

Prosecutors and Regulators Announce Criminal Charges and Civil Enforcement Actions Against Sam Bankman-Fried Following FTX Collapse

WRITTEN BY

Jay A. Dubow | Ghillaine A. Reid | Ethan G. Ostroff | Deborah Kovsky-Apap | Sam Hatcher | John Sample

On December 13, federal prosecutors announced criminal fraud and money laundering charges against Sam Bankman-Fried (SBF) in the wake of the collapse of FTX Trading Ltd. (FTX), the crypto asset trading platform that SBF co-founded and for which he served as CEO until its November bankruptcy. Additionally, on December 13, parallel civil enforcement actions were brought against SBF by the Securities and Exchange Commission (SEC) and Commodity Futures Trading Commission (CFTC).

Background of FTX and its Collapse

SBF co-founded FTX in 2019 as a trading platform for crypto assets. Prior to its collapse last month, FTX was one of the world's largest crypto exchanges and SBF was lauded as the public face of the crypto industry. FTX began to unravel in early November when CoinDesk published a [report](#) showing that Alameda Research (Alameda), a crypto hedge fund founded and majority-owned by SBF, was capitalized primarily by FTT tokens — the native token of FTX — and not by “traditional” cryptocurrencies or fiat currency. CoinDesk's report sparked concerns about Alameda's liquidity and the value of FTT, and started a virtual “bank run” of withdrawals from FTX. On November 9, SBF announced that FTX had insufficient funds to meet customer demands. FTX subsequently filed for Chapter 11 bankruptcy on November 11, with estimates that it was at least \$8 billion short. FTX's collapse has had spillover effects throughout the cryptocurrency industry. The prices for Bitcoin (BTC) and Ethereum (ETH) futures have plunged, and other crypto exchanges were forced to limit customer withdrawals. Venture capital funds and institutional investors have likewise been affected — announcing significant losses, and in some cases complete write-downs to zero, stemming from equity investments in FTX.

SBF's Arrest and Enforcement Actions

On the evening of December 12, the Office of the Attorney General of The Bahamas [announced](#) that SBF had been arrested in the Bahamas following “receipt of formal notification from the United States that it has filed criminal charges against SBF and is likely to request his extradition.” On December 13, the U.S. Attorney's Office for the Southern District of New York unsealed an [indictment](#) against SBF containing eight criminal counts, including two counts each of wire fraud and conspiracy to commit wire fraud, one count for conspiracy to commit securities fraud, and one count for conspiracy to commit commodities fraud. The indictment also includes one count for conspiracy to commit money laundering based on transactions allegedly used to hide the proceeds of the wire fraud. Finally, the indictment charges SBF with conspiracy to violate campaign finance laws based on political contributions in excess of the federal limit. While the indictment is threadbare on specific facts, the parallel civil

actions by the SEC and CFTC provide additional insight into the factual allegations underlying the criminal charges. All are likely to be superseded by new filings as new facts are uncovered.

The civil complaints by the SEC and the CFTC add details about SBF's alleged conduct and the basis for the charges. Most notably, both complaints focus on allegedly false statements that SBF made about FTX's relationship with Alameda, and statements about FTX's policies relating to the protection of customer assets — in particular, assurances given to FTX customers and investors that customer assets would not be loaned out for trading purposes. Both the SEC's and the CFTC's complaints highlight, that despite these assurances about risk management, allegedly FTX — at the direction of SBF — loaned significant customer assets and made other exceptions to risk management policies at FTX for the benefit of Alameda, including undisclosed modifications to FTX's code that allowed Alameda to take positions unavailable to other FTX users.

The SEC filed a civil [complaint](#) against SBF for violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act, alleging that he made false statements about FTX's policies and assets in meetings with equity investors in the U.S. The CFTC filed a parallel civil [complaint](#) alleging fraud in connection with the sale of commodities based on the same alleged misstatements. The CFTC's theory of harm focuses on the impact that SBF's allegedly fraudulent statements had on BTC and ETH futures rather than on the harm to FTX's equity investors.

The criminal and civil actions are in their nascent stages, but the pleadings reveal some key information about the theories underlying each action. While FTX is a crypto asset exchange, the actions largely avoid some of the trickier issues surrounding crypto enforcement and regulation. The SEC's complaint focuses on false statements made to traditional equity investors, not crypto asset purchasers. Similarly, the CFTC's complaint focuses on the price impact on BTC and ETH, arguably the two cryptocurrencies that are the closest to traditional fiat currency and thus more squarely within the CFTC's jurisdiction. While both civil complaints mention FTX in describing the allegedly fraudulent scheme, neither makes a direct claim for the loss in value of FTX.

Additionally, the civil complaints include numerous allegations based on statements SBF made after the FTX collapse started — including some made after FTX filed for bankruptcy and removed SBF as CEO. For example, the CFTC's complaint notes that SBF "admit[ted] key facts pled herein" in direct messages with a reporter on Twitter on November 15. SBF has given numerous interviews and made public appearances since stepping down from FTX, and was even scheduled to testify before Congress on December 13 before his arrest on December 12. SBF noted several times, that he was speaking against the advice of his attorneys.

Impact of the Criminal and Civil Proceedings on FTX's Bankruptcy

SBF's arrest is unlikely to have a significant impact on FTX's chapter 11 bankruptcy, other than making it more cumbersome for the debtors to obtain testimony or information from him. To the extent that the CFTC or SEC obtain a judgment against SBF for disgorgement (essentially the same recovery that the debtors are likely to seek from SBF through bankruptcy clawback claims), they may need to coordinate with the bankruptcy estate to return funds to creditors or investors. In addition, the CFTC's complaint names two of the chapter 11 co-debtors — FTX and Alameda — as defendants. If the CFTC's action for penalties is successful, it could end up being one of the largest creditors in the bankruptcy proceeding.

Takeaways

Cryptocurrency-related crime is an issue squarely within the focus of federal prosecutors and regulators. There are no safe havens for a market that was once too complicated for the authorities to manage or understand. Indeed, the SBF indictment and the enforcement actions serve as a reminder that despite the novel nature of the crypto industry, prosecutors and regulators can and will bring actions based on “traditional” theories of fraud that are time-tested on more mundane assets.

The charges described above should also serve as renewed notice to companies and their officers that public statements, while perhaps providing short-term public relations benefits, can and will be used by prosecutors and regulators to build cases. Individuals facing potential criminal or regulatory enforcement actions should avoid public statements and interviews absent express guidance from counsel. In these cases, the adage that “any press is good press” does not apply.

RELATED INDUSTRIES + PRACTICES

- [Bankruptcy + Restructuring](#)
- [Securities Investigations + Enforcement](#)
- [Securities Litigation](#)
- [White Collar Litigation + Investigations](#)