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March 19, 2024

VIA ECF

The Honorable Lewis A. Kaplan
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *United States v. Samuel Bankman-Fried*, 1:22 CR 673 (LAK)

Dear Judge Kaplan:

This letter is respectfully submitted on behalf of defendant Sam Bankman-Fried in reply to the government's Sentencing Memorandum, dated March 15, 2024 (ECF 410, "Gov. Br.").

The government's memorandum is disturbing. With marked hostility, the memorandum distorts reality to support its precious "loss" narrative and casts Sam as a depraved super-villain; it attributes to him dark and megalomaniacal motives that fly in the face of the record; it makes apocalyptic prophecies of recidivism; and it adopts a medieval view of punishment to reach what amounts to a death-in-prison sentencing recommendation. That is not justice.

No Loss

Section 3553 allows the Court to consider that the bankruptcy proceeding will result in customers and lenders being made whole as of the bankruptcy petition date. The government, predictably, downplays this fact. The truth is, there were never losses. The money has always been available. Assets remain. Each victim quoted in the government's opposition will receive 100 cents on the dollar -- plus interest.¹ This would be impossible if the estate's assets had disappeared into Sam's personal pockets.

The government concedes that the Court can make "credits against loss" in cases "involving collateral pledged or otherwise provided by the defendant." Gov. Br. at 39-40. This is such a case. *See* Trial Tr. 1227 (discussion of collateral posted in the form of FTT, Robinhood stock, and Grayscale trust shares). The government also refuses to give Sam any credit for funds Alameda paid to FTX prior to the bankruptcy, refusing to acknowledge Sam's good faith effort to process client withdrawals. *See* Ex. A. The government sees only red.

¹ *See In re FTX Trading Ltd.*, Case No. 22-bk-11068 (JTD) (Bankr. D. Del. March 6, 2024), ECF 8676 at ¶¶ 12, 18.

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Given that full payment of creditor claims from the bankruptcy estate is inevitable, the government instead laments that “nearly a year and a half” has passed without any payment and that Sam has not “provided any significant assistance” to recovery efforts. Gov. Br. at 40, 51-52. But it has never been Sam standing in the way.² Delay surely would have been reduced if Sam had not been rebuffed in his repeated efforts to assist with identifying “meaningful value” in FTX. *See* ECF 186-1, 186-2, 186-3 (attached as Ex. B); *see also* ECF 407-10. And the government omits that one of the reasons the Debtors have delayed finalization of the Chapter 11 plan is that they “continue discussions with the U.S. Department of Justice with respect to asset forfeitures and other governmental agencies regarding voluntary subordination of governmental claims behind the victims . . .” *In re FTX Trading Ltd.*, Case No. 22-11068 (JTD), ECF 8621 at 10 (Bankr. D. Del. Mar. 5, 2024). Thus, the same government seeking life in prison for Sam because no one has yet been repaid is itself partially responsible for the delay.

False Motive

Hellbent on portraying Sam as a monster, the government makes repeated references to his “unmatched greed” and his supposed ruthless desire to maximize his personal wealth. Gov. Br. at 2, 52, 94. This is a simple, seductive narrative. It is also a false one.

The word “greed” was never uttered by any trial witness. And the government snubs the people who have known Sam for years and tout his selflessness. The government also continues its conflation of corporate growth with personal greed. *See* Gov. Br. at 94-95. They fixate, still, on Sam living “in an expensive penthouse apartment” – while ignoring that he *paid rent for his room*, that he only rented one-tenth of the apartment, that FTX rented out corporate housing to scores of employees, and that the real estate was always an asset *of the company*. Nor is corporate sponsorship a marker of personal greed; it is garden-variety marketing.³ The government also derides Sam’s charitable giving because, they say, it was done with “other people’s money.” Gov. Br. at 95. They turn a blind eye to the fact that Sam gave away his earnings well before Alameda or FTX ever existed. *See* ECF 407 at 1.

Risk of Recidivism

The government’s recidivism discussion stacks conjecture on top of hypothetical on top of supposition. Gov. Br. at 87-90. According to the government, it is “*conceivable*,” that “*someday*,” Sam “*may* feel compelled” to find people who “*may* hand over their money,” concluding that “*history could* repeat itself.” Gov. Br. at 87-90. That is not proof of recidivism. That is a work of fiction.

² *See* Ex. C, authorizing John Ray III omnibus corporate authority.

³ *See e.g.*, Bank of America Stadium, TW Waterhouse Centre, Citizens Bank Park (*Stadium naming rights*, ESPN.com (September 29, 2023, 7:43 AM ET), <https://www.espn.com/sportsbusiness/s/stadiumnames.html>).

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Offenders with no criminal history, like Sam, are the least likely to re-offend. Nor does offense level predict recidivism. And offenders with a college education are less likely to recidivate.⁴ In the words of Daniel Gitner, now Chief of the S.D.N.Y.'s Criminal Division:

[L]ong sentences often are not required to deter recidivism among business fraud offenders. White-collar offenders ... often become involved in illegal conduct as a result of their position within a legitimate enterprise or in the context of a legitimate financial relationship with others. That position or relationship is often destroyed, as is the ability to forge new ones, through the felony conviction alone. Similarly, research shows that the threat of short prison terms has a significant deterrent effect on the typical white-collar would be criminal.⁵

There are many other reasons why Sam would not re-offend, including that he would sooner suffer than bring disrepute to any philanthropic movement.

Unsupported Claims and Attacks

The government makes a host of other curious, unsupported and exaggerated claims. They say that “in cases with \$200 million or more in losses, courts have typically imposed a sentence of 50 years imprisonment or more.” Gov. Br. at 97. That is misleading. JSIN data, which aggregates five years of data for offenders sentenced under the same primary guideline and same final offense level, reflects much lower numbers.⁶ The government’s “comparable defendants” chart is also way off base: 9 of the 13 involved frauds extending beyond 8 years; several lasted decades (Madoff, Stanford, Wasendorf, Farkas); two attempted to flee the country (Stanford, Rothstein); and one was a recidivist (Nicholson).

They also allege that Sam “shirked,” “evade[d],” and “deflect[ed] blame” (Gov. Br. at 1, 27), belittling his repeated, earnest statements to the contrary. *See, e.g.*, December 2022 proposed written Congressional testimony (“I fucked up...and so I’m dedicating as much of myself as I can to doing right by customers.”).⁷ The government also takes umbrage with Sam’s protestations of innocence and his temerity in putting the government to its proof at trial. *See* Gov. Br. at 84-85. Sam is hardly the first defendant to acknowledge accountability without conceding criminal culpability and to assert his basic constitutional rights. *See e.g.*, Sentencing Transcript at 24:6-20, *United States v. Goyal*, S1 19 Cr. 844 (CS) (March 3, 2022), ECF 134 (“THE COURT: Well, you’re not asking me to hold it against the defendant that he exercised his

⁴ *See* U.S. Sent. Comm’n, *Recidivism Among Federal Offenders: A Comprehensive Overview* 18-24 (March 2016), <https://www.ussc.gov/research/research-reports/recidivism-among-federal-offenders-comprehensive-overview>.

⁵ Gabrielle S. Friedman, Kan M. Nawaday, Daniel M. Gitner, *Challenging the Guidelines’ Loss Table*, Federal Sentencing Reporter, Volume 20, Number 3, February 1, 2008, 2008 WL 2201041, at *178 (internal citations omitted).

⁶ *See* U.S. Sent. Comm’n, Joint Sent. Info., available at <https://jsin.ussc.gov/analytics/saw.dll?Dashboard> (average sentence is 283 months, and 272 months with two non-custodial cases; applying § 2B1.1, the median sentence length is 156 months).

⁷ *See* December 2022 Proposed Written Congressional Testimony Notes, available at <https://s.wsj.net/public/resources/documents/SBFwrittentestimonynotes12122022.pdf>.

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constitutional rights, are you? . . . Everybody's entitled to say to the government prove it. He doesn't have to admit anything.").

Conclusion

At age 32, the government wants to break Sam Bankman-Fried. They ignore completely his condition and vulnerabilities. Instead, they urge, menacingly, that the sentence imposed must "disable" him even from "being in a position" where he theoretically "could" perpetrate a fraud. Gov. Br. at 86. That is a horrifying interpretation of specific deterrence.

We have yet to identify a federal defendant convicted of a non-violent offense who served a 40-50 year sentence and was released – perhaps because inmates suffer a two-year decline in life expectancy for each year of imprisonment.⁸ Crushing Sam in this way is unnecessary.

Hope is the necessary condition of mankind . . . A judge should be hesitant before sentencing so severely that he destroys all hope and takes away all possibility of useful life. Punishment should not be more severe than that necessary to satisfy the goals of punishment.⁹

John S. Martin, a former District Judge, recently addressed "the overly long sentences that are being imposed every day in our federal courts on nonviolent offenders."¹⁰ He wrote that "[w]e have lost all sense of how horrible it is to spend even one year in prison, far away from family and friends . . . and under constant fear of an unprovoked attack by another inmate." *Id.* He concluded that "[w]e could achieve greater deterrence by sentencing Bankman-Fried to receive 30 lashes on the street outside the New York Stock Exchange . . . If we did so, there would be hue and cry about the cruelty of the criminal justice system. But 100 years in prison, ho hum." *Id.*

Sam has lost everything and almost everyone. If the government truly believes that Sam deserves to "return to liberty," (Gov. Br. at 70), then a significant downward variance from the proper guidelines range of 63-78 months is called for under § 3553, so that he may do so promptly.

⁸ See Evelyn J. Patterson, 2013: *The Dose-Response of Time Served in Prison on Mortality: New York State, 1989-2003*, American Journal of Public Health 103, 523-528.

⁹ *United States v. Carvajal*, Case No. 04-CR-222 (AKH), 2005 WL 476125, at *6 (S.D.N.Y. Feb. 22, 2005); see also *United States v. Musgrave*, No. 15-3043, ECF 29-2 at 7 (6th Cir. 2016) ("[N]on-imprisonment sentence is . . . a significant and severe punishment...").

¹⁰ John S. Martin, *Cruel But Not Unusual: The Sentence Recommended for Sam Bankman-Fried*, New York Law Journal (March 12, 2024), <https://www.law.com/newyorklawjournal/2024/03/12/cruel-but-not-unusual-the-sentence-recommended-for-sam-bankman-fried/>.

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Respectfully submitted,

/s/ Marc L. Mukasey

Marc L. Mukasey

Torrey K. Young

cc: All counsel (via ECF)

EXHIBIT A

- 1) Jump
 - a) Ramnik?
- 2) **Pete Briger**
 - a) I could call him
- 3) Genesis
 - a) Caroline is on it
- 4) Justin Sun/Huobi
 - a) Could ask Can
 - b) Nope, turns out he's close to CZ
- 5) OKEx
 - a) ???
- 6) **Silverlake**
 - a) SBF or Ramnik?
- 7) **Sequoia**
 - a) SBF or Ramnik?
- 8) **Deltec/Tether**
 - a) Ryan
- 9) BlockFi?
 - a) Ramnik?
- 10) Jane St
 - a) SBF???
- 11) **Apollo**
 - a) SBF or Ramnik?
- 12) Dustin?
 - a) Caroline
- 13) Mubadala?
- 14) PIF?

Current status:

1. All of this is for FTX.com – FTX US is essentially itself unimpacted
2. Last Friday, there were ~16b of liquid client assets
 1. Liquid means BTC/ETH/USD
3. We have since processed ~3.5b of withdrawals
4. We have another ~1-2b liquid today-ish, and a total of ~3-5b this week
5. About 1.5b in withdrawals have been requested
6. That means:
 1. We have roughly enough to process current withdrawals

2. We have another ~2-3b of liquidity this week
3. That would mean enough to process $\sim\frac{1}{3}$ of remaining client assets
7. In addition, we have roughly \$8b of FTT/SRM/SOL, plus a bunch of other illiquid assets
8. So, if we 'contributed' the FTT/SRM/SOL to FTX to cover, then we would roughly speaking have capital but potentially not enough liquidity
9. The most likely sources of liquidity we know of are: Dustin Moskowitz, Pete Briger, Silverlake, Sequoia, and Apollo
10. We could, if we wanted, send roughly the following message:

1) Over the past few months, Binance has been engaging in a PR campaign against us -- details attached.

2) This weekend, that intensified quite a bit. They leaked a balance sheet; blogged about it; fed it to Coindesk; then announced very publicly that they were selling \$500m of FTT in response to it, while telling customers to be wary of FTX. They are the largest player in the market by far.

3) This has led to an acute panic in markets. All coins are down, but FTT, SOL, and BNB are down the most; FTT is down about 20% on it. It has also led to withdrawals from FTX.

4) We've processed about \$3.5b of withdrawals so far in the last few days from it, and have another \$1.5b remaining.

5) We've contributed all of our FTT, SRM, and SOL to FTX.

6) At this point, FTX is capitalized but not infinitely liquid. There were roughly 16b of very liquid (USD/BTC/ETH) client assets on Friday. Of those, we've processed ~\$4b, and have liquid assets needed to process another ~\$4b over the next week. So while FTX would have sufficient market value of assets, it is potentially short on liquid deliverables. There are ~\$1.5b of withdrawals queued up, and we could process another ~\$2b or so on top of that, but beyond that we would not have liquidity. On top of the ~\$4b of very liquid assets, we have another ~\$14b of somewhat liquid assets (traded but would have significant impact), and another ~\$3b of illiquid assets.

7) So, what we need is a few billion of USD. We will take whatever we can get, at whatever terms make people comfortable.

Attaching[[HYPERLINK "https://docs.google.com/document/d/1A20-jhyimTC8ktEOcqTIU-as4qC52ZCrHgZpRcit6dM/edit?usp=sharing" \h](https://docs.google.com/document/d/1A20-jhyimTC8ktEOcqTIU-as4qC52ZCrHgZpRcit6dM/edit?usp=sharing)][[HYPERLINK "https://docs.google.com/document/d/1A20-jhyimTC8ktEOcqTIU-as4qC52ZCrHgZpRcit6dM/edit?usp=sharing" \h](https://docs.google.com/document/d/1A20-jhyimTC8ktEOcqTIU-as4qC52ZCrHgZpRcit6dM/edit?usp=sharing)] doc

[possible terms: we last raised @ 32b international, 40b global; we could offer either:

a) Debt senior to everything but customer assets, convertible in 3 years if they want, @ 50% of last valuation

b) Equity investment @ 35% of last valuation]

Potential todos; we could do any or none of these

1) Reach out to Briger, Dustin, Silverlake, Sequoia, Mubadala, and Apollo when they wake up over the next few hours

2) Send a confident tweet thread


3) Halt withdrawals

4) Haircut assets

EXHIBIT B

Exhibit A

4:52

<  small group chat



10:32 AM

Thu, Nov 10

To keep this group informed, SullCrom and Fenwick are coordinating on contingency planning based on what they know, for FTX.com. They are very much open to discussing with Sam and [REDACTED] and team what you're working on and achieving the best possible outcome.

[REDACTED] and myself will continue to make sure the contingency preparation is done appropriately.

[REDACTED] called me with all sorts of ideas, and I would encourage folks not to talk with him. He resigned several days ago from all his roles.

There is a natural path where the work [REDACTED] and I are preparing for and what Sam is working on (which I understand to be attempts to support customer assets) align. In parallel the US and global regulatory pressure is increasingly intense.

Encourage Sam and his counsel to volunteer to join a call with the SullCrom and Fenwick teams, when practical, to discuss appropriate alignment.

11:36 AM

Witness-1



Message



Witness-1



idk what yours is; I guess as I see it, it's:

#1 safeguard existing assets

#2 making sure that Alameda is permanently disabled and disallowed from using FTX

#3 trying to build value for the platform because that might help at least make customers more whole; by (a) radically increasing transparency, (b) improving the product, (c) re-starting, and (d) searching for financing

obviously it's more up to what the liquidators think/want than what I do! But very interested in your thoughts.

7:26 PM

This will be a wind down. And a goal of identifying assets to sell. The code base might very well be one - but it's worthless without 100% commitment of Nishad and Gary and you to working with the global bankruptcy advisors. Everyone is employees now. The court and John Ray decide how to best generate value from current assets. John would love to hear your thoughts and talk to you / consult with you.

7:28 PM

I would love to talk to him!

he hasn't reached out yet -- tell him I'm totally happy to; he can talk to me here, email, phone, etc.

7:30 PM

Exhibit B

From: Sam Bankman-Fried [REDACTED]
Sent: Mon 12/12/2022 11:43:47 AM (UTC)
Cc: John Ray [REDACTED], David Mills [REDACTED]
Subject: Re: Connecting John Ray and Sam Bankman Fried

Hi Mr. Ray,
I have potentially pertinent information concerning future opportunities and financing for FTX and its creditors. I also believe that I have relevant financial information about FTX US, and further that I have potentially relevant regulatory information concerning FTX. I would love to talk to you, whether it's via email or phone, and to work constructively with you and the Chapter 11 team to do what's best for customers.

As always, I'm at [REDACTED], and + [REDACTED].

Sam

On Mon, Dec 5, 2022 at 5:12 PM Sam Bankman-Fried [REDACTED] wrote:

Mr. Ray,
I would still love to talk. As ^{Witness-1} [REDACTED] said, I think there's meaningful value if I can be a resource for you. I'm at [REDACTED], or this email address. You can also reach out to David Mills, my attorney, cc'ed, if you'd like, to coordinate.

Sam

On Tue, Nov 15, 2022 at 12:50 AM Sam Bankman-Fried [REDACTED] wrote:

Hey!

I appreciate that, but I'd actually love to talk to you John, and don't need my counsel to talk first--I'm ready/prepared to talk, and think it would be very constructive and helpful for coordination between offices and entities for us to have a productive communicative relationship--or at least to explore having one.

—
Sam Bankman-Fried

On November 13, 2022 at 11:12 PM EST ^{Witness-1} [REDACTED]@ftx.us wrote:

Hi all I am copying Paul Weiss, Sam's counsel
I understand SullCrom will reach out to Sam's counsel to discuss next steps.

Best,
^{Witness-1} [REDACTED]

On Nov 13, 2022, at 10:47 PM, Sam Bankman-Fried
[REDACTED] wrote:

Hey John,

I'd be super happy to chat -- here, phone, etc.!

Sam

—
Sam Bankman-Fried

On November 13, 2022 at 10:34 PM EST [REDACTED]^{Witness-1} [@ftx.us](mailto:[REDACTED]@ftx.us)
wrote:

John,
Sam's personal email is cc'd. He is eager to speak with
you.

His cell phone is [REDACTED] or you can email him
here.

Sam also copying some of the other advisors. I think
meaningful upside for preserving value for the
companies if you can be a resource for this group (and
others). Thanks again.

Best,
[REDACTED]^{Witness-1}

--

[REDACTED]^{Witness-1}

General Counsel
FTX US
[REDACTED]^{Witness-1} [@ftx.us](mailto:[REDACTED]@ftx.us)

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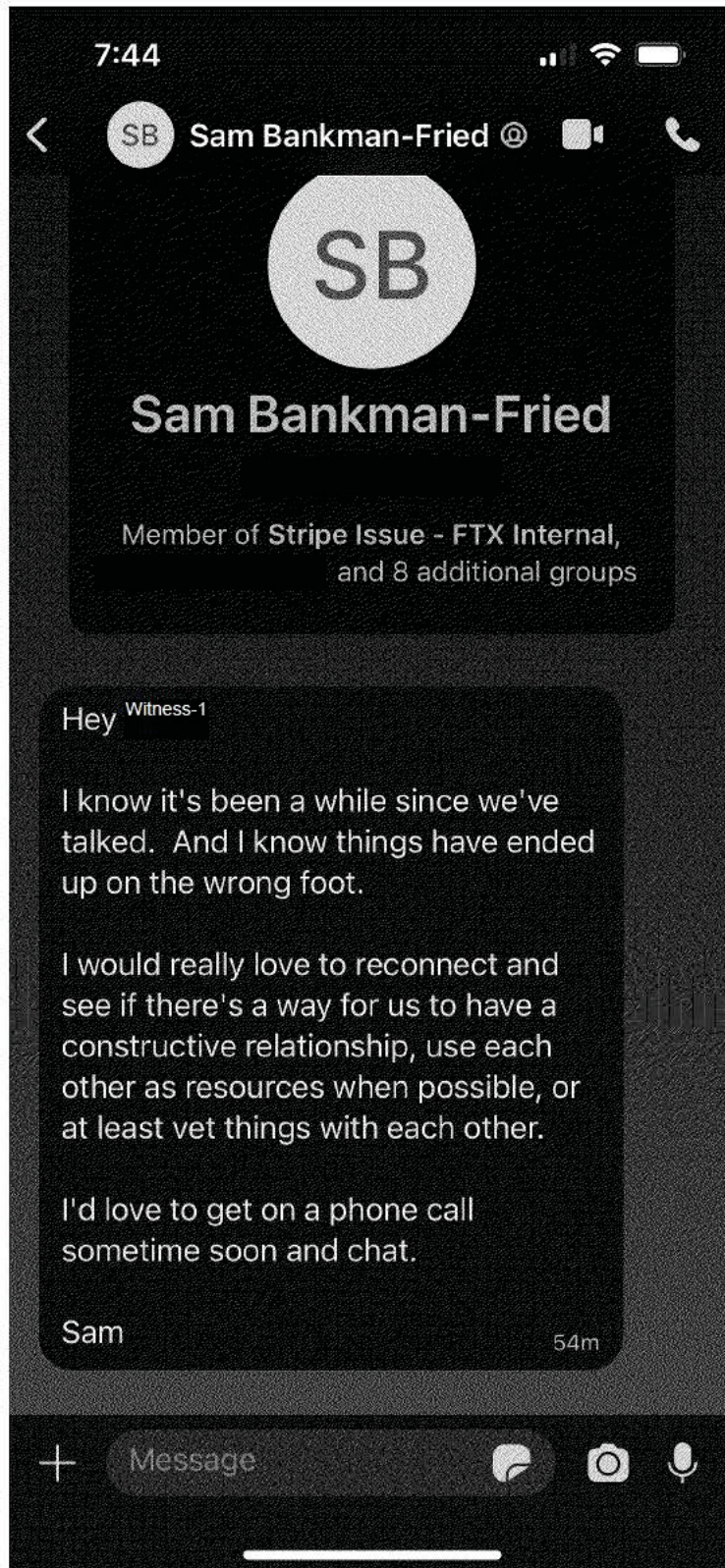
Sam Bankman-Fried

--

Sam Bankman-Fried

Exhibit C





From: Sam Bankman-Fried [REDACTED]
Date: Sunday, Jan 15, 2023 at 6:51 AM
To: Dietderich, Andrew G. [REDACTED]@sullerom.com>
Subject: [EXTERNAL] Reconnecting (from SBF)

Hey Andy--

I'm really sorry that things seem to have ended up on the wrong foot in our interactions.

I'd love to have a call to chat, and try to find a way to work constructively together--or at least give it a good faith effort.

Sam

--

Sam Bankman-Fried

**This is an external message from: [REDACTED] **

EXHIBIT C


Omnibus Corporate Authority

I, Samuel Benjamin Bankman-Fried, as controlling owner, director, officer, manager or other authorized person with respect to West Realm Shires Inc., Paper Bird Inc., Hilltop Technology Services LLC, Cedar Grove Technologies Services, Ltd., FTX Trading Ltd, Alameda Research LLC and Clifton Bay Investments LLC (the “Top Companies”), and all of their directly and indirectly owned subsidiaries (together with the Top Companies, the “FTX Group”), hereby authorize, instruct and consent to the following corporate actions with respect to all members of the FTX Group:

- (i) the appointment of John J. Ray III (the “CEO”) as Chief Executive Officer with plenary authority to exercise all powers and authority capable of delegation to an officer under applicable law, including without limitation in connection with a voluntary filing for protection from creditors under Title 11 of the United States Code and any restructuring and insolvency-related proceeding that may be appropriate or necessary, or may be commenced by third parties, with respect to all members of the FTX Group;
- (ii) the execution and delivery of any agreements, documents or instruments the CEO determines to be appropriate in connection with the foregoing;
- (iii) the retention of counsel and other advisors, and the execution and delivery of any agreements, documents or instruments in connection with the foregoing;
- (iv) the appointment of Stephen Neal (if willing to serve) as Chairman of the Board, to the extent applicable law permits me to so designate him as such, and one to three other individuals chosen by the CEO and not affiliated with me or the CEO as new directors of FTX Trading Ltd.;
- (v) the appointment of Stephen Neal (if willing to serve) as Chairman of the Board, to the extent applicable law permits me to so designate him as such, and one to three other individuals chosen by the CEO and not affiliated with me or the CEO as new directors of Alameda Research Ltd.;
- (vi) the appointment of Stephen Neal (if willing to serve) as Chairman of the Board, to the extent applicable law permits me to so designate him as such, and one to three other individuals chosen by the CEO and not affiliated with me or the CEO as new directors of West Realm Shires Inc.;
- (vii) if the CEO shall so determine, the appointment of one or more individuals chosen by the CEO and not affiliated with me as director of other members of the FTX Group;
- (iv) the performance of any and all such acts as are reasonable, advisable, expedient, convenient, proper or necessary to effect the foregoing.

It is my wish that the CEO consult with my counsel at Paul, Weiss, Rifkind, Wharton & Garrison LLP with respect to the foregoing director appointments.

Date: November 10, 2022

DocuSigned by:

672DA88132804B9
Samuel Benjamin Bankman-Fried