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## **FTX Proof of Claim Primer**

FTX and associated entities (generally referenced as “FTX” throughout) filed a petition under Chapter 11 of the U.S. Bankruptcy Code on November 17, 2022.<sup>1</sup> In the bankruptcy system, FTX is now the “debtor” and if FTX is alleged to owe an individual or entity money, they are the “creditor” with a claim against the debtor’s bankruptcy estate. This article is a brief primer on steps FTX creditors can take to ensure their status and claim is properly documented with the bankruptcy court and considered in the event of distribution of assets by the estate. A general overview of how a Chapter 11 reorganization under Chapter 11 of the U.S. Bankruptcy Code can be found [here](#).

### **A. Review Deadlines and Consult Appropriate Counsel**

The Bankruptcy Code requires that notice be sent to creditors and interested parties in a case under the U.S. Bankruptcy Code. (See [11 U.S.C. § 342](#)). The Notice of Bankruptcy Case (“Notice”) is issued by the bankruptcy court and is mailed to the parties appearing on a [Creditor Matrix](#) prepared by the debtor describing the debtor’s creditors and implicated debts.<sup>2</sup>

- The Notice from the FTX proceedings can be downloaded [here](#).

As soon as an individual or company receives a Notice, they should begin by:

- Assessing the value of the potential claim against the debtor (in this case, FTX) and gathering supporting documentation.
- Creditors interested in filing a claim should preserve all documents related to their relationship with the debtor and be prepared to share those documents with the

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<sup>1</sup> Unless a distinction is made by the U.S. bankruptcy court, any FTX-related entities named in the bankruptcy petition are subject to the bankruptcy court’s jurisdiction and proceedings. For example, the Bahamian court is [challenging aspects of the U.S. bankruptcy case](#) and some determination regarding the Bahamian court’s jurisdiction—or lack thereof—may eventually be issued.

<sup>2</sup> **Note:** the completeness of the list of creditors and their contact information is only as good as the information provided to the debtor by the creditor during the course of business. Because of apparent KYC/AML issues, funding from customers moving through Alameda Research to reach the FTX platform, and other potential failures in corporate controls, it is important to confirm FTX creditor claims are properly accounted for.

bankruptcy court in connection with the claims process and as described in Section C *infra*.<sup>3</sup>

- Determine whether to take an active role in the bankruptcy proceedings by joining a creditor's committee, engaging in an adversarial action, or other efforts.
- Noting any deadlines set forth in the Notice.
- Coordinating with internal or external counsel and consider retaining local counsel, depending on the posture and value of the claim.
- **With custodial crypto exchanges like FTX, there is the additional important consideration of whether creditor assets are assets of the bankruptcy estate, or if title remains with the customer.** In the [Celsius bankruptcy](#), Judge Martin Glenn [recently ruled](#) that customers whose funds were held in a purely custodial manner would be returned to the customers because they were not assets of the estate. According to [FTX's terms of service](#), title to customer crypto assets on the FTX platform remains with the customer. However, one significant distinction between the Celsius and FTX cases is that [FTX's apparent misuse and co-mingling of custodied customer assets](#) across the FTX debtor group may simply mean there are no ascertainable customer-owned assets to return.

## **B. Where Can I Find Information About the Case**

The most efficient way to access information regarding a pending bankruptcy proceeding is to review the case docket and obtain copies of the debtor's bankruptcy schedules and other pleadings filed that discuss the debtor's financial situation.

- These documents can be found on PACER/ECF for the [U.S. Bankruptcy Court for the District of Delaware](#).
- If creditors/attorneys don't have access to PACER/ECF, the docket and information about relevant dates/deadlines are hosted by a third-party [here](#) (this is required by the bankruptcy court so the public can readily access information).

The creditor or counsel should monitor the case and relevant deadlines. Counsel can file a Notice of Appearance and Request for Service of Papers. (See [Fed. R. Bankr. P. 9010\(b\)](#)). After filing a Notice of Appearance and Request for Service of Papers, counsel will receive electronic notice

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<sup>3</sup> Creditors should consult with their lawyer or accountant to acknowledge and document the bankruptcy and any claims they may submit in their company's records. Creditors should also cease any collection efforts against the debtor because collection efforts, settlements, etc. outside of the bankruptcy proceedings are not allowed absent leave of the court.

of all pleadings filed by parties in the case and be notified of any hearings and deadlines established by the Court.<sup>4</sup>

With respect to the need to retain local counsel, the U.S. Bankruptcy Court for the District of Delaware [permits parties](#) (*pro se* or through out-of-state counsel) to file or prosecute a proof of claim or a response to their claim. The Court may, however, direct the claimant to consult with Delaware counsel if the claim litigation will involve extensive discovery or trial time.

## C. The Proof of Claim

A [Proof of Claim](#) is an essential initial element in the bankruptcy process. It documents a creditor's right to repayment from the debtor. The proof of claim describes the type of claim, priority status, and the amount of the outstanding debt. Filing a Chapter 11 bankruptcy proof of claim can affect whether, how, and when you receive repayment from the debtor.

A proof of claim will need to include redacted copies of any documents supporting the claim that are required by [Bankruptcy Rule 3001\(c\)](#), including:

- Any writings supporting the claim (*i.e.* contracts, correspondences, invoicing, etc.).
- An itemized statement of the interest, fees, expenses, or charges.
- Documents demonstrating the existence and scope of a security interest in property of the estate.
- When a claim is based on an open-end or revolving consumer credit agreement, a statement including the following information that applies to the account must be included:
  - the name of the entity from whom the creditor purchased the account;
  - the name of the entity to whom the debt was owed at the time of an account holder's last transaction on the account;
  - the date of an account holder's last transaction;
  - the date of the last payment on the account; and
  - the date on which the account was charged to profit and loss.

Chapter 11 creditors technically do not need to file a proof of claim and should receive notices automatically by mail because the debtor is required to list its creditors in the Creditor Matrix.

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<sup>4</sup> Representatives of the creditor listed on the debtor's creditor matrix may automatically receive notifications from the bankruptcy court; however, ensuring updated contact information is provided to the court through entry of appearance or proof-of-claim is best practices.

However, this assumes the debtor has accurately described the nature and amount of the debt owed in its schedules and has not designated the debt as disputed.

Even if a creditor is not technically required to file a proof of claim, filing the claim can be a useful exercise and will supersede the information—whether correct or not—filed by the creditor and listed in their schedule of assets and liabilities. Filing a proof of claim and supporting documentation allows creditors to dispute any inaccuracies in the debtor’s schedules such as:

- category of debt;
- amount listed;
- creditor is not listed in debtor’s schedules;
- claim is designated as disputed, unliquidated, or contingent.

Instructions and an electronic proof of claim form in the FTX case can be found and submitted [here](#), as shown in the screenshot below. Instructions for filing a claim via mail can be found [here](#).

United States Bankruptcy Court District of Delaware

**File Claim**

Case Number   
Example: 14-00002

Name of Creditor

Filed by

**IMPORTANT NOTICE OF REDACTION RESPONSIBILITY:** All filers must redact: Social Security or taxpayer-identification numbers; dates of birth; names of minor children; and financial account numbers, in compliance with Fed. R. Bankr. P. 9037. This requirement applies to all documents, including attachments.

**IMPORTANT WARNING:** A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

I understand that, if I file, I must comply with the redaction rules. I have read this notice.

Next

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Update this message via Site->ePOCMessageFront

Installed Version: 7

FTX’s case information is provided below.

- *In re: FTX Trading Ltd., et al.*
- Case No. 22-11068 (JTD)

The last possible date that creditors are allowed to file their proof of claim against a Debtor in a bankruptcy case is known as the Bar Date. This is effectively the deadline for creditors to adhere

to the bankruptcy claims timeframe through timely submissions of proof of claim to be accepted by the court. Assuming their information is correctly listed with the court, the creditor should receive a Notice of the Bar Date in their formal notice of bankruptcy filing issued by the bankruptcy court. **As noted below, in the FTX case, there is currently no deadline to file claims.**<sup>5</sup>

#### Submit a Claim

DATE HIGHLIGHTS	
NOVEMBER	Petition Date
11	
2022	
<hr/>	
	Deadline to File Claims
TBD	

Generally, the bar date is set by the court [within 90 days](#) of the initial bankruptcy filing; however, the complexity of FTX’s insolvency may extend this timeline.

## D. Types of Claims

In the administration of a bankruptcy estate, there are four types of claims. The type of claim will be relevant to the documentation accompanying the proof of claim. The character of the claim determines when and how any amounts are paid to the creditor. A brief overview of the four types of claims is provided below:

- A **secured claim** is debt supported by collateral or a lien on a specific property of the debtor. Secured debt, like a mortgage or car loan, is backed by specific collateral that may be claimed by a lender if the debt goes unpaid. Secured claims have priority in the bankruptcy process, meaning they are paid before other creditor classes.
- An **unsecured claim** is, by definition, one that does not meet the requirements of a secured claim. Unsecured debts, such as credit card or medical bills, do not grant lenders any specific collateral rights. Crypto firms that sought bankruptcy protection in 2022, including Voyager Digital and Celsius Network, have classified [most of their customers](#), particularly those with interest-bearing accounts, as unsecured creditors. In the case of FTX, the interests of this class of unsecured creditors will be [represented by a committee](#)

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<sup>5</sup> Creditors receiving notice mailed to a foreign address, may also file a motion asking the court to extend the deadlines in the Notice (*i.e.* to file a proof of claim or the Bar Date).

composed of account holders, investment funds, and an affiliate of U.S. crypto firm Genesis.

- An unsecured **priority claim** is debt entitled to special treatment in the bankruptcy claims process and is paid ahead of unsecured non-priority claims. Examples include:
  - Employee compensation;
  - Unpaid contributions to employee benefits plans;
  - Tax obligations owed to the government;
  - Pending personal injury or workplace injury or death claims;
  - Certain deposits are given to the creditor to secure future goods or services
  - alimony and child support;
  - The costs of administering the bankruptcy case (*e.g.* professional accounting and legal fees).
- If an unsecured claim does not fall under any of the categories above, then it may be considered a non-priority unsecured claim. Nonpriority unsecured creditors are the last to get paid when money is available.

## **E. What Happens After I File?**

Once a proof of claim has been filed, debtors—assuming they did not file and confirm electronically—can confirm that their claim was received by the bankruptcy court by enclosing a stamped self-addressed envelope and a copy of the completed form, and the court will return a stamped confirmation in the mail.

Chapter 11 bankruptcy proceedings—including what will almost certainly include many sub-cases pendant to the FTX bankruptcy called adversarial proceedings—are generally lengthy endeavors. Administration of the FTX’s bankruptcy will likely be further complicated by fraud and other civil and criminal allegations that might result in a Ponzi determination and civil forfeiture proceedings. Ultimately, it may be many years before a Plan of Reorganization is approved and claim payouts are ultimately distributed. This is further assuming there are sufficient funds available to make any payment to creditors. However, by submitting a valid proof of claim to the court, creditors can ensure their bankruptcy claim is accurately represented in the case, and that there is some legal right of recourse against FTX.

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*Nathan Postillion is a U.S. attorney with an active litigation and counseling practice assisting builders, developers, traditional companies, and decentralized communities. He is a member of the [Blockchain Lawyers Group](#), BanklessDAO’s Legal Guild, [LexDAO](#), [LeXpunK](#), and member/consultant/contributor to a variety of DAOs and protocols. Read his*



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