockholders,¹⁸² but it was not enough.

Over the summer, Lehman announced layoffs and began looking for a buyer.¹⁸³ In early September, the Korean

176. See FED. DEPOSIT INS. COMM'N, *CRISIS AND RESPONSE: AN FDIC HISTORY, 2008 – 2013* 6 (2018), <https://www.fdic.gov/bank/historical/crisis/chap1.pdf> [<https://perma.cc/ZPW5-4HFU>].

177. See David Cho, *Huge Mortgage Lender Files for Bankruptcy*, WASH. POST (Apr. 3, 2007), <https://www.washingtonpost.com/archive/national/2007/04/03/huge-mortgage-lender-files-for-bankruptcy/eb7be900-c5c0-4103-ac63-7495ff158349/> [<https://perma.cc/MX3X-TR2B>].

178. See *HSBC Reports Rise in Troubled Loans*, N.Y. TIMES (Feb. 8, 2007), <https://www.nytimes.com/2007/02/08/business/worldbusiness/08bank.html> [<https://perma.cc/QKW5-6PH8>].

179. See Jenny Anderson & Vikas Bajaj, *Lehman Brothers to Shut Down Subprime Lender Unit*, N.Y. TIMES (Aug. 23, 2007), <https://www.nytimes.com/2007/08/23/business/worldbusiness/23iht-home.1.7225536.html> [<https://perma.cc/D49G-ZD9K>].

180. See *Lehman Brothers 1850-2008, Bankruptcy*, *supra* note 162 (“The market for MBSs continued to fold in on itself, leaving investment banks with worthless assets.”).

181. See Reller, *supra* note 153, at 7 (“If Lehman didn’t cover their financial obligations, their creditworthiness would take a large reputation hit, so they chose to borrow more money in the form of commercial paper and repo agreements to cover the costs.”).

182. *Id.* at 9.

183. See FED. DEPOSIT INS. COMM'N, *THE ORDERLY LIQUIDATION OF LEHMAN BROTHERS HOLDINGS INC. UNDER THE DODD-FRANK ACT 2* (2011), <https://www.fdic.gov/analysis/quarterly-banking-profile/fdic-quarterly/2011-vol5-2/lehman.pdf> [<https://perma.cc/TR6Q-WA6Q>] (discussing possible buyers over summer); see also Rodini, *supra* note 165, at 6 (“By August, it had laid off nearly 10% of its 25,000-person workforce.”).

Development Bank expressed interest in purchasing Lehman, but then quickly backed out.¹⁸⁴ In the following days, the President of the Federal Reserve Bank of New York met with the leaders of the major U.S. banks in an effort to find a buyer for Lehman, but no deal was reached.¹⁸⁵ In the early hours of September 15, 2008, Lehman filed for Chapter 11 bankruptcy in the U.S. Bankruptcy Court for the Southern District of New York.¹⁸⁶ It remains the largest bankruptcy in U.S. history.¹⁸⁷

B. Dodd-Frank

Dodd-Frank was a comprehensive overhaul of federal regulations, passed in response to the problems that caused the Great Recession. Dodd-Frank's reforms are too numerous and varied to list in their entirety, but its pertinent aspects are summarized below.

Dodd-Frank prohibited banks from using their own funds for proprietary trading or investments in hedge funds or private equity funds.¹⁸⁸ It created two new federal agencies: the Consumer Financial Protection Bureau ("CFPB")¹⁸⁹ and the Financial Stability Oversight Council ("FSOC").¹⁹⁰ The CFPB was intended to protect consumers against predatory behavior related to credit cards, mortgages, and other financial products.¹⁹¹ The FSOC prevents future financial crises by ensuring banks do not become "too big to fail" again.¹⁹² Dodd-Frank also expanded the definition of

184. See Reller, *supra* note 153, at 9.

185. See Henry Blodhet, *Emergency Meetings to Save Lehman, World*, BUS. INSIDER (Sep. 13, 2008, at 07:20 ET), <https://www.businessinsider.com/2008/9/emergency-fed-wall-street-meeting-to-save-lehman-world> [<https://perma.cc/C7M8-9MDC>].

186. See Graeme Wearden, David Teather & Jill Treanor, *Banking Crisis: Lehman Brothers Files for Bankruptcy Protection*, THE GUARDIAN (Sep. 15, 2008, at 19:45 ET), <https://www.theguardian.com/business/2008/sep/15/lehmanbrothers.creditcrunch> [<https://perma.cc/ZZ5A-F2XN>].

187. See Gilson, Mugford & Abbott, *supra* note 154.

188. 12 U.S.C. § 1851; see *Volcker Rule*, CORNELL L. SCH. LEGAL INFO. INST. (Nov. 2022), https://www.law.cornell.edu/wex/volcker_rule [<https://perma.cc/8XMK-44D3>].

189. 12 U.S.C. § 5533.

190. 12 U.S.C. § 5321.

191. See Ben Geier, *The Dodd-Frank Act Explained (and How It's Changed)*, NASDAQ (Mar. 15, 2023, at 16:33 ET), <https://www.nasdaq.com/articles/the-dodd-frank-act-explained-and-how-its-changed> [<https://perma.cc/5BQM-UKSW>].

192. *Id.*

“whistleblower” to include employees of subsidiary or affiliate companies, provides whistleblowers with 10–30 percent of the proceeds of litigation settlements resulting from their report, and increased the “statute of limitations for whistleblowing to 180 days after the discovery of wrongdoing.”¹⁹³

C. “A Complete Failure of Corporate Controls”

Lehman’s collapse has been attributed to a number of factors, including poor internal controls and risk management.¹⁹⁴ Many lessons were learned from Lehman, and Dodd-Frank was passed in order to prevent similar crises from recurring. Yet fifteen years later, FTX was afflicted with many of the same problems.¹⁹⁵ Theoretically, Lehman’s collapse, thoroughly dissected and analyzed before FTX was even formed, should have helped stop the failures at FTX but it did not. Thus, the world watched as another “too big to fail” institution failed.

Lehman’s and FTX’s risk management practices were strikingly similar. FTX had no risk management procedures,¹⁹⁶ while Lehman was “significantly and persistently in excess of its own risk limits,”¹⁹⁷ such that like FTX, Lehman’s risk management was derelict. Lehman’s Bankruptcy Examiner reported that “rather than adjust business decisions to adapt to risk limit excesses, management decided to adjust the risk limits to adapt to

193. *Id.*

194. See *Lehman Brothers*, YALE SCH. MGMT., <https://ypfs.som.yale.edu/lehman-brothers> [<https://perma.cc/YTT6-C7HY>] (last visited May 5, 2024).

195. See Cindy Moehring, *Culture, Controls, and Corporate Governance: Lessons from the FTX Fiasco*, U. ARK. WALTON COLL. BUS. (Dec. 19, 2023), <https://walton.uark.edu/insights/posts/culture-controls-and-corporate-governance-lessons-from-the-ftx-fiasco.php> [<https://perma.cc/WA5C-3RYM>].

196. See Jesse Hamilton, *With Founder Facing Charges, New CEO Says FTX Embezzled Customer Cash*, COINDESK (May 9, 2023, at 00:04 ET), <https://www.coindesk.com/business/2022/12/13/with-ftxs-founder-facing-charges-new-ceo-details-lack-of-independence-of-ftx-us> [<https://perma.cc/HFW5-GN7D>] (noting John Ray III’s congressional testimony indicating that FTX had “absolutely no internal controls whatsoever.”).

197. *Public Policy Issues Raised by the Report of the Lehman Bankruptcy Examiner: Hearing Before the H. Comm. on Fin. Serv.*, 111th Cong. 2 (2010) (prepared statement of Anton R. Valukas, Examiner, Lehman Brothers Bankruptcy), <https://elischolar.library.yale.edu/cgi/viewcontent.cgi?article=1727&context=yafs-documents> [<https://perma.cc/MGX8-SDB4>] [hereinafter Valukas Statement].

business goals.”¹⁹⁸ SBF testified in court that “spending clients’ fiat deposits was just part of ‘risk management.’”¹⁹⁹ Lehman’s Examiner noted specific examples of excessively risky business decisions, including a large failed transaction that “put Lehman on or over the brink.”²⁰⁰

Such transactions from FTX were numerous, but there are a few notable examples. FTX transferred at least four billion dollars of customer funds to Alameda after it suffered a series of losses—but several weeks later, Alameda loaned distressed cryptocurrency broker Voyager \$500 million, a transaction that turned out to be a loss given Voyager’s subsequent bankruptcy filing.²⁰¹ SBF used third-party loans to Alameda to start a two-billion-dollar venture capital fund,²⁰² and FTX invested \$250 million in a hedge fund in September 2022, two months before it collapsed.²⁰³

198. *Id.*

199. Zhiyuan Sun, *SBF Says Spending FTX Customers’ Money Was Part of ‘Risk Management’: Report*, COINTELEGRAPH (Oct. 31, 2023), <https://cointelegraph.com/news/sbf-says-spending-ftx-customers-money-risk-management-report> [<https://perma.cc/T9MA-3A96>].

200. *See* Valukas Statement, *supra* note 197, at 3.

201. Shaurya Malwa & Oliver Knight, *FTX Used Customer Funds Among Other Assets to Prop Up Alameda Research in May: Report*, COINDESK (May 9, 2023, 00:02 ET), <https://www.coindesk.com/business/2022/11/10/ftx-used-customer-funds-among-other-assets-to-prop-up-alameda-research-in-may-reuters/> [<https://perma.cc/K66E-3MPE>].

202. *See* Rebecca Bellan, *SBF Started a \$2 Billion Venture Fund Using Alameda Loans*, TECHCRUNCH (Oct. 11, 2023, at 03:41 ET), <https://techcrunch.com/2023/10/11/sbf-started-a-2-billion-venture-fund-using-alameda-loans/> [<https://perma.cc/4CM2-9G5D>].

203. *See* Elizabeth Lopatto, *Sam Bankman-Fried Was a Bad Friend, Too*, THE VERGE (Oct. 16, 2023, at 19:34 ET), <https://www.theverge.com/2023/10/16/23920125/sam-bankman-fried-nishad-singh-testimony-ftx-trial> [<https://perma.cc/SYX2-9BFP>]; *see also* Zack Abrams & Anna Baydakova, *SBF’s Trial: Nishad Singh Said No, But Not Often Enough*, THE BLOCK (Oct. 16, 2023, at 21:20 ET), <https://www.theblock.co/post/257840/inside-sbfs-trial-nishad-singh-said-no-but-not-often-enough> [<https://perma.cc/8YAX-UGNL>].

Both FTX²⁰⁴ and Lehman followed a “high-leverage . . . business strategy supported by limited equity.”²⁰⁵ Lehman focused on aggressive growth strategies and “risky and complex financial products,”²⁰⁶ a path FTX also followed: a thirty-two billion-dollar valuation in less than three years,²⁰⁷ multiple funding rounds in several months,²⁰⁸ and \$1.13 billion spent on marketing.²⁰⁹ Both companies were functionally operating without regulatory oversight: Lehman’s Examiner concluded that the SEC’s regulation of Lehman was so lax that it basically had “no regulator in place that required Lehman to adhere to its risk limits,”²¹⁰ and FTX had no regulator at all.²¹¹ While Lehman’s Board of Directors did not step in to counteract corporate excesses,²¹² FTX never even had such an entity.²¹³ Lehman created “materially misleading” financial statements,²¹⁴ and FTX frequently did the same.²¹⁵

204. See *supra* notes 24, 45 and accompanying text. At the time of its collapse, FTX had \$9 billion in liabilities, \$900 million in liquid assets, \$5.5 billion in less liquid assets, and \$3.2 billion in illiquid investments. See Antoine Gara et al., *FTX Held Less Than \$1bn in Liquid Assets Against \$9bn in Liabilities*, FIN. TIMES (Nov. 12, 2022), <https://www.ft.com/content/f05fe9f8-ca0a-48d5-8ef2-7a4d813af558> [<https://perma.cc/BVE8-ZZTW>].

205. Young Ah Kim, *The Agency Problem of Lehman Brothers’ Board of Directors*, ILL. BUS. L.J. (Apr. 28, 2016), <https://publish.illinois.edu/illinoisblj/2016/04/28/the-agency-problem-of-lehman-brothers-board-of-directors/> [].

206. See *id.*

207. See Crawley, *supra* note 53.

208. See *id.*

209. MacKenzie Sigalos, *FTX Top Engineer Testifies Bankman-Fried Spent \$1.13 Billion on Celebrities and Sponsorships*, CNBC (Oct. 16, 2023, at 13:37 ET), <https://www.cnbc.com/2023/10/16/ftx-top-engineer-says-bankman-fried-spent-1point13-billion-on-celebrities.html> [<https://perma.cc/5XCL-RTGP>].

210. See Valukas Statement, *supra* note 197, at 2.

211. See Jason Abbruzzese & Daniel Arkin, *FTX Is in Freefall. Where Was the Oversight?*, NBC NEWS (Nov. 15, 2022, at 11:47 ET), <https://www.nbcnews.com/tech/crypto/ftx-freefall-was-oversight-rcna57098> [<https://perma.cc/MC9N-2ABC>].

212. See Kim, *supra* note 205 (“After Lehman Brothers collapsed, many observers have pointed out that it should not have taken excessive debts, diversified product portfolio and the board of directors should have monitored its strategy and risk management more carefully.”).

213. See Cindy Moehring, *Six Cross-Industry Lessons from the Rise and Fall of FTX*, U. ARK. WALTON COLL. BUS. (Jan. 27, 2023), <https://walton.uark.edu/insights/posts/six-cross-industry-lessons-from-the-rise-and-fall-of-ftx.php> [<https://perma.cc/T4BC-V89Y>].

214. See Valukas Statement, *supra* note 197, at 14.

215. See David Yaffe-Bellany, Matthew Goldstein & J. Edward Moreno, *Caroline Ellison Says She and Sam Bankman-Fried Lied for Years*, N.Y. TIMES (Oct. 11, 2023), <https://www.nytimes.com/2023/10/11/technology/caroline-ellison-sam-bankman-fried-testimony.html> [h

In many respects, Lehman was not FTX's predecessor, but its inspiration. Lehman's Examiner's findings could have chronicled FTX, and FTX's CEO's court filings could have described Lehman. Could the massive failure of Lehman have prevented the similarly monumental collapse of FTX?

III. THE PATH FORWARD

Preventing another FTX comes down to the reasons for its downfall. Did FTX go down because of a failure of corporate governance and risk mismanagement? Or was FTX different from previous corporate failures because it was a cryptocurrency company? The answer to both questions is yes. In many ways, the failure of FTX was nothing new—poor risk management and insufficient corporate governance combined with lax governmental oversight. Previous financial crises have suggested that regulation can be an effective antidote.

In other ways, however, the nature of cryptocurrency and blockchain technology made FTX's failure unique. Cryptocurrency, a new and rapidly evolving asset, is difficult to regulate because of its very nature: it has no tangible existence, no borders, and is prone to exponential and volatile fluctuations in value. Regulating cryptocurrency comes with many questions and challenges. Can cryptocurrency be regulated? Who should regulate it? How should regulators toe the line between protecting consumers and allowing a new industry to flourish?

Five cryptocurrency-related bills have been proposed by Congress: the Digital Asset Market Structure and Investor Protection Act,²¹⁶ the Blockchain Regulatory Certainty Act,²¹⁷ the Lummis-Gillibrand Responsible Financial Innovation Act,²¹⁸ the Digital Commodities Consumer Protection Act,²¹⁹ and the Financial Innovation and Technology for the 21st Century Act.²²⁰ First, this Part will discuss each of these bills and explain why they

<https://perma.cc/D8WQ-53MM>] (indicating that Alameda CEO Caroline Ellison testified to creating misleading balance sheets).

216. H.R. 5745, 118th Cong. (2023).

217. H.R. 1747, 118th Cong. (2023), *reintroduced*, H.R. 3533, 119th Cong. (2025).

218. S. 4356, 117th Cong. (2020), *reintroduced*, S. 2281, 118th Cong. (2023).

219. S. 4760, 117th Cong. (2022).

220. H.R. 4763, 118th Cong. (2024).

are each unable to effectively regulate the cryptocurrency industry. This Part will then propose a new legislative solution that will combine Dodd-Frank-style corporate governance reforms with technological solutions for the modern era.

A. *The Current State of Cryptocurrency Regulation*

The Digital Asset Market Structure and Investor Protection Act (“DAMS”) provides much-needed regulatory clarity by defining which cryptocurrencies are securities, regulable by the SEC, and which are commodities, regulable by the CFTC; creates a Digital Commodity Exchange (“DCE”) to regulate digital asset trading; authorizes the Federal Reserve to create a Central Bank Digital Currency (“CBDC”); and gives the Treasury Department “oversight and veto power over the creation of all stablecoins.”²²¹ While DAMS addresses some of the corporate governance failures that played a role in FTX’s downfall and delineates regulatory responsibilities among various government agencies, it does not utilize technology to address the high-tech issues posed by cryptocurrency. Even more problematic, DAMS may overregulate a booming industry to the point of stifling it by allowing the Treasury Department to veto the creation of all stablecoins.²²²

The Blockchain Regulatory Certainty Act (“BRCA”) is simpler than DAMS, with only one purpose: “it would clarify that blockchain service providers that do not custody or control user funds (such as developers, cryptocurrency miners, validators, and wallet software providers) are not money transmitters for the purposes of state money transmission and licensing laws or under U.S. anti-money laundering laws.”²²³ The problem with BRCA is

221. See Nikhilesh De, *New Crypto Bill in US Congress Is the Most Comprehensive Yet*, COINDESK (Aug. 2, 2021), <https://www.coindesk.com/policy/2021/08/02/new-crypto-bill-in-us-congress-is-the-most-comprehensive-yet/> [https://perma.cc/JED7-2FDZ]; Deric Behar et al., *Digital Asset Market Structure Bill Seeks to Fill US Regulatory Gaps*, JDSUPRA (June 30, 2023), <https://www.jdsupra.com/legalnews/digital-asset-market-structure-bill-9089090/> [https://perma.cc/R9HS-5KA8].

222. See H.R. 5745, 118th Cong. § 311 (2023) (granting the Secretary of the Treasury discretion to approve applications from digital asset fiat-backed stablecoins).

223. Deric Behar, et al., *Blockchain Regulatory Certainty Act Would Protect Non-Custodial Crypto Services*, JDSUPRA (Mar. 31, 2023), <https://www.jdsupra.com/legalnews/blockchain-regulatory-certainty-act-7059573/> [https://perma.cc/D4SS-NUPX].

that it is far too narrow to truly address the underlying causes of the collapse of FTX.

The Lummis-Gillibrand Responsible Financial Innovation Act (“RFIA”) delineates regulatory responsibilities between the SEC and the CFTC: “the subject of an investment contract is a commodity and subject to regulation by the CFTC, unless it can be shown to be a security.”²²⁴ The CFTC is granted jurisdiction over cryptocurrency-commodities, referred to as “ancillary assets,” including initial coin offerings, as well as cryptocurrency exchanges.²²⁵ The RFIA also provides a tax exemption for cryptocurrency purchases of goods and services, clarifies that decentralized autonomous organizations (“DAOs”) are taxable business entities, and requires the Federal Reserve to process digital asset bank applications in a timely manner.²²⁶

There are several issues with the RFIA. First, its explanation of what is regulated by the CFTC and what falls to the SEC is overly complex and borders on incomprehensible, particularly as to the SEC’s all-encompassing jurisdiction of anything that can be shown to be a security.²²⁷ Second, the RFIA is arguably too friendly towards the cryptocurrency industry, essentially allowing it to choose its preferred regulator, the CFTC.²²⁸ Finally, the RFIA has also been criticized for proposing what many consider insufficient oversight over stablecoins.²²⁹

SBF publicly supported and lobbied for the Digital Commodities Consumer Protection Act (“DCCPA”), colloquially referred to by some as the “SBF Bill,” which increased its chances of enactment before the FTX collapse, but has likely had a

224. Derek Andersen, *Lummis-Gillibrand Crypto Bill Comprehensive But Still Creates Division*, COINTELEGRAPH (June 22, 2022), <https://cointelegraph.com/news/lummis-gillibrand-crypto-bill-comprehensive-but-still-creates-division> [https://perma.cc/2JYA-FBFB].

225. S. 4356, 117th Cong. § 403(a) (2022).

226. *See id.* §§ 801(a), 204, 702.

227. *See Andersen, supra* note 224.

228. *See supra*, note 225, § 403(a); Robert Kuttner, *Will Congress Let Crypto Pick Its Regulator?*, AM. PROSPECT (Aug. 16, 2022), <https://prospect.org/economy/will-congress-let-crypto-pick-its-regulator/> [https://perma.cc/9U7P-Y3CS].

229. *See Arthur E. Wilmarth Jr., Policy Brief: Congress Should Reject the Lummis-Gillibrand Stablecoin Bill Because It Would Endanger Consumers, Investors, and Our Financial System*, GEO. WASH. U. L. COMMONS (2024), https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2989&context=faculty_publications [https://perma.cc/9R3R-K2HN].

negative impact on its odds since.²³⁰ The DCCPA amends the Commodity Exchange Act to grant the CFTC jurisdiction over cryptocurrency exchanges.²³¹ On an ironic note, the DCCPA requires cryptocurrency exchanges to “hold customer funds ‘in a manner that minimizes the risk of loss or of unreasonable delay in access to the customer property’” and prohibits commingling customer funds with exchange assets and investing customer funds in “anything other than U.S. Treasuries or other ‘high-quality liquid assets that the Commission may by rule or regulation prescribe.’”²³²

The primary issue with the DCCPA is that it would effectively ban decentralized finance, which as explained below, must play a role in resolving the issues that currently plague the cryptocurrency community.²³³ Additionally, like the RFIA, the DCCPA grants primary regulatory oversight over the cryptocurrency industry to the CFTC, which has always been viewed as the industry’s preferred regulator, at least relative to the more enforcement-heavy SEC.²³⁴ Finally, it may be worthwhile to state the obvious: can legislation linked to the architect of one of the greatest frauds in history really be effective at preventing similar failures in the future?

The Financial Innovation and Technology for the 21st Century Act (“FIT21”) is the first cryptocurrency bill approved by a Committee in either chamber.²³⁵ The FIT21 establishes rules that determine whether a cryptocurrency company must register with

230. See Cheyenne Ligon, *The ‘SBF Bill’: What’s in the Crypto Legislation Backed by FTX’s Founder*, COINDESK (Nov. 15, 2022, at 10:05 ET), <https://www.coindesk.com/policy/2022/11/15/the-sbf-bill-whats-in-the-crypto-legislation-backed-by-ftx-founder/> [<https://perma.cc/3EKK-MMMV>].

231. See *id.*

232. *Id.*

233. *Id.*

234. See S. 4760, 117th Cong. § 2 (2022); see Natalie H. Lucciola, *Regulation of an Industry Created Without Regulation: Implications of the CFTC’s Attempt to Oversee Crypto’s*, 1601 SETON HALL L. COMMONS 1, 21 (2024), https://scholarship.shu.edu/cgi/viewcontent.cgi?article=2597&context=student_scholarship [<https://perma.cc/8BPB-W5EP>].

235. H.R. 4763, 118th Cong. (2023); see Kristin Smith, *The FIT Act Is the Most Comprehensive Crypto Regulation Ever Voted on by Congress*, COINDESK (June 14, 2024, at 15:12 ET) <https://www.coindesk.com/consensus-magazine/2023/08/16/the-fit-act-is-the-most-comprehensive-crypto-regulation-ever-voted-on-by-congress/> [<https://perma.cc/RX3T-YRJR>].

the CFTC or the SEC.²³⁶ The main issue with the FIT21 is that it does not provide sufficient protections for cryptocurrency consumers.²³⁷ The bill has been described as “pro-crypto, anti-SEC, deregulation disguised as regulation.”²³⁸

B. Comprehensive Federal Regulation

In order to prevent another FTX, the cryptocurrency community needs regulatory clarity and proper governmental oversight as soon as possible. While all of these bills have positive and negative aspects, piecemeal legislation is not the solution. Furthermore, it is unclear why none of these bills seek to utilize the blockchain technology that underlies cryptocurrency to solve the problems that plague the industry. Effective cryptocurrency regulation must address the dual failures of FTX: the corporate governance issues that plagued Lehman and the particular complications posed by the blockchain technology that makes cryptocurrency possible.

First, effective legislation must regulate any cryptocurrency company that sells, stores, invests, controls, or lends digital assets to consumers or entities in the U.S., regardless of the company’s location. This could be accomplished through the same enforcement mechanisms that regulate sports betting by tracking consumer location.

Second, such legislation must prohibit cryptocurrency exchanges from issuing their own coins and prohibit issuers from investing cryptocurrency on behalf of their customers without their express consent.

Third, cryptocurrency exchanges should be required to pause withdrawals when cryptocurrency rises above a certain volatility

236. See Tom Mitchelhill, *Crypto Bills Pass Congressional Committee in ‘Huge Win’ for US Crypto*, COINTELEGRAPH (July 27, 2023), <https://cointelegraph.com/news/crypto-regulatory-framework-bill-pass-house-congressional-committee>.

237. See Derek Andersen, *‘Pro-Crypto Bill’ Passes Out of US House Agriculture Committee*, COINTELEGRAPH (July 27, 2023), <https://cointelegraph.com/news/republican-crypto-bill-passes-us-house-agriculture-committee> [<https://perma.cc/WW4U-CG3L>].

238. See *Fact Sheet: Seven Questions on the Pro-Crypto, Anti-SEC Financial Innovation and Technology for the 21st Century Act (FIT 21)*, BETTER MARKETS (June 11, 2024), <https://bettermarkets.org/wp-content/uploads/2024/06/Better-Markets-Crypto-FIT-21-Fact-Sheet-6.11.24.pdf> [<https://perma.cc/8Y8P-NPUD>].

threshold. During the 2022 “Crypto Winter”²³⁹ and in the aftermath of the FTX collapse,²⁴⁰ companies that paused withdrawals were widely viewed as insolvent and distressed. Requiring withdrawal pauses would take away at least some of those negative connotations.

Fourth, banking companies must be required to cooperate with cryptocurrency companies, who cannot comply with the law without access to banking.

Fifth, one individual or entity must not be allowed to own multiple cryptocurrency companies. A singular cryptocurrency company can do multiple things, as long as an exchange does not issue its own coins, but one individual or entity cannot own or control multiple different companies.

Sixth, licensed cryptocurrency companies must be required to contribute to an insurance fund in fiat currency that would protect consumers in the event of a market-wide or company-specific downturn, similar to an FDIC for cryptocurrency.

Seventh, the cryptocurrency industry must be required to comply with the corporate governance mechanisms that FTX so badly lacked. Cryptocurrency companies must be required to do simple things, such as not using software that deletes records. Because of the additional cyber-security risks faced by the cryptocurrency community, government agencies must provide cryptocurrency companies with enhanced security procedures. Companies that take on large investments and are valued above a certain amount must demonstrate proper risk management procedures and internal controls. As an example, such companies must be required to include an outside board member that represents investors’ interests and limitations must be placed on the frequency of funding rounds for cryptocurrency companies.

Any cryptocurrency company that issues, stores, controls, invests or in any way impacts user funds must be required to complete regular third-party audits. These audits must be conducted by licensed public accounting firms, rather than for example, FTX’s firm that prided itself on being the “first-ever CPA firm to officially open its Metaverse headquarters in the

239. See Protos Staff, *supra* note 74.

240. See *supra* notes 137–40, 142, and 145 and accompanying text.

metaverse platform Decentraland.”²⁴¹ Further, the audits must address risk management, particularly the riskiness of the firm’s cryptocurrency holdings, behavior, and the probability of behaviors inherent to cryptocurrency, such as rehypothecation.

Perhaps the most important internal control requirement for cryptocurrency is proof of reserves documentation.²⁴² Third-party audits must include these unbiased reports of cryptocurrency companies’ assets. Proof of reserves accesses cryptographic signatures that demonstrate the sum of customer assets and compares them against the company’s assets to ensure it can cover withdrawals.²⁴³ Cryptocurrency companies with extraordinarily fast growth rates must be prioritized for audits and additionally scrutinized.

Eighth, a legislative solution must create a new government agency solely responsible for all blockchain- and cryptocurrency-related problems. Attempts to define cryptocurrency as a security or a commodity so as to permit regulation by the SEC or the CFTC will never suffice because cryptocurrency is an inherently different asset. Some have contended that digital assets should not be subject to the jurisdiction of either of the presently existing regulatory agencies, in part because of the expensive, lengthy, and frustrating bureaucratic processes associated with these agencies.²⁴⁴ The cryptocurrency community needs a specialized federal agency with the requisite know-how and skillset to protect consumers while allowing the industry to flourish by providing fast and nimble processes for necessary regulatory approvals.

241. *The Audit Firm for Ftx.com Was the First of Its Kind to HQ in the Metaverse #cantmakethisshitup*, HACKERNOON (Nov. 18, 2022), <https://hackernoon.com/the-audit-firm-for-ftxcom-was-the-first-of-its-kind-to-hq-in-the-metaverse-cantmakethisshitup> [<https://perma.cc/6778-C8EP>].

242. JP Schnapper-Casteras, *How to Prevent the Next FTX*, ATL. COUNCIL (Nov. 17, 2022), <https://www.atlanticcouncil.org/blogs/new-atlanticist/how-to-prevent-the-next-ftx/> [<https://perma.cc/2HJM-775E>].

243. Jacob Wade, *Proof of Reserves: Could It Have Avoided the FTX Meltdown?*, INVESTOPEDIA (Feb. 28, 2023), <https://www.investopedia.com/proof-of-reserves-6830204> [<https://perma.cc/YY7C-CS4H>].

244. See e.g., Joel Seligman, *The Rise and Fall of Cryptocurrency: The Three Paths Forward*, 19 N.Y.U. J.L. & BUS. 93, 127 (2022).

C. *Crypto-Specific Solutions*

FTX's collapse shocked the world, but should it have? Months before FTX went down, Bloomberg analyzed FTX's public blockchain data and concluded that "a significant amount of digital assets continue to flow between FTX and Alameda,"²⁴⁵ noting that "Alameda's known wallets were the largest stablecoin depositors and sources of liquidity to all of FTX's known wallet addresses," and finding that Alameda interacted with FTX more than five times as much as it did with the then-largest exchange, Binance.²⁴⁶ Bloomberg's analysis demonstrated that blockchain technology could have been used to prevent the collapse of FTX. Effective federal legislation must utilize blockchain technology, require self-policing by the cryptocurrency-community, and expand decentralized finance.

1. Blockchain Technology

Effective federal regulation of the cryptocurrency industry must utilize the publicly visible and fully auditable blockchain.²⁴⁷ Blockchain technology adds blocks of transaction data to a list, with each additional block of information recording information about the previous block, essentially creating an unchangeable digital ledger²⁴⁸ and the data necessary to compile proofs that ascertain the financial health of cryptocurrency companies, such as proof of reserves and zero-knowledge proofs.²⁴⁹

To determine a cryptocurrency company's proof of reserves, analysts use publicly available blockchain data through the Merkle root and the Merkle tree hashing mechanism to calculate the total amount of customer assets held by the company, which they then compare against the company's available assets.²⁵⁰ The primary issues with the proof of reserves method is that it depends

245. See Massa, Irrera, & Miller, *supra* note 96.

246. *Id.*

247. Shlomit Azgad-Tromer & Matthew Green, *How Crypto Can Avoid the Next FTX*, COINDESK (June 14, 2024, at 14:21 ET), <https://www.coindesk.com/opinion/2022/12/13/ftx-collapse-cryptocurrency-failures> [<https://perma.cc/U2V8-KTGZ>].

248. See *Why Dapps Are More Important Than Ever in Light of FTX Fraud*, ALLINFRA (Mar. 30, 2023), <https://allinfra.com/blog/post/74> [<https://perma.cc/3N27-24K9>].

249. See Azgad-Tromer & Green, *supra* note 247.

250. See Wade, *supra* note 243.

on the provision of accurate information from the company itself and does not track where the company's assets came from.²⁵¹

Zero-knowledge (“ZK”) proofs use cryptographic technology to prove statements true or untrue without requiring their makers having to reveal any unnecessary information.²⁵² Unfortunately, ZK proofs may not be feasible for large cryptocurrency companies because they require substantial resources to complete.²⁵³ Either or both of these mechanisms together would use the blockchain itself to help regulate the cryptocurrency community.

2. Community Policing

Self-regulation²⁵⁴ by the cryptocurrency industry, made possible by the blockchain, is crucial to preventing another FTX.²⁵⁵ Not only is such self-regulation possible, in fact, cryptocurrency companies are most adept to regulate their own rapidly changing and volatile environment.²⁵⁶ Moreover, the cryptocurrency community has already demonstrated a desire and a willingness to self-regulate.²⁵⁷

In order for self-regulation to work, the cryptocurrency industry must create a self-regulatory organization (“SRO”)—an independent entity that has the “power to create and enforce

251. *Id.*

252. Shiraz Jagati, *Zero-Knowledge Proofs, Explained*, COINTELEGRAPH (July 31, 2023), <https://cointelegraph.com/explained/zero-knowledge-proofs-explained> [https://perma.cc/6D4S-DME4].

253. *See id.*

254. *The Role of Self-Regulation in the Cryptocurrency Industry: Where Do We Go from Here?*, FIN. MAGNATES (Mar. 31, 2023, at 11:25 GMT), <https://www.financemagnates.com/cryptocurrency/regulation/the-role-of-self-regulation-in-the-cryptocurrency-industry-w-here-do-we-go-from-here/> [https://perma.cc/HD36-KJF3] (defining self-regulation as the “practice of setting and enforcing rules within a business by the industry itself”).

255. *See id.*

256. *See id.*

257. *See, e.g.*, Frederick Munawa, *‘Proof of Reserves’ Emerges as a Favored Way to Prevent Another FTX*, COINDESK (Nov. 17, 2022, at 09:48 ET), <https://www.coindesk.com/tech/2022/11/17/proof-of-reserves-emerges-as-a-favored-way-to-prevent-another-ftx/> [https://perma.cc/X5UB-BZTX] (“Binance, the world’s largest cryptocurrency exchange by volume, has already shared its wallet balances and says it plans to conduct a proof-of-reserves snapshot ‘in the next few weeks.’ Other exchanges that have made similar commitments include Gate.io, KuCoin, Poloniex, Bitget, Huobi, OKX, Deribit and Bybit.”).

stand-alone industry and professional regulations and standards on its own.”²⁵⁸ The SRO and the cryptocurrency community would then work together to “develop shared codes of conduct and best practices” for all cryptocurrency-related companies “with regard to disclosure in financial statements, sources and uses of funds, conflicts of interest, and related parties[.]”²⁵⁹

An effective SRO would institute “industry-led initiatives, organizations, and best practices promoting transparency, accountability, and customer protection,”²⁶⁰ the same way a formal governmental entity would. Examples of corporate governance standards an SRO could require from the cryptocurrency community include: banning the use of software that deletes records; requiring third-party financial and risk management audits that include proof of reserves; making sure large cryptocurrency companies have boards of directors, proper risk management procedures, and sufficient internal controls; requiring transparency in the form of “standardized reporting and appropriate protocols for sharing information”; and ensuring that all types of cryptocurrency companies, including exchanges, wallets, and miners, comply with industry standards.²⁶¹

True self-regulation will require global coordination from the cryptocurrency community because of the inherently international nature of cryptocurrency.²⁶² An effective SRO would ensure compliance with its rules and regulations by reprimanding or expelling members who disobey them.²⁶³ The cryptocurrency community’s enforcement of industry standards is crucial for a

258. Adam Hayes & Gordon Scott, *Self-Regulatory Organization (SRO): Definition and Examples*, INVESTOPEDIA (Apr. 30, 2024), <https://www.investopedia.com/terms/s/sro.asp> [<https://perma.cc/3PGB-JQ6X>].

259. RICHARD BERNER, WILLIAM COEN & CAROLYN WILKINS, BRETTON WOODS COMM., ADDRESSING GOVERNANCE ISSUES IN THE CRYPTO ECOSYSTEM 2, 6 (2023) https://www.brettonwoods.org/sites/default/files/documents/BWC-Brief5-Gov-Issues-Crypto_WebVersion.pdf [<https://perma.cc/6XYX-5TRF>].

260. See *The Role of Self-Regulation in the Cryptocurrency Industry: Where Do We Go from Here?*, *supra* note 254.

261. See *supra* Part III.A.4.b (explaining proposed corporate governance mechanisms); BERNER et al., *supra* note 259, at 8; *id.*

262. See BERNER et al., *supra* note 259, at 8–9.

263. See Hayes & Scott, *supra* note 258 (explaining that “SROs can admit, reprimand, or expel members based on established rules and criteria”).

self-regulatory regime to work,²⁶⁴ as compliance is most easily effectuated by punishing violators through blacklisting, *i.e.*, refusing to do business with them.²⁶⁵ Thus, the cryptocurrency industry itself must play a role in its own future.

3. Decentralized Finance

In 2009, Satoshi Nakamoto created Bitcoin and the blockchain technology.²⁶⁶ A message inside the first Bitcoin block—a headline from a British newspaper—explains the reason behind their creation: “Chancellor on brink of second bailout for banks.”²⁶⁷ Through the creation of Bitcoin and the blockchain, Nakamoto aimed to replace centralized financial institutions and third-party intermediaries with an alternative system of self-governance through visible data.²⁶⁸ Yet, SBF used his technology to create a centralized financial institution that took unjustifiable risks with its customers’ finances, exemplifying the problems inherent in centralized financial institutions. Any solutions targeted at the cryptocurrency industry must incorporate decentralized finance.

264. See Jonathan Macey & Caroline Novogrod, *Enforcing Self-Regulatory Organization’s Penalties and the Nature of Self-Regulation*, HOFSTRA L. REV. 40, 963, 966 (2012) (discussing self-regulation in the financial industry, “the principal way that SROs traditionally have been able to enforce their own rules without having to use the government’s civil and criminal enforcement power is by maintaining a monopoly and using their credible threat to be able to exclude a participating firm from the cartel as its ultimate enforcement mechanism”).

265. Cf. *The Possibilities and Limits of Self-Regulation*, ENCYCLOPEDIA https://www.encyclopedia.com/education/arts-construction-medicine-science-and-technology-magazines/possibilities-and-limits-self-regulation#fn_2 [<https://perma.cc/P7HK-NC47>] (last visited Nov. 9, 2025) (explaining how community policing works within the Internet. “The community punishes violators in breach of netiquette, especially if the violator is unrepentant.”).

266. *History of Blockchain*, ICAEW, <https://www.icaew.com/technical/technology/blockchain-and-cryptoassets/blockchain-articles/what-is-blockchain/history> [<https://perma.cc/VKU2-XCBA>] (last visited Nov. 9, 2025).

267. Jordan Johnson, *The Hidden Message in Bitcoin’s First Block — Why The World Needs Bitcoin*, MEDIUM (July 8, 2021), <https://jordan-johnson.medium.com/the-hidden-message-in-bitcoin-9f40f2f84371> [<https://perma.cc/Q9RH-QTDL>].

268. See *id.*; Mac, *Why Was Bitcoin Created?*, MEDIUM (Oct. 14, 2017), <https://medium.com/bitcoin-blockchain-explained/why-was-bitcoin-created-20ab3a65d952> [<https://perma.cc/T6PX-TMVH>].

Consider the similarities between FTX and Lehman²⁶⁹ or the companies that failed during crises in the cryptocurrency market, Celsius, BlockFi, Voyager, and Genesis, all of which were centralized.²⁷⁰ In fact, 2022's distressed cryptocurrency companies and 2008's insolvent financial institutions have a lot in common: "gatekeeping, custodianship of customer funds . . . under-collateralization, ambiguous regulation, and insider trading."²⁷¹

Throughout "Crypto Winter" and the crisis caused by FTX's collapse, decentralized cryptocurrency companies remained stable, "enabling users to exit their crypto positions or, if they prefer, to capitalize on low prices and buy in."²⁷² Therefore, FTX's failure should not be attributed to the greater cryptocurrency industry, but to centralized finance. Decentralized finance provides the transparency necessary to prevent another FTX and "is more resistant to hacks, fraud, and theft."²⁷³ A shift towards decentralized finance is the solution to FTX's "failed centralized governance in the name of decentralized crypto assets."²⁷⁴

269. See *supra* Part II.A.2 (explaining the similar corporate governance failures between FTX and Lehman Brothers).

270. See e.g., Amanda Cassatt, *FTX Showed the Problems of Centralized Finance and Proved the Need for DeFi*, COINDESK (Nov. 11, 2022), <https://www.coindesk.com/layer2/2022/11/11/ftx-showed-the-problems-of-centralized-finance-and-proved-the-need-for-defi/> [https://perma.cc/PE5Z-BKAP]; Dmitry, *How the Fall of FTX Proves the Need for Decentralized Blockchain Technology*, QUICKNODE (Nov. 18, 2022), <https://blog.quicknode.com/how-the-fall-of-ftx-proves-the-need-for-decentralized-blockchain-technology/> [https://perma.cc/T33G-P5XJ]; Lucas Santana, *Genesis Bankruptcy Might Close the Loop of Centralized Finance Busts*, HASHDEX (Jan. 24, 2023), <https://hashdex.com/en-US/insights/genesis-bankruptcy-might-close-the-loop-of-centralized-finance-busts> [https://perma.cc/D5NP-24RY].

271. See Dmitry, *supra* note 270.

272. See Cassatt, *supra* note 270.

273. See Dmitry, *supra* note 270; Marieke Flement, *FTX Failed Because of Humans, Not Crypto*, FORKAST (Nov. 21, 2022, at 17:01 HKT), <https://forkast.news/more-regulations-would-not-have-prevented-ftx-crisis/> [https://perma.cc/4Q6Z-E7UZ] ("But regulation isn't the answer to human error. Instead, we should leverage the blockchain and insist on a decentralized model of working. This would provide the transparency the sector currently lacks and desperately needs.").

274. Vivian Fang, *FTX Bankruptcy: A Failure of Centralized Governance in the Name of Decentralized Cryptocurrencies*, HARV. L. SCH. BANKR. ROUNDTABLE (Feb. 28, 2023), <https://bankruptcyroundtable.law.harvard.edu/2023/02/28/crypto-bankruptcy-series-ftx-bankruptcy-a-failure-of-centralized-governance-in-the-name-of-decentralized-cryptocurrencies/> [https://perma.cc/EZF7-KEYG].

CONCLUSION

Much ink has been spilled, including in this Note, about the myriad reasons to which FTX's collapse can be attributed, whether technological, cryptocurrency-specific, or governance-related. A path forward must utilize the blockchain and other aspects of cryptocurrency, while keeping in mind that cryptocurrency is a financial asset susceptible to the malfeasance that plagues the corporate world in general. Though difficult to imagine at this time, comprehensive federal regulation, with buy-in from the cryptocurrency community, can encourage the industry to thrive while protecting consumers.