

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

FTX TRADING LTD., *et al.*,¹

Debtors.

Chapter 11

Case No. 22-11068 (JTD)

(Jointly Administered)

Hearing Date: June 25, 2024 at 10:00 a.m. (ET)

Objection Deadline: June 17, 2024 at 4:00 p.m. (ET)

**DEBTORS' MOTION FOR ENTRY OF AN ORDER (A) AUTHORIZING THE
DEBTORS' ENTRY INTO, AND PERFORMANCE UNDER, THE
SETTLEMENT WITH THE UNITED STATES DEPARTMENT OF THE
TREASURY – INTERNAL REVENUE SERVICE, (B) APPROVING THE
SETTLEMENT AND (C) GRANTING RELATED RELIEF**

FTX Trading Ltd. and its affiliated debtors and debtors-in-possession (collectively, the “Debtors”) hereby submit this motion (the “Motion”) for entry of an order, substantially in the form attached hereto as Exhibit A (the “Order”), pursuant to section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), and rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (a) authorizing the Debtors’ entry into, and performance under, the settlement (the “Settlement”), embodied in certain letters dated April 11, 2024, May 15, 2024, and May 20, 2024 (the “Acknowledgement Letters”),² attached as Exhibit 1 to the Order, between and among (i) the Debtors and (ii) the United States Department of the Treasury – Internal Revenue Service (the “IRS”); (b) approving the Settlement; and (c) granting related relief. In support of the Motion, the Debtors respectfully state as follows:

¹ The last four digits of FTX Trading Ltd.’s tax identification number are 3288. Due to the large number of debtor entities in these Chapter 11 Cases, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ claims and noticing agent at <https://cases.ra.kroll.com/FTX>. The principal place of business of Debtor Emergent Fidelity Technologies Ltd is Unit 3B, Bryson’s Commercial Complex, Friars Hill Road, St. John’s, Antigua and Barbuda.

² Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Acknowledgement Letters.

Preliminary Statement

1. The Settlement is a significant and valuable component of the Debtors' proposed chapter 11 reorganization plan, resolving a multitude of complex disputes with the Debtors' largest creditor without the cost and delay of litigation, and while mitigating significant risk of diminution of the assets available for distribution to creditors.

2. The IRS initially asserted proofs of claim against the Debtors amounting to more than \$44 billion, which it amended to \$24 billion (the "IRS Claims"). The Debtors do not dispute that, given the complexity of these cases and the state of the Debtors' books and records prior to the commencement of these Chapter 11 Cases, the Debtors could have significant tax liability to the IRS. However, the Debtors vigorously dispute the IRS Claims in many crucial respects including, among other things, income tax liability for so-called "misappropriation income" as a result of Sam Bankman-Fried's theft of FTX customer funds, employment tax liability for purported compensation paid to Mr. Bankman-Fried and other former principals of the Debtors, and the proposed disallowance of a large amount of deductions and losses for lack of substantiation. The IRS does not agree with the Debtors' arguments and has informed the Debtors that absent a settlement it would pursue these and other theories to impose significant tax liability.

3. Among other things, the Settlement—which would only become effective and final upon confirmation of Debtors' proposed chapter 11 reorganization plan (the "Conforming Plan")—would resolve these disputes without the need for the Debtors to expend significant time and incur expenses on litigation. Specifically, the Debtors and the IRS have agreed in the Settlement that the Debtors shall pursue a Conforming Plan and, in connection with that Conforming Plan, the IRS shall forego and subordinate the IRS Claims and receive (1) a \$200 million allowed priority tax claim payable within 60 days of the effective date of the Conforming Plan, and (2) a \$685 million allowed junior subordinated claim payable on a subordinated basis to

customers and other creditors with interest paid at the “Consensus Rate” set forth in the Conforming Plan, to the extent funds are available in accordance with the Settlement and the distribution waterfall of the Conforming Plan. Although the Debtors believe that they are not liable for additional taxes under the IRS’s current theories, the IRS Claims raise novel issues of tax and bankruptcy law, and the Debtors thus believe that resolving the IRS Claims as set forth in the Settlement eliminates significant litigation risk and allows for certainty with respect to creditor and customer recoveries under the Debtors’ Conforming Plan. In exchange, upon satisfaction of such claims, the Debtors will receive a full and final settlement of any and all prepetition claims against the Debtors arising from activities, transactions, liabilities, or events on or before October 31, 2022 at a value far below the amounts claimed by the IRS and the IRS’s agreement to subordinate any and all claims against the Debtors arising from activities, transactions, liabilities, or events after October 31, 2022.

4. Notably, resolution of the disputes between the parties would require costly and potentially protracted litigation for both estimation of the IRS Claims and, if the IRS chose to pursue its claims thereafter, the final adjudication of the Debtors’ tax liability. The outcome of these proceedings would be uncertain given certain novel and complex issues of tax law raised by the IRS Claims. The Settlement thus provides much needed certainty as to the magnitude of the IRS Claims and allows these Chapter 11 Cases to move to swiftly toward resolution, thereby enabling the prompt distribution to the Debtors’ other creditors and customers.

5. Accordingly, the Debtors submit that the Debtors’ entry into, and performance under, the Settlement provides material value to the Debtors’ estates while avoiding costly, time-consuming, and uncertain litigation, is in the best interests of the Debtors’ estates and all stakeholders, is well within the range of reasonableness and should be approved. The Official Committee of Unsecured Creditors (the “Committee”) and the Ad Hoc Committee of Non-US

Customers of FTX.com (the “Ad Hoc Committee”) supports the Settlement as set forth in the Acknowledgement Letters.

Background

6. On November 11 and November 14, 2022 (as applicable, the “Petition Date”),³ the Debtors filed with the Court voluntary petitions for relief under the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Joint administration of the Debtors’ cases (the “Chapter 11 Cases”) was authorized by the Court by entry of an order on November 22, 2022 [D.I. 128]. On December 15, 2022, the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed the Committee pursuant to section 1102 of the Bankruptcy Code [D.I. 231].

7. On May 19, 2023, the Court entered the *Order (I)(A) Establishing Deadlines for Filing Non-Customer and Government Proofs of Claim and Proofs of Interest and (B) Approving the Form and Manner of Notice Thereof and (II) Granting Related Relief* [D.I. 1519] (the “Non-Customer Bar Date Order”). The Non-Customer Bar Date Order established, among other things, September 29, 2023 as the deadline by which government units must file proofs of claim.

8. Additional factual background relating to the Debtors’ businesses and the commencement of these Chapter 11 cases is set forth in the *Declaration of John J. Ray III in Support of Chapter 11 Petitions and First Day Pleadings* [D.I. 24], the *Declaration of Edgar W. Mosley II in Support of Chapter 11 Petitions and First Day Pleadings* [D.I. 57], the *Supplemental*

³ November 11, 2022 is the Petition Date for all Debtors, except for Debtor West Realm Shires Inc.

Declaration of John J. Ray III in Support of First Day Pleadings [D.I. 92] and the *Supplemental Declaration of Edgar W. Mosley II in Support of First Day Pleadings* [D.I. 93].

Facts Specific to the Relief Requested

9. On April 27 and 28, 2023, the IRS filed initial proofs of claim purporting to be estimates of the Debtors' prepetition tax liability nominally totaling approximately \$44 billion.⁴ On September 21, 2023, in accordance with the Non-Customer Bar Date Order, the IRS filed amended proofs of claims that modified the prepetition IRS Claims but left the potential aggregate estimated tax claims against the Debtors at more than \$43 billion.⁵ On November 2, 2023, the IRS further amended certain of its claims to reduce the total amount of tax sought to approximately \$24 billion.⁶ The IRS currently has 47 pending claims filed against 31 of the Debtors. These claims would consume the Debtors' combined estates if allowed in their entirety.

10. In response to the IRS Claims and the parties' inability to reach a settlement, on November 29, 2023, the Debtors filed the *Motion of Debtors for Entry of an Order Establishing A Schedule and Procedures for Estimating Claims Filed by The United States Department of the Treasury – Internal Revenue Service* [D.I. 4204] (the "Estimation Motion"). At a hearing on December 13, 2023, the Court granted the Estimation Motion and ordered that the IRS Claims would be estimated pursuant to section 502(c) of the Bankruptcy Code. [Dec. 13, 2023 Hr'g Tr. 55:5-56:6; *see also* D.I. 5080.] The Court also ordered supplemental briefing regarding the applicable burden of proof at the estimation hearing. (Dec. 13, 2023 Hr'g Tr. at 57:23-25.) The parties filed simultaneous briefs addressing the burden of proof issue on January 5, 2024, and the

⁴ Proof of claim numbers: 1747, 1748, 1754, 1755, 1757, 1758, 1759, 1760, 1761, 1762, 1763, 1764, 1765, 1766, 1767, 1768, 1783, 1784, 1785, 1786, 1787, 1788, 1789, 1791, 1894 1795, 1797, 1799, 1800, 1802, 1803, 1804, 1805, 1806, 1807, 1808, 1810, 1812, 1815, 1816, 1817, 1818, 1819, 1820, 1821.

⁵ Proof of claim numbers: 58971, 58972, 58974, 58979, 58980, 58983, 58985, 58986, 59388.

⁶ Proof of claim numbers: 88399, 88407, 88429, 88430, 88431, 88432, 88433, 88434.

Court heard argument on January 17, 2024. [See D.I. 5410; 5416.] On January 31, 2024, the Court ruled from the bench that “the burden of proof at the estimation hearing will rest on the IRS.” (Jan. 31, 2024 Hr’g Tr. at 9:9-18.)

11. In the estimation proceedings, the parties engaged in discovery regarding the IRS Claims. That discovery included contention interrogatories served by the Debtors, in response to which the IRS provided “preliminary statement[s] of facts and issues” in which the IRS purported to calculate approximately \$8 billion of income and employment taxes owed by the Debtors. Although this represents a substantial reduction of the sums asserted in the IRS Claims, the IRS noted that it was providing those “preliminary statement[s]” only for purpose of the “estimation proceeding, not [as] determination[s] of tax liability,” and that its “estimations for purposes of this bankruptcy and ultimately its issuance of a notice of deficiency (if any) at the end of the examination may change if more information is learned.”

12. The parties also have engaged in extensive arm’s-length settlement negotiations that resulted in the Acknowledgment Letters. The terms of the Settlement provide, among other things:⁷

- **Settlement of Prepetition Claims.** In full and final satisfaction of the Filed Claims and any other claims as defined in the Bankruptcy Code (“Claims”) of the IRS arising out of or relating to the Debtors’ income tax years ending December 31, 2018, December 31, 2019, December 31, 2020, December 31, 2021, and October 31, 2022 (collectively, the “Prepetition Income Tax Years”) and the Debtors’ taxable quarters ending March 31, 2018, through and including December 31, 2022 (such taxable quarters and the taxable year ending December 31, 2022 accruing through October 31, 2022 collectively, the “Prepetition Employment Tax Periods”) or that the IRS could assert for any tax liability arising out of events, transactions, or activities occurring prior to October 31, 2022 (collectively, the “Prepetition Claims”), pursuant to a Conforming Plan, the IRS shall receive (a) a \$200,000,000 priority tax claim (the “Priority IRS Claim”) payable within 60 days of the effective date of the Conforming Plan (“Effective”).

⁷ Any summary of the Settlement and Acknowledgement Letters contained herein is qualified in its entirety by the actual terms and conditions of the Settlement, as embodied in the Acknowledgement Letters. To the extent that there is any conflict between any summary contained herein and the actual terms and conditions of the Acknowledgement Letters, the actual terms and conditions of the Acknowledgement Letters shall control.

Date”) and (b) a \$685,000,000 junior subordinated claim (the “Junior Subordinated IRS Claim”) that is subordinated to the claims of customers and creditors with interest paid at the Consensus Rate set forth in the Conforming Plan, payable if and to the extent of funds available in accordance with the Acknowledgment Letters and the distribution waterfall of the Conforming Plan.

- The Priority IRS Claim shall be paid by wire to the Department of Justice consistent with additional instructions given upon acceptance.
- The Debtors may not seek a refund of any component of the Priority IRS Claim. The Debtors will immediately contact the Department of Justice in the case of an erroneous refund and will return any amounts erroneously refunded.
- **Administrative Tax Expense.** The Debtors represented they intend to use section 505(b)(2) of the Bankruptcy Code to request a determination of any unpaid liability of the estates under those procedures. The IRS agrees to subordinate to claims of customers and other creditors with interest paid at the Consensus Rate set forth in the Conforming Plan, pursuant to the Conforming Plan, all Claims of the IRS arising out of any Postpetition Tax Year, including without limitation any related penalties, statutory addition, or interest (“Senior Subordinated IRS Claims”), in accordance with the Acknowledgment Letters and the distribution waterfall of the Conforming Plan. To the extent there is a dispute regarding any audit of the Postpetition Tax Years that are not resolved between the Debtors, or its successors, and the IRS prior to the issuance of a statutory notice of deficiency, that matter shall be resolved after the issuance of a statutory notice of deficiency through a proceeding in the United States Bankruptcy Court.

Jurisdiction

13. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019. Pursuant to Local Rule of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) 9013-1(f), the Debtors consent to the entry of a final order or judgment by the Court in connection with this

Motion to the extent it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

Relief Requested

14. By this Motion, the Debtors request entry of the Order, substantially in the form attached hereto as Exhibit A, (a) authorizing the Debtors' entry into, and performance under, the Settlement, (b) approving the Settlement, and (c) granting certain related relief.

Basis for Relief

I. The Settlement Satisfies Bankruptcy Rule 9019 Because It Is Fair, Reasonable, and in the Debtors' Best Interests.

15. Given the complexity of the disputes between the Debtors and the IRS and the associated cost of resolving those disputes, the Debtors have determined that, in its totality, entry into the Settlement is in the best interests of the Debtors and their estates.

16. Bankruptcy Rule 9019(a) provides, in relevant part, that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). Compromises and settlements are “a normal part of the process of reorganization.” *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968) (*TMT Trailer Ferry*) (quoting *Case v. L.A. Lumber Prods. Co.*, 308 U.S. 106, 130 (1939)). The compromise or settlement of time-consuming and burdensome litigation, especially in the bankruptcy context, is encouraged and “generally favored in bankruptcy.” *In re World Health Alternatives, Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006). “In administering reorganization proceedings in an economical and practical manner it will often be wise to arrange the settlement of claims as to which there are substantial and reasonable doubts.” *In re Penn Cent. Transp. Co.*, 596 F.2d 1102, 1113 (3d Cir. 1979) (quoting *TMT Trailer Ferry*, 390 U.S. 414, 424 (1968)).

17. “[T]he decision whether to approve a compromise under [Bankruptcy] Rule 9019 is committed to the sound discretion of the Court, which must determine if the compromise is fair, reasonable, and in the interest of the estate.” *In re Louise’s, Inc.*, 211 B.R. 798, 801 (D. Del. 1997). Courts should not, however, substitute their judgment for that of the debtor, but instead should canvas the issues to see whether the compromise falls below the lowest point in the range of reasonableness. *See In re Neshaminy Office Bldg. Assocs.*, 62 B.R. 798, 803 (E.D. Pa. 1986); *In re W.T. Grant and Co.*, 699 F.2d 599, 608 (2d Cir. 1983); *see also In re World Health*, 344 B.R. at 296 (“[T]he court does not have to be convinced that the settlement is the best possible compromise. Rather, the court must conclude that the settlement is ‘within the reasonable range of litigation possibilities.’”) (internal citations omitted)).

18. Additionally, section 105(a) of the Bankruptcy Code provides, in pertinent part, that the “[c]ourt may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions” of the Bankruptcy Code. 11 U.S.C. § 105(a). Taken together, section 105(a) and Bankruptcy Rule 9019(a) grant a bankruptcy court the power to approve a proposed compromise and settlement when it is in the best interests of the debtor’s estate and its creditors. *See In re Marvel Entm’t Grp., Inc.*, 222 B.R. 243, 249 (D. Del. 1998); *In re Louise’s, Inc.*, 211 B.R. 798, 801 (D. Del. 1997).

19. The Third Circuit has enumerated four factors that should be considered in determining whether a compromise should be approved: “(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors.” *In re Martin*, 91 F.3d 389, 393 (3d Cir. 1996); *accord In re Nutraquest, Inc.*, 434 F.3d 639, 644 (3d Cir. 2006) (finding that the *Martin* factors are useful when analyzing a settlement of a claim against the debtor as well as a claim belonging to the debtor); *see also TMT Trailer*

Ferry, 390 U.S. at 424; *In re Marvel Entm't Group, Inc.*, 222 B.R. 243 (D. Del. 1998) (proposed settlement held in best interest of the estate); *In re Mavrode*, 205 B.R. 716, 721 (Bankr. D.N.J. 1997). The test boils down to whether the terms of the proposed compromise fall “within a reasonable range of litigation possibilities.” *In re Penn Cent.*, 596 F.2d at 1114 (citations omitted); *see In re Pa. Truck Lines, Inc.*, 150 B.R. 595, 598 (E.D. Pa. 1992) (same).

20. The Settlement provides material value to the Debtors' estates, including, among other things, (i) the resolution of disputes with respect to the Debtors' prepetition tax liability by granting the IRS the allowed Priority IRS Claim in the amount of \$200 million and the allowed Junior Subordinated IRS Claims in the amount of \$685 million, and (ii) the IRS's agreement to subordinate any administrative postpetition tax claims to the claims of the Debtors' customers and other creditors with interest paid at the Consensus Rate set forth in the Conforming Plan. In exchange, the IRS agrees that all IRS Claims are fully and finally satisfied by the Settlement. Settling with the IRS now avoids costly and time-consuming litigation in connection with the merits of the IRS Claims, and eliminates the risks of any unfavorable outcome.

21. Accordingly, and as further described below, the compromises set forth in the Acknowledgement Letters are, in the aggregate, fair and equitable, fall well within the range of reasonableness, satisfy each of the applicable *Martin* factors, and should be approved.

22. **The Probability of Success in Litigation.** The Debtors maintain that the IRS Claims lack merit, and are prepared to litigate the merits of those claims in this Court as necessary. However, the IRS may be able to assert various novel arguments to support the merits of the IRS Claims, including arguments relating to the Debtors' income tax liability for funds stolen by Mr. Bankman-Fried and spent on the Debtors' behalf. Moreover, the Debtors acknowledge that they may owe some taxes in addition to the sums reflected in the Debtors' tax returns. The state of the Debtors' prepetition books and records renders a complete accounting of

all prepetition tax liability nearly impossible. As a result, the outcome of the estimation hearing and any subsequent litigation is uncertain.

23. The Settlement, in contrast, brings finality on favorable terms. A substantial majority of the IRS Claims would have been classified as priority claims and consumed nearly the entire estate if allowed in full. The Settlement thus achieves an over-97% reduction of the priority claims that the IRS has filed, and an over-88% reduction of the total amount of the IRS Claims. The Debtors expect recoveries for customer claims and general unsecured claims to be significant. Given that expectation, the settlement negotiation between the Debtors and the IRS necessarily centered on the allocation of risk of customer and unsecured claim recoveries. By providing the IRS with (i) the Priority IRS Claim in the allowed amount of \$200 million, (ii) the Junior Subordinated IRS Claim in the allowed amount of \$685 million on a subordinated basis to customers and creditors, and (iii) the Senior Subordinated IRS Claim on a subordinated basis to customers and creditors, the Settlement provides a fair and efficient resolution for the estates and allows the Debtors to proceed with resolution of the Chapter 11 Cases.

24. **The Complexity of the Litigation and the Attendant Expense, Inconvenience, and Delay.** Litigation of the IRS Claims would be complex and expensive, leading to significant inconvenience and delay. The law governing a corporation's income tax liability for a majority shareholder's theft is under-developed and uncertain and the costs of pursuing such complex litigation would be high. Although the ultimate issue might have been decided after briefing and an estimation hearing, it is very likely that either or both parties would have appealed any unfavorable result and sought to litigate the issue on the merits after estimation; all of this likely would have required substantial briefing, additional time for resolution, and the possibility that some or all of the distribution to creditors would have been delayed. Additionally, the Committee and the Ad Hoc Committee could participate in such litigation and the estates would

be responsible for payment of the Committee and Ad Hoc Committee's expenses in connection therewith. The Settlement eliminates these costs.

25. **The Paramount Interests of Creditors.** The Settlement is in the best interests of the Debtors' estates and the stakeholders because, as discussed above, approval of the Settlement resolves complex disputes between the Debtors and the IRS that would have involved costly and time-consuming litigation with uncertain outcome by providing for the resolution of all of the IRS's claims against the Debtors. In particular, because the IRS is receiving only 2.5% of the originally asserted IRS Claims on a priority basis—and because the Junior Subordinated IRS Claim and Senior Subordinated IRS Claims are subordinated to customers and other creditors—its recovery will not have any material effect on the recovery of customers and general unsecured creditors and allows recovery on such claims faster than if litigation had been pursued to victory. As such, in the Debtors' sound business judgment, the value of entering into the Settlement far exceeds the net benefits that the Debtors and stakeholders likely would obtain from continuing on the alternative litigation path.

26. Based on the foregoing, the Debtors submit that the Settlement, as embodied in the Acknowledgement Letters, satisfies Bankruptcy Rule 9019 because it is fair, reasonable, and in the best interests of the Debtors, the estate, and the stakeholders. As a result, the Debtors respectfully submit that the Settlement satisfies the *Martin* factors and request that the Court approve the Settlement and authorize the Debtors to enter into and perform under it.

Waiver of Bankruptcy Rule 6004(h)

27. Given the nature of the relief requested herein, the Debtors respectfully request a waiver of the 14-day stay under Bankruptcy Rule 6004(h). Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until expiration of 14 days after entry of the order, unless the court orders otherwise.” For

the reasons described above, the relief requested is essential to maximize the value of the Debtors' assets and ample cause exists to justify a waiver of the stay period to the extent applicable.

Reservation of Rights

28. Nothing in this Motion: (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors or their estates; (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors or their estates to contest the validity, priority, or amount of any claim against the Debtors or their estates; or (c) shall otherwise impair, prejudice, waive, or otherwise affect the rights of the Debtors or their estates with respect to any and all claims or causes of action against any third party.

Notice

29. Notice of this Motion has been provided to: (a) the U.S. Trustee; (b) counsel to the Committee; (c) the Securities and Exchange Commission; (d) the IRS; (e) the United States Department of Justice; (f) the United States Attorney for the District of Delaware; and (g) to the extent not listed herein, those parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be provided.

Conclusion

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court (a) enter the Order, substantially in the form attached hereto as Exhibit A, and (b) grant such other and further relief as is just and proper.

Dated: June 3, 2024
Wilmington, Delaware

LANDIS RATH & COBB LLP

/s/ Matthew R. Pierce

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*Counsel for the Debtors
and Debtors-in-Possession*

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

FTX TRADING LTD., *et al.*,¹

Debtors.

Chapter 11

Case No. 22-11068 (JTD)

(Jointly Administered)

Hearing Date: June 25, 2024 at 10:00 a.m. (ET)

Objection Deadline: June 17, 2024 at 4:00 p.m. (ET)

NOTICE OF MOTION

TO: (a) the U.S. Trustee; (b) counsel to the Official Committee of Unsecured Creditors; (c) the Securities and Exchange Commission; (d) the Internal Revenue Service; (e) the United States Department of Justice; (f) the United States Attorney for the District of Delaware; and (g) to the extent not listed herein, those parties requesting notice pursuant to rule 2002 of the Federal Rules of Bankruptcy Procedure.

On June 3, 2024, the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) filed the *Debtors’ Motion for Entry of an Order (A) Authorizing Debtors’ Entry Into, and Performance Under, the Settlement with the United States Department of the Treasury – Internal Revenue Service; (B) Approving the Settlement; and (C) Granting Related Relief* (the “Motion”).

Objections, if any, to the relief requested in the Motion must be filed with the United States Bankruptcy Court, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801, on or before **June 17, 2024 at 4:00 p.m. (ET)**.

At the same time, you must also serve a copy of the objection upon the undersigned counsel so as to be **received no later than 4:00 p.m. (ET) on June 17, 2024**.

A HEARING ON THE MOTION WILL BE HELD ON **June 25, 2024 AT 10:00 A.M. (ET)** BEFORE THE HONORABLE JOHN T. DORSEY, UNITED STATES BANKRUPTCY COURT JUDGE, IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, 5th FLOOR, COURTROOM NO. 5, WILMINGTON, DELAWARE 19801.

¹ The last four digits of FTX Trading Ltd.’s and Alameda Research LLC’s tax identification number are 3288 and 4063 respectively. Due to the large number of debtor entities in these Chapter 11 Cases, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ claims and noticing agent at <https://cases.ra.kroll.com/FTX>. The principal place of business of Debtor Emergent Fidelity Technologies Ltd is Unit 3B, Bryson’s Commercial Complex, Friars Hill Road, St. John’s, Antigua and Barbuda.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: June 3, 2024
Wilmington, Delaware

LANDIS RATH & COBB LLP

/s/ Matthew R. Pierce _____

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*Counsel for the Debtors
and Debtors-in-Possession*

Exhibit A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

FTX TRADING LTD., *et al.*,¹

Debtors.

Chapter 11

Case No. 22-11068 (JTD)

(Jointly Administered)

Ref No. __

**ORDER (A) AUTHORIZING DEBTORS' ENTRY INTO, AND
PERFORMANCE UNDER, THE SETTLEMENT WITH THE
UNITED STATES OF AMERICA REGARDING FEDERAL TAXES;
(B) APPROVING THE SETTLEMENT; AND (C) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")² of FTX Trading Ltd. and its affiliated debtors and debtors-in-possession (collectively, the "Debtors"), for entry of an order (this "Order") (a) authorizing the Debtors' entry into, and performance under, the Settlement, embodied on the Acknowledgement Letters attached hereto as Exhibit 1, (b) approving the Settlement, and (c) granting certain related relief; and this Court having jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court being able to issue a final order consistent with Article III of the United States Constitution; and venue of these Chapter 11 Cases and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b); and

¹ The last four digits of FTX Trading Ltd.'s tax identification number are 3288. Due to the large number of debtor entities in these Chapter 11 Cases, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at <https://cases.ra.kroll.com/FTX>. The principal place of business of Debtor Emergent Fidelity Technologies Ltd is Unit 3B, Bryson's Commercial Complex, Friars Hill Road, St. John's, Antigua and Barbuda.

² Capitalized terms not otherwise defined herein are to be given the meanings ascribed to them in the Motion.

this Court having found that proper and adequate notice of the Motion and the relief requested therein has been provided in accordance with the Bankruptcy Rules and the Local Rules; and objections (if any) to the Motion having been withdrawn, resolved or overruled on the merits; and upon the record of these Chapter 11 Cases, the Motion and supporting documents; and this Court having found and determined that the relief set forth in this Order is in the best interests of the Debtors and their estates; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized to enter into, and perform under, the Settlement.
3. The terms of the Settlement, as embodied in the Acknowledgement and Acceptance Letters and which would only become effective and final upon confirmation of Debtors' proposed chapter 11 reorganization plan (the "Conforming Plan"), are approved in their entirety.
4. If the Conforming Plan is confirmed, in full and final satisfaction of the claims asserted by the IRS and any other claims as defined in the Bankruptcy Code that the IRS could assert arising out of or relating to the Debtors' income tax years ending December 31, 2018, December 31, 2019, December 31, 2020, December 31, 2021, and October 31, 2022 (collectively, the "Prepetition Income Tax Years") and the Debtors' employment taxable quarters ending March 31, 2018, through and including September 30, 2022, and for the taxable years ending March 31, 2018 through and including December 31, 2021, plus liabilities for the taxable quarter ending December 31, 2022, and for the taxable year ending December 31, 2022, accruing through October

31, 2022 (collectively, the “Prepetition Employment Tax Periods”) or that the IRS could assert for any tax liability arising out of events, transactions, or activities occurring prior to October 31, 2022, the IRS shall receive:

a. An allowed priority claim against the Debtors in the aggregate amount of \$200,000,000 (the “Priority IRS Claim”) that shall be paid within sixty (60) days after effectiveness of the Conforming Plan; and

b. An allowed unsecured junior subordinated claim against the Debtors in the aggregate amount of \$685,000,000 payable if and to the extent of funds available in accordance with the Settlement and the distribution waterfall of the Conforming Plan and payable only after other subordinated government claims have been paid in full (the “Junior Subordinated IRS Claim”). The Junior Subordinated IRS Claim shall be subordinated to both the Senior Subordinated IRS Claims and the Senior Subordinated Governmental Claims (as defined below), and no payment will be made on the Junior Subordinated IRS Claim until all Senior Subordinated IRS Claims and Senior Subordinated Governmental Claims are paid in full.

5. If the Conforming Plan is confirmed: (i) the Debtors shall not seek to amend their tax returns for the Prepetition Income Tax Years or Prepetition Employment Tax Periods, file a Form 843, or otherwise seek any refunds or crediting of overpayments; (ii) the Debtors agree that each of them, their subsidiaries, and any of their successors are not entitled to any carryforwards or carrybacks of capital losses, net operating losses, other losses, or credits from the Prepetition Income Tax Years; (iii) none of the Debtors are bound by assertions made or positions taken by any of the Debtors in tax returns filed for the Prepetition Income Tax Years or the Prepetition Employment Tax Periods; (iv) the IRS shall close all audits for Prepetition Income Tax

Years or the Prepetition Employment Tax Periods, and will not begin or open any new audits for those periods.

6. If the Conforming Plan is confirmed: (i) the first taxable year, within the meaning of 26 U.S.C. § 441, for each of the Debtors' postpetition tax obligations under Subtitle A of the Internal Revenue Code (Income Taxes) is the fiscal year ended October 31, 2023, and for each of the Debtors' postpetition tax obligations under Subtitle C of the Internal Revenue Code (Employment Taxes) is the period accruing from November 1, 2022, and such periods continuing through all future tax periods to the effective date of the Conforming Plan shall be deemed to constitute the "Postpetition Tax Years"; and (ii) any and all IRS claims against the Debtors arising from activities, transactions, liabilities, or events occurring in the Postpetition Tax Years, including without limitation, any related penalties, statutory addition, or interest (the "Senior Subordinated IRS Claims"), will be subordinated as follows:

a. The Senior Subordinated IRS Claims shall be separately classified alongside a parallel class of claims by the Commodity Futures Trading Commission and other Federal, state, and foreign governmental authorities who have agreed to a similar ranking (collectively, the "Senior Subordinated Governmental Claims"). Any Senior Subordinated IRS Claims and Senior Subordinated Governmental Claims shall be subordinated to the claims of other creditors and customers and postpetition interest on such claims (at a rate not to exceed 9.0% per annum from the commencement of the Chapter 11 Proceedings to payment of the claim in full) (collectively, the "Senior Claims"). Therefore, no funds shall be distributed in satisfaction of the Senior Subordinated IRS Claims until the Senior Claims are satisfied as set forth in the Conforming Plan. Payment of the Senior Subordinated Claims shall be deferred until such time as provided under the Conforming Plan.

b. Twenty-five percent (25%) of the distributable funds available after payment of the Senior Claims (and associated interest) shall be available to pay any Senior Subordinated IRS Claims until the Senior Subordinated IRS Claims are paid in full, after which such funds shall be used to pay any Senior Subordinated Governmental Claims that remain unpaid, if any. Similarly, seventy-five percent (75%) of the distributable funds available after payment of Senior Claims (and associated interest) shall be used to pay Senior Subordinated Governmental Claims until the Senior Subordinated Governmental Claims are paid in full, after which such funds shall be used to pay any Senior Subordinated IRS Claims that remain unpaid, if any.

7. If the Conforming Plan is confirmed, other than as expressly provided herein, then this Order shall (a) resolve the Debtors' *Motion for Entry of an Order Establishing a Schedule and Procedures for Estimating Claims filed by the United States* [D.I. 4204] and any further objections to the United States to the Prepetition Income Tax Years or Prepetition Employment Tax Periods, and (b) shall constitute a determination of the Prepetition Income Tax Years or Prepetition Employment Tax Periods as described in paragraph 4 for purposes of 11 U.S.C. § 505(c) and 26 U.S.C. § 6871. The Debtors to the extent necessary, may direct their claims agent to take all actions consistent with the Settlement.

8. The failure to specifically include or reference any particular term or provision of the Settlement in this Order shall not diminish or impair the effectiveness of such term or provision.

9. The Debtors are authorized and empowered to execute and deliver such documents, and to take and perform all actions necessary to implement and effectuate the relief granted in this Order.

10. The requirements set forth in Bankruptcy Rule 6004(a) are waived.

11. This Order is immediately effective and enforceable, notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or otherwise.

12. This Court shall retain jurisdiction with respect to any matters, claims, rights, or disputes arising from or related to the Motion or the implementation of this Order.

Dated: _____
Wilmington, Delaware

The Honorable John T. Dorsey
United States Bankruptcy Judge

Exhibit 1

Acknowledgement Letters



U.S. Department of Justice

Tax Division

Please reply to: Office of Review
P.O. Box 310
Washington, D.C. 20044

DAH:DSM:ADKunofsky
DJ 5-15-2030
CMN 2023100177

May 20, 2024

Marc De Leeuw, Esq.
Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004-2498
deleeuwm@sullcrom.com

Re: *In re FTX Trading, Ltd., et al.*,
No. 22-bk-11068 (Bankr. D. Del.)

Dear Mr. De Leeuw:

This refers to the debtors' offer as set forth in the attached letter dated April 11, 2024, which you acknowledged on April 17, 2024, as modified by the attached letter dated May 15, 2024, which you acknowledged on May 16, 2024.

The offer has been accepted on behalf of the Attorney General.

Sincerely yours,

DAVID H. HUBBERT
Deputy Assistant Attorney General

By:

JAMES J. WILKINSON
Chief, Office of Review



U.S. Department of Justice

Tax Division

Civil Trial Section, Eastern Region

DAH:DSM:ADKunofsky
DJ 5-15-2030
CMN 2023100177

P.O. Box 227 Telephone: 202-353-9187
Washington, D.C. 20044 Telecopier: 202-514-6866
Ari.D.Kunofsky@usdoj.gov

Via Email

April 11, 2024

Marc De Leeuw, Esq.
Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004-2498
deleeuwm@sullcrom.com

Re: *In re FTX Trading, Ltd., et al.*,
No. 22-bk-11068 (Bankr. D. Del.)

Dear Mr. De Leeuw:

Based on the discussions held over the last few weeks between the Debtors and the Department of Justice, Tax Division, the following represents the United States' understanding of the settlement offer made by the Debtors to resolve the Debtors' estimation and further objection to the United States' tax claim and administrative tax expenses. In addition, once accepted by the IRS, the obligations of the Debtors and the United States with respect to the settlement shall be subject to (a) approval of the settlement by the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") and (b) confirmation of a chapter 11 plan of reorganization for the Debtors that is consistent in all material respects with the draft form of chapter 11 plan presented to the Department of Justice, Tax Division, on Tuesday, April 9 or otherwise acceptable to the IRS (a "Conforming Plan").

- 1. Prepetition Claims.** The IRS filed claims against the Debtors (the "Filed Claims") for income tax years ending December 31, 2019, December 31, 2020, December 31, 2021, and October 31, 2022 ("Prepetition Income Tax Years"), and for employment tax for the taxable quarters ending March 31, 2018, through and including September 30, 2022, for the taxable years ending March 31, 2018, through and including December 31, 2021, plus liabilities for the taxable quarter ending December 31, 2022, and taxable year ending December 31, 2022, accruing through October 31, 2022 ("Prepetition Employment Tax Periods").
- 2. Postpetition Tax Years.** The parties agree that the first year for the Debtors' post-petition income tax and employment tax obligations shall be for the period beginning November 1, 2022, and continuing through to future tax years through the Effective Date of a plan confirmed by the Bankruptcy Court ("Postpetition Tax Years").

- 3. Settlement of Prepetition Claims.** In full and final satisfaction of the Filed Claims and any other claims as defined in the Bankruptcy Code (“Claims”) of the IRS arising out of or relating to the Prepetition Income Tax Years or the Prepetition Employment Tax Periods (collectively, the “Prepetition Claims”), pursuant to a Conforming Plan, the IRS shall receive (a) a \$200,000,000 priority tax claim (the “Priority IRS Claim”) payable within 14 days of the effective date (“Effective Date”) of the Conforming Plan and (b) a \$685,000,000 junior subordinated claim (the “Junior Subordinated IRS Claim”) payable if and to the extent of funds available in accordance with this settlement agreement and the distribution waterfall of the Conforming Plan.
- (a) The Priority IRS Claim shall be paid by wire to the Department of Justice consistent with additional instructions given upon acceptance.
 - (b) Debtors may not seek a refund of any component of the Priority IRS Claim. Debtors will immediately contact the Department of Justice in the case of an erroneous refund and will return any amounts erroneously refunded.
- 4. Administrative Tax Expense.** The Debtors represented they intend to use 11 U.S.C. § 505(b)(2) to request a determination of any unpaid liability of the estate under those procedures. The IRS agrees to subordinate, pursuant to the Conforming Plan, all Claims of the IRS arising out of any Postpetition Tax Year, including without limitation any related penalties, statutory addition, or interest (“Senior Subordinated IRS Claims”), as provided in this offer and the distribution waterfall of the Conforming Plan. To the extent there is a dispute regarding any audit of the Postpetition Tax Years that are not resolved between the Debtors, or its successors, and the IRS prior to the issuance of a statutory notice of deficiency, that matter shall be resolved after the issuance of a statutory notice of deficiency through a proceeding in the United States Bankruptcy Court.
- 5. Subordination.**
- (a) Pursuant to the Conforming Plan, the Senior Subordinated IRS Claims shall be separately classified alongside a parallel class of claims by the Commodity Futures Trading Commission (the “CFTC”) and other Federal, state, and foreign governmental authorities who have agreed to a similar ranking (the “Senior Subordinated Governmental Claims”). Any Senior Subordinated IRS Claims and Senior Subordinated Governmental Claims shall be subordinated to the Claims of other creditors and post-petition interest on such Claims (at a rate not to exceed 9.0% per annum from the commencement of the chapter 11 cases to payment of the claim in full) (collectively, the “Senior Claims”).
 - (b) The Conforming Plan shall provide that 25% of the distributable funds available after payment of the Senior Claims (and associated interest) shall be used to pay any Senior Subordinated IRS Claims until the Senior Subordinated IRS Claims are paid in full, after which such funds shall be used to pay any Senior Subordinated Governmental Claims that remain unpaid. Similarly, the Conforming Plan shall provide 75% of the distributable funds available after payment of Senior Claims (and associated interest) shall be used to pay Senior Subordinated Governmental

Claims until the Senior Subordinated Governmental Claims are paid in full, after which such funds shall be used to pay any Senior Subordinated IRS Claims that remain unpaid.

- (c) The Conforming Plan also shall provide that the Junior Subordinated IRS Claim is further subordinated to both Senior Subordinated IRS Claims and Other Subordinated Governmental Claims, and that no payment will be made on the Junior Subordinated IRS Claim until all these other Claims are paid in full.
 - (d) The Debtor has informed the IRS that its Claims (other than the Priority IRS Claim) will be paid only to the extent of funds available at the appropriate level of the distribution waterfall, and a failure of funds to be available shall not affect the finality of the settlement. The Debtor also has informed the IRS that the Debtors currently forecast having no funds available to pay the Junior Subordinated IRS Claim and that the Disclosure Statement for the Conforming Plan will estimate recoveries on the Junior Subordinated IRS Claim at zero.
 - (e) The IRS agrees that it shall not seek to collect any Claim subject to the settlement from the Debtors, their subsidiaries, or any successor to the Debtor or such subsidiary, or any of their respective properties, including in circumstances where such Claims remain unpaid under the Conforming Plan.
 - (f) For the avoidance of doubt, any Senior Subordinated IRS Claim and Junior Subordinated IRS Claim shall rank in the Conforming Plan senior to the interests of stockholders.
 - (g) Payment of the Senior Subordinated IRS Claim shall be paid either: (i) to the IRS in the ordinary course or (ii) by wire to the Department of Justice upon resolution of any applicable dispute, in each case consistent with any additional instructions given upon acceptance and the distribution rules in the Conforming Plan.
 - (h) Payment Junior Subordinated IRS Claim shall be made by wire to the Department of Justice consistent with additional instructions given upon acceptance and the distributions rules in the Conforming Plan.
- 6. No Prepetition Refunds, Overpayments, or Losses.** The Debtors shall not seek to amend their tax returns for the Prepetition Income Tax Years or Prepetition Employment Tax Periods, file a Form 843, or otherwise seek any refunds or crediting of overpayments. The Debtors agree that they, their subsidiaries, and any successors are not entitled to any carryforwards or carrybacks of capital losses, net operating losses, other losses, credits, or any other tax attributes from the Prepetition Income Tax Years. The United States acknowledges that the Debtors in an audit are not bound by assertions made in tax returns filed for the Prepetition Income Tax Years or Prepetition Employment Tax Periods; both parties may use whatever evidence is permitted under the tax and bankruptcy rules.
- 7. Postpetition Losses.** No carryovers shall be utilized after the Effective Date by any successor to the Debtors created pursuant to the Plan.

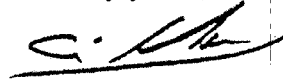
8. **Resolution of the Estimation Motion and Claims.** Acceptance of this offer shall resolve Debtors' motion for estimation and any objections to the United States' Filed Claims.
9. **Obligation to Pay and File Federal Tax Returns Between the Petition Date and Effective Date.** The Debtors shall file all federal tax returns for the Postpetition Tax Years, including federal income tax returns and federal employment tax returns. Nothing in this settlement shall prevent the IRS from auditing or examining the Postpetition Tax Years. In addition, nothing in this settlement shall relieve any entities created to effectuate the Plan from their federal tax filing and payment obligations.
10. **Approval of the Court.** The IRS shall not oppose the approval of the settlement or the confirmation of a Conforming Plan by the Bankruptcy Court on grounds inconsistent with this offer, if accepted. Approval of the settlement by the Bankruptcy Court shall constitute a determination of the claims described in paragraph 1, and the United States may immediately assess an amount sufficient under 11 U.S.C. § 505(c) and 26 U.S.C. § 6871 to appropriately receive any payment in accordance with the settlement, *provided* that any such assessment shall be contingent upon the confirmation of a Conforming Plan as and when contemplated hereby.
11. **Cooperation.** The Debtors agree that they and any successor in interest or trustee of a liquidation trust will assist the IRS and Department of Justice, Tax Division regarding any additional assessment or investigation of non-debtors and shall provide at least 30-days written notice to the IRS before destroying any records. Notice of the destruction of records may be given either through a letter to the undersigned counsel or via a court filing.
12. **Legal fees and costs.** The parties will not seek legal fees, costs, or damages from each other.
13. **Termination.** The settlement shall terminate upon written notice by the Debtors if Conforming Plan is not confirmed by December 31, 2024, or if the FTX Board of Directors determine prior to such date, upon advice of counsel, that pursuit of a Conforming Plan is no longer consistent with their fiduciary duties.
14. **Entirety of the Agreement.** This settlement constitutes the entirety of the agreement between the Debtors and United States with regards to the IRS's tax claims and expenses in this matter. In the event of any ambiguity between this offer and the Conforming Plan, this offer shall control.

If the foregoing comports with your understanding of the Debtors' proposed settlement offer, please sign and date at the bottom of this letter. Please return the documents by email to counsel for the United States at StephanieA.Sasarak@usdoj.gov and Ari.D.Kunofsky@usdoj.gov. We acknowledge that the terms of the proposed settlement may be made public by the Debtors in connection with the Disclosure Statement for the Conforming Plan currently being prepared for the Bankruptcy Court, and do not object to such disclosure.

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Once we receive the signed acknowledgment, we will process this offer in accordance with our usual procedures. Unless you receive a formal written acceptance of your offer from an authorized delegate of the Attorney General, the United States is in no way committed to a settlement.

Sincerely yours,



ARI D. KUNOFSKY
Supervisory Trial Attorney
Civil Trial Section, Eastern Region

I acknowledge these terms accurately reflect the Debtors' offer to the United States in the above-referenced matter.



Marc De Leeuw
Counsel for the Debtors

April 17, 2024

DATE



U.S. Department of Justice

Tax Division

Civil Trial Section, Eastern Region

DAH:DSM:ADKunofsky
DJ 5-15-2030
CMN 2023100177

P.O. Box 227 Telephone: 202-353-9187
Washington, D.C. 20044 Telecopier: 202-514-6866
Ari.D.Kunofsky@usdoj.gov

Via Email

May 15, 2024

Marc De Leeuw, Esq.
Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004-2498
deleeuwm@sullcrom.com

Re: *In re FTX Trading, Ltd., et al.*,
No. 22-bk-11068 (Bankr. D. Del.)

Dear Mr. De Leeuw:

Based on our discussion this evening, the Debtors and the Department of Justice, Tax Division, agreed to modify paragraph 3 of the offer acknowledgment letter dated April 11, 2024, which you acknowledged on April 17, 2024, to substitute 60 days for 14 days. For the avoidance of doubt, the modified offer provides that the IRS shall receive a \$200,000,000 priority tax claim (the "Priority IRS Claim") payable within 60 days of the effective date ("Effective Date") of the Conforming Plan. All other terms of the offer are unchanged.

The letter represents the written consent of the United States to the modification as required by paragraph 14 of the letter dated April 11, 2024, which you acknowledged on April 17, 2024.

If the foregoing comports with your understanding of the Debtors' proposed settlement offer, please sign and date at the bottom of this letter. Please return the documents by email to counsel for the United States at StephanieA.Sasarak@usdoj.gov and Ari.D.Kunofsky@usdoj.gov. We acknowledge that the terms of the proposed settlement may be made public by the Debtors in connection with the Disclosure Statement for the Conforming Plan currently being prepared for the Bankruptcy Court, and do not object to such disclosure.

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Once we receive the signed acknowledgment, we will process this offer in accordance with our usual procedures. Unless you receive a formal written acceptance of your offer from an authorized delegate of the Attorney General, the United States is in no way committed to a settlement.

Sincerely yours,



ARI D. KUNOFSKY
Supervisory Trial Attorney
Civil Trial Section, Eastern Region

I acknowledge these terms accurately reflect the Debtors' offer to the United States in the above-referenced matter.



Marc De Leeuw
Counsel for the Debtors

May 16, 2024

DATE