United States Senate
WASHINGTON, DC 20510

November 23, 2022

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

The Honorable Kenneth Polite, Jr.
Assistant Attorney General
Criminal Division
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950 Pennsylvania Avenue, NW
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Dear Attorney General Garland and Assistant Attorney General Polite:

We write to express deep concern over the disturbing allegations of fraud and illicit behavior that led to the collapse of cryptocurrency firm FTX Trading Ltd. (FTX) and to urge to the Department of Justice (DOJ or "the Department") to hold the company's executives accountable to the fullest extent of the law.

We were glad to see you both announce the DOJ's renewed commitment to investigating and prosecuting white collar crime earlier this year. In speeches at the American Bar Association's White Collar Crime National Institute, you affirmed the Department's intent to "[hold] individuals accountable for white-collar crime, as opposed to only levying fines on companies" and "to increase its focus on the flesh-and-blood victims of white-collar wrongdoing."[1] We have long urged regulators to hold corporate executives personally accountable when their businesses break the law, and one of us has introduced legislation to ensure that this happens.[2] Given the Department's commitment to holding perpetrators of white-collar crime personally accountable, we expect DOJ to investigate the actions leading to the collapse of FTX with the utmost scrutiny.

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[1] The Wall Street Journal, "Justice Department to Step Up Focus on White-Collar Crime Victims," Dylan Tokar, March 3, 2022, https://www.wsj.com/articles/justice-department-to-step-up-focus-on-white-collar-crime-victims-11646353383?mod=article_inline.

[2] The Guardian, "Why did the US justice department let Purdue off the hook for the opioid crisis?," Maggie Hassan and Sheldon Whitehouse, September 8, 2020, https://www.theguardian.com/commentisfree/2020/sep/08/us-justice-department-opioid-crisis-purdue; United States Caucus on International Narcotics Control, "Strengthening U.S. Efforts to Attack the Financial Networks of Cartels," September 2022, pp. 6-7, https://www.drugcaucus.senate.gov/reports/report-strengthening-u-s-efforts-to-attack-the-financial-networks-of-cartels/; Corporate Executive Accountability Act, S. 1010, https://www.congress.gov/bill/116th-congress/senate-bill/1010.

Earlier this month, FTX, one of the world's largest cryptocurrency exchanges, once valued at $32 billion, announced that it and more than 130 additional affiliated companies, had filed for bankruptcy.[3] The company's swift collapse has created shockwaves across the industry: Genesis, a crypto trading firm, said $175 million were locked within the firm's FTX trading account; Galois Capital, a crypto hedge fund, reported that half of its capital, an estimated $100 million, was tied up in its FTX account; and BlockFi, a crypto lender, halted withdrawals and is reportedly preparing a bankruptcy filing – and the contagion continues to spread.[4]

The impact of FTX's collapse on retail investors has been even more alarming. In its Chapter 11 filings, FTX announced that it would seek to discharge its debts, which could amount to as much as $8 billion that it owes to over one million customers,[5] many of which are retail investors. Through high-dollar advertisement placements and celebrity endorsements,[6] FTX created a false sense of safety and legitimacy and encouraged consumers to pour their hard-earned money into investments on the exchange.[7] Now, "working- and middle-class retail investors from around the world … [are] unable to access money they held on FTX."[8]

In the days leading up to FTX's collapse, company CEO Sam Bankman-Fried attempted to downplay concerns about its liquidity, assuring customers in a since-deleted tweet that "FTX has enough to cover all client holdings. We don't invest client assets (even in treasuries)."[9] A spokesperson for FTX US, FTX's US-based platform, similarly affirmed that the company's "assets are backed 1:1."[10] However, when customers attempted to withdraw deposits, it became

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[3] CNBC, "From $32 billion to criminal investigations: How Sam Bankman-Fried's crypto empire vanished overnight," MacKenzie Sigalos, November 15, 2022, https://www.cnbc.com/2022/11/15/how-sam-bankman-frieds-ftx-alameda-empire-vanished-overnight.html; Voluntary Petition for Non-Individuals Filing for Bankruptcy, filed by FTX Trading Ltd. on November 11, 2022, https://www.csbankruptcyblog.com/wp-content/blogs.dir/375/files/sites/55/2022/11/FTX-Petition.pdf.

[4] Cointelegraph, "The FTX contagion: Which companies were affected by the FTX collapse," Ezra Reguerra, November 17, 2022, https://cointelegraph.com/news/the-ftx-contagion-which-companies-were-affected-by-the-ftx-collapse; The Wall Street Journal, "BlockFi Prepares for Potential Bankruptcy as Crypto Contagion Spreads," Alexander Gladstone, Vicky Ge Huang, and Soma Biswas, November 15, 2022, https://www.wsj.com/articles/blockfi-prepares-for-potential-bankruptcy-as-crypto-contagion-spreads11668534824?mod=Searchresults_pos1&page=1.

[5] The New York Times, "Collapsed Crypto Exchange FTX Could Owe More Than 1 Million Creditors," David Yaffe-Bellany, November 15, 2022, https://www.nytimes.com/2022/11/15/technology/crypto-ftx-bankruptcy-creditors.html.

[6] Observer, "Tom Brady, Stephen Curry, Larry David and Other Celebrities Are Being Sued for Pushing FTX," Sissi Cao, November 17, 2022, https://observer.com/2022/11/ftx-crypto-endorsement-tom-brady-stephen-curry/.

[7] CNBC, "They put their trust in FTX. Now their money is frozen – and maybe wiped out," Daniel Arkin, November 17, 2022, https://www.nbcnews.com/tech/crypto/put-money-ftx-now-money-frozen-maybe-wiped-rcna57251.

[8] Truthout, "FTX Crypto Crash Threatens Life Savings of Working People," Sam Knight, November 17, 2022, https://truthout.org/articles/ftx-crypto-crash-threatens-life-savings-of-working-people/.

[9] The Wall Street Journal, "FTX Tapped Into Customer Accounts to Fund Risk Bets, Setting Up Its Downfall," Vicky Ge Huang, Alexander Osipovich, and Patricia Kowsmann, November 11, 2022, https://www.wsj.com/articles/ftx-tapped-into-customer-accounts-to-fund-risky-bets-setting-up-its-downfall-11668093732.

[10] Axios, "FTX's U.S. subsidiary says it's not impacted by liquidity crunch," Kia Kokalitcheva and Crystal Kim, November 8, 2022, https://www.axios.com/2022/11/09/ftx-us-american-subsidiary-impact-liquidity-crunch.

clear that Mr. Bankman-Fried and company representatives were lying. In an investor meeting, Mr. Bankman-Fried relented, admitting that Alameda Research, an affiliated trading platform of which he is the founder, owed FTX about $10 billion in customer deposits that were lent without their consent – a violation of both U.S. securities laws and FTX's own terms of service.[11] The fall of FTX was not simply a result of sloppy business and management practices, but rather appears to have been caused by intentional and fraudulent tactics employed by Mr. Bankman-Fried and other FTX executives to enrich themselves. In fact, Mr. Bankman-Fried had already revealed his true interests of self-enrichment last year when he siphoned $300 million to his own wallet, an investment that was intended to "help grow [FTX], improve user experience and allow it to engage more with regulators."[12]

John Jay Ray, an executive who has managed multiple companies through bankruptcy, including the energy trading giant Enron, and who has since taken over as FTX CEO, shed new light on Bankman-Fried's negligence in a court filing last week.[13] In the filing, "Mr. Ray described an astonishing level of disarray and said he had never seen 'such a complete failure of corporate control.'"[14] Mr. Ray called it an unprecedented situation, spurred by "compromised systems integrity and faulty regulatory oversight abroad" and "the concentration of control in the hands of a very small group of inexperienced, unsophisticated and potentially compromised individuals."[15] He described "the use of software to 'conceal the misuse of customer funds,'" and told the court the financial statements produced under Bankman-Fried could not be trusted, given that "[FTX] did not keep appropriate books and records, or security controls, with respect to its digital assets."[16]

As this situation unfolds, new facts will undoubtedly shed more light on how Bankman-Fried and his associates' deception has harmed FTX's customers, and customers of any company that was exposed to the contagion – and may reveal that the problems with the crypto industry extend well beyond FTX.[17] We urge the Department to center these "flesh-and-blood victims" as it investigates, and, if it deems necessary, prosecute the individuals responsible for their harm.

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[11] CNBC, "Sam Bankman-Fried's Alameda quietly used FTX customer funds for trading, source says," Paige Tortorelli and Kate Rooney, November 13, 2022, https://www.cnbc.com/2022/11/13/sam-bankman-frieds-alameda-quietly-used-ftx-customer-funds-without-raising-alarm-bells-say-sources.html

[12] The Wall Street Journal, "FTX's Sam Bankman-Fried Cashed Out $300 Million During Funding Spree," Eliot Brown, Caitlin Ostroff, and Berber Jin, November 18, 2022, https://www.wsj.com/articles/ftxs-sam-bankman-fried-cashed-out-300-million-during-funding-spree-11668799774?mod=hp_lead_pos4.

[13] The New York Times, "New Chief Calls FTX's Corporate Control a 'Complete Failure,'" David Yaffe-Bellany, November 17, 2022, https://www.nytimes.com/2022/11/17/business/ftx-bankruptcy.html.

[14] The New York Times, "New Chief Calls FTX's Corporate Control a 'Complete Failure,'" David Yaffe-Bellany, November 17, 2022, https://www.nytimes.com/2022/11/17/business/ftx-bankruptcy.html; In re FTX Trading Ltd., et al., Debtors, No. 22-11068- JTD, (Bankr. Del. 2022).

[15] In re FTX Trading Ltd., et al., Debtors, No. 22-11068- JTD, (Bankr. Del. 2022).

[16] The New York Times, "New Chief Calls FTX's Corporate Control a 'Complete Failure,'" David Yaffe-Bellany, November 17, 2022, https://www.nytimes.com/2022/11/17/business/ftx-bankruptcy.html.

[17] The Wall Street Journal, "Crypto's FTX Moment Shows Danger of Centralized Finance With No Central Bank," James Mackintosh, November 9, 2022, https://www.wsj.com/articles/crypto-reinvented-centralized-financebut-forgot-the-central-bank-11668017723.

Sincerely,

Elizabeth Warren
United States Senator

Sheldon Whitehouse
United States Senator