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March 20, 2023

VIA ECF

Hon. Analisa Torres
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *SEC v. Ripple Labs Inc., et al.*, No. 20-cv-10832 (AT) (SN) (S.D.N.Y.)

Dear Judge Torres:

Defendants Ripple Labs Inc. ("Ripple"), Bradley Garlinghouse, and Christian A. Larsen respectfully submit this notice of supplemental authority relevant to their Opposition to the SEC's Motion for Summary Judgment (ECF No. 675).

On March 11, 2023, Judge Michael Wiles of the U.S. Bankruptcy Court for the Southern District of New York issued a ruling in *In re Voyager Digital Holdings, Inc.*, No. 22-10943 (MEW) (Bankr. S.D.N.Y. March 11, 2023), ECF No. 1170 ("Op."), attached hereto as Exhibit A. This ruling provides further support for Defendants' fair notice defense.

Voyager concerned the bankruptcy of Voyager Digital, a digital asset brokerage company. Under the proposed bankruptcy plan, Voyager would sell its assets—including a digital asset called VGX—to the exchange Binance.US. The SEC objected to the plan, arguing that VGX had "aspects of a security" (without specifying what those aspects were). Op. at 9-10. It further objected that Binance.US was an unregistered securities exchange (without specifying why the SEC's Staff thought so). *Id.* Judge Wiles rejected the SEC's objections and approved the bankruptcy plan. *See id.* at 13-14, 49. His bases for rejecting those objections endorse many of the arguments Defendants have raised here.

First, Judge Wiles "rebuked the SEC attorneys for the vagueness" of their objections, noting that the SEC had not "offered any guidance at all as to just what it was that the Debtors

allegedly were supposed to prove" in order to show that VGX was not a security. *Id.* at 9; *see also id.* at 10 ("I reject the contention that the Court, and the Debtors, somehow were supposed to figure out for themselves just what 'aspects' of the VGX token might be considered to be aspects of a 'security.'"). He also emphasized "the limited guidance that the SEC has provided" generally to market participants. *Id.* at 11.

Second, just as Defendants have highlighted in connection with their fair notice defense, *see* ECF No. 675 at 43, 45-46 & n. 29, Judge Wiles found that cryptocurrency market participants operate "in a regulatory environment that at best can be described as highly uncertain," in which "[r]egulators themselves cannot seem to agree as to whether cryptocurrencies are commodities that may be subject to regulation by the CFTC, or whether they are securities that are subject to securities laws, or neither, or even on what criteria should be applied in making the decision"—an "uncertainty [that] has persisted despite the fact that cryptocurrency exchanges have been around for a number of years." Op. at 6.

Copies of the March 11 opinion and relevant hearing transcript in *Voyager*, along with a copy of Judge Wiles's order denying the government's motion for a stay of the March 11 decision pending appeal, are attached as Exhibits A-C for the Court's convenience. We thank the Court for its consideration of this matter.

Respectfully submitted,

/s/ Michael K. Kellogg
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Exhibit A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	**Chapter 11**
VOYAGER DIGITAL HOLDINGS, INC., et al.,	:	**Case No. 22-10943 (MEW)**
Debtors.	:	**(Jointly Administered)**

DECISION REGARDING (1) APPROVAL OF THE DEBTORS' DISCLOSURE STATEMENT, (2) CONFIRMATION OF THE DEBTORS' PLAN OF REORGANIZATION, (3) MOTIONS SEEKING THE APPOINTMENT OF A TRUSTEE, (4) MOTIONS REQUESTING FULL CUSTOMER ACCESS TO ACCOUNT HOLDINGS, AND (5) RELATED MATTERS

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HONORABLE MICHAEL E. WILES
UNITED STATES BANKRUPTCY JUDGE

This Decision addresses the Debtors' request for final approval of the Disclosure Statement that the Debtors distributed in January 2023, the proposed confirmation of the

Debtors' plan of reorganization, and some other motions that were filed by creditors. The proposed plan contemplates a sale transaction that is subject to some strict deadlines, and I dictated my findings and conclusions into the record at the end of the hearing on March 7, 2023 so that a confirmation order could be entered without unintentionally triggering any termination rights on the part of the proposed purchaser. However, I indicated that we would review a transcript of my rulings and would correct spelling, omitted citations, inadvertent errors, and places where I had been less clear than I would have liked during the course of my dictation, and that a corrected and final decision would then be issued. We have received the transcript and we have made corrections, added citations and re-ordered some points for clarity, but have not changed the substance of the decision as it was announced in open Court. This written Decision represents the actual and final Decision of the Court.

We held a lengthy hearing that began on Thursday, March 2 and continued through Tuesday, March 7. There were many participants in the hearing, including a large number of *pro se* parties who are Voyager account holders. I want to thank the *pro se* parties for their participation and for the unusual amount of work and energy that they put into this case. I appreciate that they are not attorneys and that they have labored under some significant disadvantages as a result. I tried wherever possible during the course of the hearing to give the *pro se* parties the chance to ask questions, even if at times we may have strayed somewhat from the issues that are presently before the Court. Unfortunately, I had to exclude one *pro se* party who refused to abide by my instructions and who was disrespectful in his conduct. However, the other *pro se* participants clearly made a significant effort to be helpful and to abide by the rules as I explained them, and I greatly appreciate the fact that they did so.

The primary issue before me in this hearing is the Debtors' request for final approval of their Disclosure Statement and confirmation of their proposed plan of reorganization. The plan, as I said, provides for a sale of customer accounts to BAM Trading Services Inc. (which does business as Binance.US), though account holders can elect not to become customers of Binance.US. The plan also includes a backup option in the event that the proposed deal with Binance.US does not close.

The Debtors have argued that the proposed deal with Binance.US will maximize their ability to make distributions to account holders in the form of cryptocurrencies rather than cash. This may have tax benefits for the account holders, though the tax issues apparently are not completely clear and nobody has presented evidence or made legal submissions to me about the tax issues or the tax benefits. The Debtors have also argued that the proposed deal with Binance.US would permit more cryptocurrencies to be distributed "in kind" than would be permitted by any of the available alternatives. They have further argued that the Binance.US deal would limit the amounts of cryptocurrency sales that the Debtors would have to make, and thereby would reduce the extent to which sales by the Debtors might adversely affect market prices, particularly in the case of cryptocurrencies where normal trading volumes are relatively low.

The objections have focused on many things. Some objections have raised relatively common bankruptcy issues, such as objections to some of the releases that the Debtors have proposed. Other objections are focused more specifically on regulatory issues or on the wisdom of potential dealings with Binance.US.

Let me say at the outset, and as background to my rulings, that I cannot think of another case I have had that comes before me in a setting quite like this one does.

I am aware that there are some people who question the very concept of cryptocurrencies and the whole idea of cryptocurrency investment and trading. I note that no party in this case has taken such a position, and it is not for me to decide whether particular investments are good ideas or not. But it certainly provides an unusual backdrop to this bankruptcy case.

I also am aware that Voyager operated, and Binance.US currently operates, in a regulatory environment that at best can be described as highly uncertain. There are firms that operate as cryptocurrency brokers or exchanges, and have done so for several years, without being subject to clear and well-defined regulatory requirements. Regulators themselves cannot seem to agree as to whether cryptocurrencies are commodities that may be subject to regulation by the CFTC, or whether they are securities that are subject to securities laws, or neither, or even on what criteria should be applied in making the decision. This uncertainty has persisted despite the fact that cryptocurrency exchanges have been around for a number of years.

If the current regulatory environment can be characterized as uncertain, the future regulatory environment can only be characterized, in my mind, as virtually unknowable. There have been differing proposals in Congress to adopt different types of regulatory regimes for cryptocurrency trading. Meanwhile, the SEC has filed some actions against particular firms with regard to particular cryptocurrencies, and those actions suggest that a wider regulatory assault may be forthcoming. The CFTC seems to have taken some positions that are at odds with the SEC's views. Just how this will all sort itself out, how the pending actions relating to cryptocurrencies will be decided, and just what issues might be raised in future regulatory actions, and how they will affect individual firms or the industry as a whole, is unknown.

Complicating things further is the fact that Voyager operated, and Binance.US continues to operate, in an industry that also has been the subject of severe financial shocks over the past

year. Many firms were adversely affected by the loan defaults of Three Arrows, including Voyager itself. The Three Arrows defaults led to several bankruptcy filings across the country. The more recent and sudden collapse of FTX has reverberated even more throughout the industry and has also led to some financial problems at other firms.

Perhaps the most worrisome, for me, are revelations of apparent misbehavior and misuse of customer assets at some firms. I certainly do not have all of the evidence as to what happened at FTX, and we will all have to wait until judgments can be entered in that case before we are sure exactly what happened. However, public statements by the persons currently handling the bankruptcy of FTX have indicated that there was an enormous disparity between the way that FTX actually operated, and the way it actually used customer assets, as opposed to what it had represented to its customers.

I am also aware of the examiner's report about the conduct of business at Celsius, and how the custody of customer assets at that firm may have differed from public statements as to how customer assets were being treated. Once again, I certainly do not have all the evidence as to what actually happened at Celsius, and we will have to see what further developments there are in that case. But the examiner's report certainly raised the prospect of a disparity between the way that particular firm actually operated and the representations it made to its customers about how assets were handled.

In this particular case, some account holders and some other parties have referred me to newspaper or magazine articles, or to a recent letter sent by a group of US Senators, all raising questions about how Binance.US does business and perhaps more questions about how its affiliated companies do business. Despite the questions that have been raised, however, I must note that I have been offered absolutely no actual, admissible evidence – I mean literally zero

admissible evidence – that would support an accusation that Binance.US is misusing customer assets or is engaged in misbehavior of any kind at all. Instead, I am in the unenviable position of having to make a ruling about the proposed transaction in the face of hearsay accusations of potential wrongdoing, in an industry where other firms have apparently engaged in real wrongdoing, while having absolutely no evidence indicating that there is any good basis for the questions about Binance.US that have been raised.

With those observations to put things into context, let me turn to some of the actual objections that have been filed. The first one that I will address is the objection filed by the Securities and Exchange Commission.

The SEC argued in its written objection that the Debtors cannot prove the feasibility of their proposed plan, for two reasons. First, the SEC argued that in its view the Debtors had the burden to prove that the rebalancing of the Debtors' cryptocurrency portfolios (in preparation for plan distributions) would not involve illegal purchases and sales of securities. The objection did not take the position that any particular cryptocurrencies are securities, or otherwise explain how or why the Debtors' rebalancing activities might be illegal, although it did contain a vague footnote suggesting that the VGX token was one as to which some unspecified issue might exist.

The SEC also suggested that the Debtors should be required to prove that Binance.US is not operating as a securities broker without registering as such. Once again, the SEC did not actually take the position that Binance.US *is* operating as an unregistered and unlicensed securities broker. Instead, it just suggested that the Debtors had the burden to prove the negative, without offering any evidence or even any reason to think that Binance.US actually is doing anything for which it requires further SEC registrations.

I questioned the SEC about these objections at the outset of this hearing, and to some extent I rebuked the SEC attorneys for the vagueness of their submission, though in fairness to the SEC attorneys I think they were just the messengers and not the architects of the message that they were sent to deliver to me. Although the SEC contended that the Debtors somehow had to prove a negative – *i.e.*, that the Debtors were not violating securities laws and that Binance.US is not violating registration requirements for brokers – the SEC had not even affirmatively contended that the Debtors were doing anything wrong, or that Binance.US was doing anything wrong. Nor had the SEC offered any guidance at all as to just what it was that the Debtors allegedly were supposed to prove on these issues, or how the Debtors possibly could prove what the SEC wanted them to prove without receiving any explanation at all from SEC as to just why the Debtors' operations, or Binance.US's operations, might raise legal issues.

Near the end of the hearing on Friday the SEC asked to provide clarification of the SEC's legal position. The SEC initially asked if it could state its position only to me on an *in camera* basis, but I denied that request and ruled that to the extent the SEC wanted to say something further about its objection, it ought to be stated in the public forum, where all other interested parties could hear and understand the SEC's position. The SEC representatives then said two things on the record. First, I was told that the SEC staff believes that the VGX token has aspects of a security, but that the Commission itself has not taken any position on that subject. Second, I was told that the SEC staff believes that Binance.US is operating as a securities exchange without registering as such, though once again the Commission itself has not taken any position on that subject. Although the SEC offered these clarifications as to what the SEC staff apparently believes, the SEC emphasized that only the Commission itself could take a formal position on behalf of the SEC, and that these views of the staff did not constitute the official

views of the SEC. Furthermore, although the SEC had obtained clearance to reveal the staff's beliefs, the SEC confirmed that it was not authorized, and did not intend, to present any evidence on these issues, or even any further explanation as to the bases for whatever beliefs the SEC staff may have.

To the extent that the SEC contends that these issues are bars to the confirmation of the Debtors' plan, I must disagree. In the first place, I reject the contention that the Court, and the Debtors, somehow were supposed to figure out for themselves just what "aspects" of the VGX token might be considered to be aspects of a "security," or just what particular activities of Binance.US allegedly could raise registration issues, and then somehow to offer evidence and legal argument on those points.

This bankruptcy case has been pending since July 2022. Customers and creditors have been denied access to their assets for many months, and they deserve to have a resolution of the case. Bankruptcy cases are very expensive, and each and every delay means that administrative expenses eat away at the recoveries that creditors may receive. I have a proposed plan of reorganization before me, and I have an obligation to make a ruling – now – as to whether it can be confirmed. I cannot simply put the entire case into an indeterminate and expensive deep freeze while regulators figure out whether they do or do not think there is any problem with the transactions that are being proposed.

As I said at the outset of the hearing, if a regulator believes there is a legal issue with respect to something that is proposed before me, I am more than anxious to hear an explanation and to consider the issue. But if there is a problem, I expect a regulator to tell me that it has an actual objection (as opposed to saying that there "might" be an issue), and also to tell me what

the issue is and *why* it is an issue, so that other parties may address it and so that I may make a proper and well-considered ruling.

Here, I do not know how any party could possibly be expected to address the SEC's comments with the limited guidance that the SEC has provided. The SEC did not explain why the VGX token should be regarded as a security, for example, leaving me only to guess as to what the arguments might have been. Similarly, the SEC did not explain why it thought Binance.US might be operating as a securities broker. I do not know, for example, if there is one specific cryptocurrency token that may have been traded by Binance.US and that the SEC thinks was a security (for which the relevant remedy might simply be to stop trading in that token), or whether the SEC has different theories. If we were to try to address the issues, we would have to guess what the issues were, and would have no idea if we were even discussing the right points.

I understand and appreciate that the SEC is limited in what it can say about potential enforcement actions. But I cannot conclude from this record that an enforcement action is even likely, let alone whether it would be meritorious or even what arguments would be made. I also cannot determine, even if an enforcement action were brought, whether it would affect the transactions that I am being asked to approve. On this very point, for example, I asked the SEC's counsel at the outset of this hearing to explain what the consequences would be if Binance.US were to be found to have been acting as an unregistered broker dealer. I asked if that would just mean that Binance.US might have to stop certain activities while it pursued a license, or if it would mean that Binance.US would have to shut down all of its activities. The SEC said it could not answer that question. Notwithstanding that statement, the SEC took the position during argument on March 6 that the Debtors' Disclosure Statement allegedly was deficient because it did not more specifically describe what the results of a regulatory action

against Binance.US would be. As I said then, I do not know how the Debtors could have been expected to be more specific about that question when the SEC attorneys themselves told me that they could not answer the question.

In addition, the SEC's argument on these points has all been phrased in terms of whether the Debtors can prove the "feasibility" of their proposed plan. "Feasibility," in bankruptcy parlance, is a shorthand reference to the provisions of section 1129(a)(11) of the Bankruptcy Code, which states that in order to confirm a plan the court must find that the confirmation "is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." 11 U.S.C. § 1129(a)(11). Here, the only issues the SEC has raised are (a) whether one specific token (VGX) is a security, and (b) whether Binance.US needs to register as a securities broker. There is no reason why these issues affect "feasibility" of the kind discussed in section 1129(a)(11).

The SEC has been aware of the VGX token for some time and has not even reached a conclusion as to whether it is a security, let alone taken any action to stop trading in the token. In addition, even if there are problems with the sale or distribution of VGX, there is no reason to my knowledge why that would or should impede or affect the remainder of what the Debtors are proposing. Similarly, even if Binance.US were to be told to stop its business entirely, the Debtors' plan in this case provides a so-called "toggle" option under which the Binance.US deal would be stopped and the Debtors would instead make distributions, to the extent they could, without using Binance.US. There would have to be some practical changes as a result, and the recoveries that account holders would receive would likely diminish, but the plan itself includes the toggle option, and so there is no reason to think that the issues the SEC has raised as to

Binance.US would mean that we would need a further "liquidation" or "reorganization" of a kind that is not already provided for in the plan.

For these reasons, the issues raised by the SEC do not really go to the "feasibility" of the Plan as that term is used in section 1129(a)(11) of the Bankruptcy Code. I appreciate that the SEC made some effort to tell me something about what the staff is thinking, but in the end it did not support the highly conditional objection that the SEC filed.

One of the requirements for confirmation of a Plan is that the plan has been proposed in good faith and not by any means forbidden by law. *See* 11 U.S.C. § 1129(a)(3). Voyager's case is a high-profile one, and the facts that Voyager has been attempting to sell itself to another firm, and to make "in kind" distributions of cryptocurrencies to account holders, has been known for many months. The SEC and all other government agencies have had a full and fair opportunity to object if they believe that the rebalancing transactions that I have previously approved and that are contemplated by the plan are illegal in any way, or if they believe that the distributions of cryptocurrencies and cash that are contemplated by the plan are violative in any way of any applicable statute, rule or regulation. I have no desire or intention to approve anything that runs afoul of legal limits, just as I have no desire to approve anything that will put customers at risk. The plain fact is, however, that the SEC has not actually made any objection. It has only vaguely hinted at possible issues that have not even been described in a manner that would permit the Court or the parties to address them.

This is a Court. In the end I have to make decisions based on actual, admissible evidence and, where legal issues are involved, based on cogent legal arguments. I have no actual evidence or cogent legal argument, from the SEC or from any other regulator or party, that could support a contention that the plan would require Voyager to purchase or sell any token that should be

considered to be a security, or that Binance.US is engaged in any activity for which it is required to register as a broker or dealer. I therefore am compelled by the evidence and arguments before me to reject and overrule any contention that the transactions contemplated by the Plan would be illegal, and any suggestion that for regulatory reasons the Debtors would be unable to complete their proposed liquidation. The Debtors have offered evidence that Binance.US has the operational and financial capability to perform its obligations, and I have not been given any evidence to suggest that Binance.US could not legally perform those obligations.

For similar reasons, I reject the contentions by the SEC and others to the effect that the Debtors allegedly did not offer sufficient disclosure about potential regulatory risks. The Disclosure Statement that was distributed included specific disclosures about regulatory issues faced in so-called "Unsupported Jurisdictions" where Binance.US does not have certain regulatory licenses. *See* Disclosure Statement (ECF No. 863) at pp. 79-80. It also included detailed statements to the effect that:

- The Debtors could not predict whether regulators would take the position that additional regulatory approvals are required for the completion of the contemplated transactions (*id.* at 21-22), and that therefore there could be no guaranty that there would not be regulatory issues;
- The Debtors' business is subject to "an extensive and highly evolving regulatory landscape" that involves significant uncertainties, and that it is possible that governmental bodies might disagree as to whether particular laws or regulations are applicable to the Debtors or to the contemplated transactions (*id.* at 74-76);
- The Wind-Down Debtors could be adversely affected by potential litigation or regulatory actions (*id*. at 76); and

- Consummation of the proposed restructuring transactions might require approvals of governmental units and the failures to obtain such approvals "could prevent or impose limitations or restrictions on Consummation of the Restructuring Transaction and Confirmation of the Plan." *Id.* at 76.

Voyager also disclosed all of the regulatory inquiries that it had received from federal and state authorities (*id*. at 76-79), and nobody has contended to the contrary, although I note that none of those inquiries appeared to relate to the characteristics of the VGX token or to the activities of Binance.US. The Disclosure Statement stated that Voyager had received a subpoena from the SEC dated January 5, 2022 that explored (a) whether the Rewards Program that Voyager was offering at that time constituted a securities offering, and (b) whether Voyager needed to register as an investment company. *Id*. at 80. It further revealed that on July 15, 2022 the SEC had asked for certain financial statement information and other internal documentation, and that in August and September 2022 Voyager had received inquiries and a subpoena from the CFTC. *Id.* Other state and federal inquiries were also described. The inquiries show that the regulators raised many questions about Voyager's past activities, but frankly I did not see anything in them that would bar the transactions that are currently contemplated, and nobody has argued to the contrary here.

I do not believe that the Disclosure Statement, which was circulated in January 2023, needed to be any more specific than it was, particularly with regard to issues that the SEC itself did not identify until March 2023 and that the SEC itself has not been able to explain during this hearing in anything other than conclusory terms.

A number of questions have also been raised about the extent to which account holders would be protected if they were to become customers of Binance.US. These objections have

been posed by the SEC, the Office of the United States Trustee, the State of Texas and the State of New York. Nobody has suggested that the Debtors had information that they were hiding from anyone on these points. Similarly, nobody has contended that the Debtors made any misrepresentations about the Debtors' own conclusions about Binance.US. Instead, various parties have suggested that the Debtors should have obtained different or better assurances from Binance.US as to how it handles customer assets, and that the prior disclosures supposedly were inadequate to the extent they did not already anticipate or describe the results of the additional assurances that the objecting parties think the Debtors should obtain.

Although these objections have been framed as complaints about the disclosures that were included in the Disclosure Statement, I do not believe that is an accurate way to characterize them. As I said during the hearing, it is more accurate to say that these are substantive questions masquerading as disclosure issues. They are substantive complaints about what the Debtors have done or should be doing to assure themselves of a lack of problems before the transaction closes, rather than proper objections to the disclosures that the Debtors already made.

The Debtors have made clear that their due diligence as to how Binance.US does business is a constant, ongoing project and that the Debtors will continue to ask questions and to seek assurances as issues are raised. We would all be shocked if the Debtors did not do so. It is simply wrong for various parties to suggest that the January 2023 Disclosure Statement was somehow inadequate just because it did not describe follow-up conversations that had not yet taken place and follow-up assurances that had not yet been received. If I were to impose such a standard it would mean, in effect, that the Debtors would have had to stop their due diligence inquiries once a Disclosure Statement had been approved, for fear that any further discussion

would immediately mean that the prior disclosures were deficient and that the entire expensive process would have to start all over again so that materials could be updated. That would be an absurd result.

I do not find anything deficient in what the Disclosure Statement actually said, and the evidence of the Debtors' further due diligence investigations just supported what the Debtors had already said in the Disclosure Statement, rather than suggesting any need for revised disclosures.

The Disclosure Statement revealed that cryptocurrencies would be transferred to Binance.US only as and when they were to be distributed to customers, and that until such time as the distributions were completed Binance.US would receive and hold the cryptocurrencies "solely in a custodial capacity in trust and solely for the benefit of Account Holders who each open an account on the Binance.US Platform." *Id.* at 7, 35. Pages 34-36 of the Disclosure Statement also revealed that the Debtors had sought and obtained various assurances from Binance.US that:

- Binance.US had the financial resources to complete the proposed transaction;
- Binance.US "maintains 100% reserves for all its customers' digital assets" and would have "substantial capital remaining" even if all customers were to withdraw all of their digital assets;
- Binance.US "does not lend any of its customers' assets or offer margin products on its platform;"
- Customer assets transferred to Binance.US would be held by Binance.US "pursuant to its standard digital asset wallet infrastructure which is stored on Amazon Web Services (AWS) servers located in Northern Virginia and Tokyo;" and

- Binance.US "has various security protocols in place to ensure the safe storage of customer assets" and that those security protocols "have achieved various third-party expert certifications" attesting to their compliance with industry standards.

During the hearing, the Debtors also described other requests for information that they had made and other assurances they had sought. The evidence included testimony that Binance.US had been asked to provide, and had provided, a sworn statement as to certain of its business practices. At my request the Debtors obtained the consent of Binance.US to offer that sworn certificate as evidence of the diligence the Debtors had conducted and as evidence of the bases for the conclusions the Debtors had reached. The certificate was admitted into evidence and filed on the docket so that all parties could see it. (ECF No. 1137-2.) It is dated February 28, 2023 and it states:

- Binance.US holds digital assets deposited by its customers "solely in a custodial capacity and on a one-to-one reserve basis;"
- Binance.US "segregates the Customer Assets from the Company's digital assets on its general ledger;"
- Only employees of Binance.US are able to move or withdraw Customer Assets;
- Binance.US does not lend or rehypothecate Customer Assets; and
- Binance.US maintains security protocols and procedures that are reviewed by independent parties and that comply with various applicable standards.

These results of the Debtors' further due diligence just reinforced what the Debtors had already said in the Disclosure Statement. The fact that these inquiries were made did not mean that the original disclosures were deficient in any way.

The evidence does not satisfy everyone. I am sure there are some people who are worried about news reports and who would prefer to have nothing to do with Binance.US. During cross-examination, more than a few objectors pointed out that FTX had also made representations to the Debtors and that those statements had turned out to be false, though in fairness the witnesses have testified that they have ramped up their investigations and increased the information and assurances they have sought from Binance.US in light of what happened with FTX.

I do not mean to cast aspersions on Binance.US when I say this, but it is of course true that in the end we can never be one hundred percent sure that a representation is true and correct, even when it is made under oath. At the same time, however, we do not usually presume that people are lying or that buyers are dishonest, particularly in the absence of any evidence suggesting that they actually are.

My role, as the Bankruptcy Judge, is in the first instance to determine whether the proposed plan complies with the provisions of the Bankruptcy Code itself. As to the business details and the business wisdom of the arrangement, however, and as to the selection of the proposed counterparty, my role here is more limited. So long as the provisions of a plan comply with Bankruptcy Code requirements and applicable laws, my authority is limited to a determination of whether the Debtors' desire to do this transaction is within the scope of the Debtors' reasonable business judgment. *See In re Borders Group, Inc.,* 453 B.R. 477, 482 (Bankr. S.D.N.Y. 2011), and cases cited therein. Furthermore, in considering that issue I am required to make decisions based on the evidence that is submitted to me.

I understand the point of view of the skeptics here. Given what has happened in this industry I cannot help but be worried myself about how any firm in this industry might handle

customer assets. But the plain fact of the matter is that I have been given absolutely no admissible evidence – literally none – that would support a conclusion that Binance.US will misuse customer assets or that Binance.US cannot be trusted. Any party in interest who wished to object to a transaction with Binance.US was entitled to take relevant discovery and was entitled to present evidence of any problems that were discovered, but no party did so. The evidence that is actually before me requires me to conclude that the Debtors are exercising reasonable business judgment in electing to proceed with the transaction.

That does not mean that I think that every detail of the proposed transaction was necessary or even appropriate. During the course of the hearing I asked the Debtors and Binance.US to consider certain changes to the terms of their proposed arrangement that I believed would not affect the primary business terms but that would help to address other concerns and questions that had been raised.

First, after our hearing in January the Binance.US deal was clarified to say (and my Order entered in January clearly says) that from the time when assets are transferred to Binance.US, until the time they are distributed to account holders, Binance.US would be acting as a distribution agent for Voyager. Accordingly, during that time Binance.US would be only a nominal owner of the assets. Binance.US would not have any beneficial interest in the assets during that distribution period. Instead, the assets would be held by Binance.US strictly in trust for (and in custody for) either the Debtors or the account holders, respectively.

Binance.US has also previously confirmed that customers may immediately withdraw assets from Binance.US if they choose to do so. During the hearing I suggested that it would make sense if what I have just referred to as the "distribution period" – i.e., the period during which Binance.US is deemed to have no beneficial interest in the assets – were to continue for a

sufficient amount of time after a customer's account is credited so that customers who wish to make immediate withdrawals can do so without sacrificing any of the protections that my order might provide to them. Binance.US has not only agreed to that suggested change, it has gone further. It has agreed with the Debtors to the inclusion of language in the Plan documents and in my order to the effect that the assets transferred to Binance.US by Voyager will *always* be held in strict trust and in custody for customers, and that Binance.US will not have beneficial interests in those assets. That language now appears in Article IV, section C of the plan.

Second, I asked that the parties consider a change to the proposed treatment of account holders who live in what the parties have called "Unsupported Jurisdictions," which are four States in which Binance.US does not currently have the licenses necessary to distribute cryptocurrencies to customers. I understand (and will address below) the issues that have been raised regarding the fact that customers in most states will be able to receive distributions in the form of cryptocurrencies, whereas customers in the Unsupported Jurisdictions will have to wait six months to see if Binance.US can obtain the needed approvals, and will receive cash distributions at the end of six months if Binance.US cannot obtain such approvals. The question that I raised with the parties, however, is as to account holders in Unsupported Jurisdictions who do not want to become Binance.US customers and who would prefer to take a cash distribution. Under the proposed plan, customers in most States who do not become customers of Binance.US, or who just would prefer cash distributions for other reasons, will be given cash distributions at the end of a three-month period. Since customers in most states can get such cash distributions after three months, I raised the question as to why customers in Unsupported Jurisdictions should not have that same right. I suggested that this opportunity could be made available by giving customers a simple "opt-out" form by which they would elect to take cash

distributions and would thereby be entitled to them at the completion of the same three-month period. Binance.US has agreed to this proposed change and the change has been incorporated in the plan and related documents.

Third, I noted that the parties' agreement includes provisions requiring the transfer of customer data from Voyager to Binance.US. Voyager has argued that its customer agreements permit the transfer of that data, and no party has offered me any contrary evidence or contention. Under the parties' agreement, as I understand it, the only customer data that has been transferred so far is as to customers who have already made elections to be customers of Binance.US. However, if there is approval of the transaction, there would be a wholesale transfer to Binance.US of all remaining customer data, which would mean that Binance.US would receive all customer data for all Voyager customers, even if those customers elect not to do business with Binance.US. I raised the question of whether these terms could be modified. I recognize that one of the things that Binance.US is "buying" here is the right to market itself to Voyager's customers. I asked, however, whether the transfer of customer data to Binance.US could be limited as much as possible in the first instance (which would enable Binance.US to do such marketing), but with a deferral where possible of the transfer of other, more sensitive customer information (about bank account information, for example) to such time as a particular customer actually elects to be a Binance.US customer. The parties have agreed, in response, to allow customers to "opt out" of the transfer of certain kinds of information, including photo IDs and bank account information, until such time as they actually become customers of Binance.US. The final agreement incorporates this limit, which complies with the terms of Voyager's customer agreements and is a reasonable accommodation of the points the Court raised.

I think that these proposed modifications address some of the objections and issues that came up during the hearing. However, there are other issues that I will now discuss.

The Office of the United States Trustee has asserted additional objections to the Disclosure Statement. One such objection is the U.S. Trustee's contention that the Disclosure Statement was not clear as to who would hold cryptocurrencies and in what capacities: I believe the Disclosure Statement already said, as a I noted above, that cryptocurrencies would only be transferred to Binance.US as and when they were to be distributed to account holders; that until the distributions were completed Binance.US would have only a nominal and not a beneficial interest in the assets to be transferred; and that all such assets would be held in custody and in trust either for the Debtors or for account holders, as applicable. I believe those disclosures were sufficient, and as I have described the parties have agreed to additional language to try to provide further protections to customers.

The SEC has complained that the Debtors did not disclose whether there are meaningful economic benefits to the Binance.US transaction apart from the $20 million that Binance.US would pay in excess of the market valued of cryptocurrencies. I am going to overrule this objection. The Liquidation Analysis that was attached to the Disclosure Statement included projections as to what creditors' recoveries would be under the Binance.US transaction, under the alternative "toggle" proposal, and under a chapter 7 liquidation. It stated that for various reasons (which were explained in footnotes) that the Binance.US proposal would result in approximately $90 million more being available for distribution, resulting in approximately 5% greater recoveries for creditors when compared to the toggle option and about a 14% increase when compared to a possible chapter 7 liquidation. I think those calculations were sufficient to disclose what the Debtors believed as to the value of the Binance.US transaction.

During the hearing there were many questions about these calculations. The Debtors testified that their current estimates are that the Binance.US deal will produce approximately $100 million more in distributable assets than the so-called "toggle" plan would provide. I found the Debtors' explanations and testimony about these points to be reasonable and credible, and I note that no contrary evidence was presented.

The State of Texas has contended that the Disclosure Statement was insufficient because it allegedly did not make sufficient disclosures about certain features of the Binance.US "terms of use" for customers. However, I note that the Disclosure Statement contains many direct links to those terms of use, and all of the arguments about provisions that Texas thinks customers should know are taken directly from the terms of use to which customers were directed. This is not an argument about actual disclosures, and about actual information available to customers, so much as it is a contention (made in hindsight) that the Debtors should have put greater emphasis on specific provisions that Texas thinks are important, instead of just referring customers to the places where the terms could be found. I do not find this to be a proper or reasonable objection. I note that the State of Texas reviewed the Disclosure Statement before this Court's preliminary approval and filed its own objections in January (ECF No. 814), and that in its January objection Texas did not ask for any further disclosures about the Binance.US terms of use. That just supports my conclusion that this is not really a complaint that there was a failure to disclose material information, so much as it is a belated complaint by one party that the Disclosure Statement did not give as much emphasis to particular information as the complaining party would have preferred.

Texas has also complained that the Disclosure Statement allegedly did not disclose the potential effects that a preference lawsuit by Alameda could have on creditor recoveries.

However, the figures quoted in the Texas objection (as to how much recoveries would be affected) were taken from Exhibit C to the Disclosure Statement itself. *See* Disclosure Statement (ECF No. 863) at page 198 of 420. Texas contended, during argument at the end of the confirmation hearing, that the information was too hard to find. However, the information was added to the Disclosure Statement after there was discussion of the point in January 2023. At that time I approved the addition of the information at the place where it ultimately appears, and to my recollection no party complained that it should have been placed elsewhere.

Texas has also complained that the disclosures as to what creditors' recoveries would be somehow shows that the recoveries under the Plan would be less than they would be in a chapter 7 liquidation. I do not think Texas is continuing to press this objection but for completeness I will address it. The problem with the objection is that it was based on an "apples to oranges" comparison. More specifically, Texas compared (a) what the recoveries under the Binance.US deal would be if Alameda *does* have a valid and large administrative claim against the Debtors, versus (b) what the chapter 7 recoveries would be if Alameda does *not* have such a claim. The plain truth, however, is that if Alameda has a large administrative claim it would have that same claim regardless of whether a plan is confirmed or the Debtors are liquidated in chapter 7, and the administrative claim would have the same impact on recoveries in all of the possible scenarios. An Alameda claim therefore would not affect the Debtors' conclusion that recoveries under the proposed plan will exceed what recoveries would be in a chapter 7 liquidation.

A number of parties have also objected to the releases of creditors' claims that have been proposed in the plan. Many of these objections seem to be based on misconceptions as to exactly how the releases work. Just to be clear: the Debtors have proposed to release some claims that the Debtors themselves would otherwise be able to pursue, or that the estate would otherwise be

able to pursue. Some other parties (Binance.US itself, for example, and the Debtors' officers and directors) have agreed to release claims that they might own against the Debtors and a long list of other parties. In addition, creditors were given the opportunity to elect to grant releases – or in bankruptcy terms, to "opt into" releases – if they chose to do so. However, the forms that were sent to creditors made clear that nobody was obligated to opt in and that the choice was strictly voluntary. Many bankruptcy plans provide that an affirmative vote in favor of a plan is itself a consent to the grant of releases, but the plan in this case does not do so. Instead, the plan here provides that no creditor or shareholder has released any claims belonging to that person or entity unless that person has affirmatively done so by executing the "opt in" release form.

I believe that this disposes of the objection filed by the Federal Trade Commission and portions of the objections posed by the United States Trustee and by certain customers, including Mr. Newsom, Mr. Warren, Mr. Hendershott, Mr. Jones and Mr. Brucker. They objected to the approval of nonconsensual third-party releases, but there are no nonconsensual third-party releases here. There is a separate issue regarding the proposed "exculpation" provisions of the Plan and confirmation order, but I will address those provisions in a moment.

There are also challenges to some of the settlements and releases of the Debtors' own claims that are included in the Plan. The United States Trustee filed an objection stating that the "Released Party" and "Releasing Party" definitions should not include the Wind-Down Debtors. That change has been made, and my understanding is that this particular objection is moot.

The Debtors also have proposed a settlement of claims against the Debtors' CEO (Mr. Ehrlich) and former Chief Financial Officer (Mr. Psaropoulos). The Debtors offered evidence that two independent directors were in charge of a Special Committee that investigated possible claims against officers and directors; that the Special Committee hired outside counsel (the

Quinn Emmanuel firm) to assist in that investigation; that the Special Committee had concluded that the only claims against insiders that were worth pursuing were claims against Mr. Ehrlich and Mr. Psaropolous relating to the Three Arrows loans; that the Special Committee further concluded that those claims would be subject to various defenses and that the claims were not "slam dunks;" that the Special Committee had investigated the officers' resources and that the proposed settlements would provide for payments that represent a significant percentage of the officers' available assets; that the Debtors would release other claims against the two officers but would not actually release claims relating to the Three Arrows loans, and instead would only agree that any further recoveries on the Debtors' claims as to the Three Arrows loans would come from insurance proceeds and not from the individual assets of the settling parties. The Debtors also reserved their rights to seek to undo a transaction by which Voyager allegedly paid as much as $10 million, just before its bankruptcy filing, for an additional $10 million of director and officer liability coverage.

When considering a settlement such as this, the applicable Second Circuit authorities make clear that my role is to determine whether the Debtors' decision to settle is a reasonable one, after considering a number of factors. In this case, consistent with the applicable case law, I have considered the nature of the claims that would have been asserted; the legal defenses that could have been asserted (including the business judgment defense); the testimony about additional defenses that could have been asserted under the terms of certain exculpatory language in the Debtors' by-laws or other governing documents; the benefits of the proposed settlement; the testimony that the settlement was the result of arm's-length bargaining; the testimony about the size of the settlement payments in relation to the settling parties' resources; the fact that the settlements preserve the Debtors' rights to pursue the Three Arrows claim

further, though further recoveries on such claims would be limited to insurance proceeds; the competency and experience of the counsel retained by the Special Committee; and the support for the settlement by the Official Committee of Unsecured Creditors. *See Iridium Operating LLC v. Official Committee of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452, 462 (2d Cir. 2007) (citations omitted). I conclude after considering the relevant factors that the settlement with Mr. Ehrlich and Mr. Psaropolous is a reasonable one and should be approved.

I understand that this settlement is disappointing to some of the *pro se* parties who have appeared, a number of whom expressed a strong resentment towards the two settling parties and who expressed a strong desire to pursue them more vigorously and to demand a higher percentage of their net worth before settling. I sympathize with these parties' frustrations, but the only actual evidence that I have on the relevant points is the evidence submitted by the Debtors, and I conclude from that evidence that the settlement is a reasonable one.

The releases that the Debtors proposed to give as to their own claims were not limited to the releases to be granted as part of the settlement with Mr. Ehrlich and Mr. Psaropolous. Instead, the Debtors also proposed to grant broad releases of claims that the Debtors might have against a number of other parties. The parties who would have been the beneficiaries of such releases included the Official Committee of Unsecured Creditors and its members, a long list of "Released Professionals" (which apparently includes all of the law firms and other advisors in these cases), plus all "Released Voyager Employees." "Released Voyager Employees" was defined as "all directors, officers, and Persons employed by each of the Debtors and their Affiliates serving in such capacity on or after the Petition Date but before the Effective Date."

The scope of the releases that the Debtors proposed to give to such persons was extremely broad. The releases proposed to free all Released Parties from all Causes of Action,

whether known or unknown, that the Debtors could have asserted in their own right "or on behalf of the Holder of any Claim . . ." I really did not understand this latter phrase at all. If it was somehow intended to mean that a third party's own claim would be released (on a theory that the Debtors somehow could have asserted it in some kind of representative capacity) it is both too vague and excessive, and I will not approve it.

The plan also proposed to release all of the Released Parties from any claim of any kind that the Debtors might have against those Released Parties "based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership or operation thereof), their capital structure, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Debtor's out-of-court restructuring efforts, intercompany transactions between or among a Debtor and another Debtor . . . or upon any other act or omission, transaction, agreement, event, or other occurrence related to the Debtors taking place on or before the Effective Date," but with an exclusion for actual fraud, willful misconduct, or gross negligence. The evidence before me, however, did not suggest that the Debtors had done any investigation, or made any careful consideration, of all of the types of claims that would be covered by this sweeping language. Mr. Kirpalani, the counsel to the Special Committee, acknowledged that much during oral argument.

As I said during oral argument, this is not a release that is tailored to claims that have actually been reviewed and assessed by the Debtors. Instead, it is a release that is deliberately as broad and all-encompassing as possible, untethered to any actual review of many of the claims that would be subject to the release. I therefore do not believe that the evidence before me

justified and warranted the full scope of the Debtors' releases as they were proposed. The Debtors have since modified the terms of these proposed releases so that they will be limited to matters that the Special Committee actually investigated. I have approved those modified releases in the confirmation order that I have entered.

I want to pause to re-emphasize a point that came up several times during the hearing. A number of account holders and/or shareholders complained during the hearing that they felt they had been misled as to Voyager's financial condition. If a customer or shareholder believes he or she was misled by statements about Voyager's financial condition, and that he or she took actions that he or she otherwise would not have taken and suffered damages as a result, any claims based on such injuries would belong to the customers or shareholders, and not to the Debtors or the estate. The Debtors' proposed releases may release claims that the Debtors themselves were injured due to mismanagement or bad decisions by officers and employees. However, claims for injuries directly suffered by customers or shareholders (*i.e.*, injuries that are not just derivative of injuries suffered directly by the Debtors) are not affected.

The Office of the United States Trustee also objected to the scope of the exculpation provisions that the Debtors sought to include in the Plan. Broadly speaking, the proposed exculpation provision stated that certain parties would not have liability for certain transactions and actions that occurred during the courts of the bankruptcy case or that will occur in the implementation of a confirmed bankruptcy plan. It is routine that bankruptcy plans contain provisions that state that fiduciaries and other parties do not incur liabilities by having engaged in transactions that the Court has approved, or by taking actions that the Court has directed them to take.

In this case, the version of the plan that was circulated to creditors and other parties in interest in January (ECF No. 852) included a proposed exculpation provision that was fairly broad. It stated in relevant part as follows:

> Effective as of the Effective Date, to the fullest extent permissible under applicable law . . . no Exculpated Party shall have or incur, and each Exculpated Party is exculpated from any Cause of Action for any act or omission on or after the Petition Date and prior to the Effective Date based on the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation or filing, or consummation of the Disclosure Statement, the Plan, the Special Committee Investigation, any Definitive Documents or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Disclosure Statement or Plan, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of consummation of the Plan, the administration and implementation of the Plan, including the issuance of securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement . . . except for Causes of Action related to any act or omission that is determined by a Final Order of a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence . . .

It further stated:

> The Exculpated Parties have, and upon Consummation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the solicitation of votes and distribution of consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for any violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

I have previously issued a decision as to what I regard as the proper scope of an exculpation provision and some of the legal justifications for it. *See In re Aegean Marine Petroleum Network, Inc.*, 599 B.R. 717 (Bankr. S.D.N.Y. 2019). As I noted in *Aegean*, "exculpation" provisions are to some extent based on the theory that court-supervised fiduciaries are entitled to a qualified immunity for discretionary actions that they take in their official capacities. However, a proper exculpation provision is also a protection for court-supervised and court-approved transactions. As I noted there, parties should not be liable for doing things that

the Court authorizes them to do and that in many instances a court may direct them to do. *See, e.g., Airadigm Commc'ns., Inc. v. FCC (In re Airadigm Communs., Inc.)*, 519 F.3d 640, 655-57 (7th Cir. 2008) (approving a plan provision that exculpated an entity that funded a plan from liability arising out of or in connection with the confirmation of a Plan, except for willful misconduct); *In re GraniteB Broad Corp*., 369 B.R. 120, 139 (Bankr. S.D.N.Y. 2007) (approving exculpation provision that was limited to conduct during the bankruptcy case and noting that the effect of the provision is to require 'that any claims in connection with the bankruptcy case be raised in the case and not saved for future litigation.").

My reasoning in the *Aegean* case has been approved and adopted by other courts in other cases. *See, e.g., In re LATAM Airlines Grp. S.A.*, 2022 Bankr. LEXIS 1725, at *159 (Bankr. S.D.N.Y. June 18, 2022) ; *In re Murray Metallurgical Coal Holdings, LLC*, 623 B.R. 444, 504 (Bankr. S.D. Ohio 2021). Such provisions are proper to protect those who are authorized – in fact, directed – by the confirmation of a plan to carry out the terms of the plan. *See In re Ditech Holding Corp.*, 2021 Bankr. LEXIS 2274, at *25-26 (Bankr. S.D.N.Y. Aug 20, 2021). My conclusion that parties generally should be protected from liabilities for having done what a Court has specifically authorized (and especially for having done what a Court has directed them to do) is also consistent with a long line of authority, as discussed further below.

In this case, the Debtors and the United States Trustee apparently had discussions, and my understanding is that they had tentatively agreed that the proposed exculpation language in the Plan and confirmation order would be equivalent to what I had ordered in *Aegean* – namely, it would make clear that exculpated parties would not have liability for having done things that I had approved or for making doing what a confirmed Plan would require them to do. This became a much bigger issue, however, at the end of the first week in March, when the Debtors

filed revisions to their proposed confirmation order that included paragraphs that could have been read as barring all federal and state governmental entities and other parties from ever making any assertion of any kind that the Debtors, Binance.US or their representatives were doing anything that violated any federal or state law or regulation. It was not my attention to approve anything so broad, and I said so as soon as the issue came up during argument on March 6. As we discussed the issue during oral argument, however, the SEC, the US Trustee and the US Government circled back to the proposed exculpation provisions, and took the position that no exculpation provision could be granted at all insofar as it would relate to any federal or state statute or regulation. As somebody put it during argument, any officers or directors or entities who would implement the confirmed plan would just have to "take their chances" as to whether the Government might contend that their conduct was illegal, and as to whether the Government might seek to punish them for doing what I had authorized and directed them to do.

Frankly, I think this position by the Government is unreasonable and wrong. It is based on a serious misunderstanding of just what it means when a court confirms a plan of reorganization.

The approval of a plan of reorganization does not just give a debtor an option to proceed with what the plan provides. Instead, section 1142(a) of the Bankruptcy Code states that "the debtor and any entity organized or to be organized for the purpose of carrying out the plan shall carry out the plan and shall comply with any orders of the court." 11 U.S.C. § 1142(a). Section 1142 thereby imposes an affirmative, statutory obligation on the debtors, other entities and their personnel to do what the plan contemplates. In effect, the confirmation order acts as a court order that the plan be carried out.

In this case, confirmation of the Plan will require the Debtors and their respective personnel and representatives (including Binance.US in its capacity as the Debtors' distribution agent) to complete the rebalancing transactions that the Plan contemplates and to make the distributions of cryptocurrencies that the Plan contemplates. Once I confirm the Plan, the relevant parties will have no choice but to do so.

All of the relevant governmental entities have been on notice of what the plan proposes. They had every opportunity to tell me if they believed that anything contemplated by the Plan would violate any applicable statute, rule or regulation. Four States have taken the position that Binance.US cannot open customer accounts in those States without additional approvals, and the Plan specifically takes account of that fact. No other regulator has contended during the confirmation hearing that there is anything illegal in what the plan contemplates. As noted above, the SEC has hinted vaguely that it thinks there "might" be issues with the Debtors' sales of VGX and/or with some unspecified aspect of Binance.US's business, but it has explicitly stopped short of contending that anything actually is illegal, and has repeatedly declined to offer evidence or to take a firm position on these points.

In short, what the Government is requesting is that I enter a confirmation order that will have the effect, under section 1142 of the Code, of compelling employees, officers, professionals and entities to do the rebalancing transactions that the Plan contemplates and to make the distributions of cryptocurrencies that the Plan requires, while in the view of the Government those same people and entities might then be liable for fines, sanctions, damages or other liabilities just for doing what my confirmation order affirmatively obligates them to do. And the Government contends that this daunting prospect of future liability should hang over the heads of the parties and their personnel even though the Government itself has had every opportunity to

identify any legal issues that are posed by the transactions and is not prepared to say today that there is anything wrongful about what we are currently contemplating.

I think the Government's position is absurd. I note that the Government has conceded, in the supplemental papers that it filed, that many courts have considered participants in bankruptcy proceedings to be protected by a species of qualified immunity. However, while "qualified immunity" is a similar doctrine, it is not entirely accurate as a description of the authority that I have in mind for the exculpation provision. "Qualified immunity" is a doctrine that is applied to people who have discretion to perform specific functions in quasi-official roles but without having obtained specific court approval or acting pursuant to an explicit court direction. Many of the same decisions that discuss such a "qualified" immunity, however, also make clear that there is a broader immunity for actions that are specifically approved by a court and/or that have been explicitly required to be taken by court order, particularly where government officials or other parties had the opportunity to object to the court's approval of an action and did not do so. *See, e.g., Bradford Audio Corp. v. Pious*, 392 F.2d 67, 72-73 (2d Cir. 1968) (receiver was immune from liability for having done what a court order approved and directed the receiver to do); *Dana Commercial Credit Corp. v. Center Teleproductions, Inc. (In re Center Teleproductions, Inc.),* 112 B.R. 567, 577-78 (Bankr. S.D.N.Y. 1990) (trustee granted absolute immunity from action brought by an entity with a security interest in property where trustee acted pursuant to court order); *see also Boullion v. McClanahan,* 639 F.2d 213, 214 (5th Cir. 1981) (holding that where a bankruptcy trustee sought and obtained court approval for his actions he was entitled to absolute immunity); *T& W Inv. Co. v. Kurtz*, 588 F.2d 801, 802 (10th Cir. 1978) (finding immunity appropriate when "every action by [the receiver] objected to in this suit was known to and approved by the state court judge supervising the receiver," the plaintiff

"had an opportunity to and did object throughout the state court proceedings" and "the receiver was in fact following the orders of the court and complying therewith**"**); *Phoenician Mediterranean Villa, LLC v. Swope (In re J&S Props., LLC)*, 545 B.R. 91, 103 (Bankr. W.D. Pa 2015) (where a bankruptcy trustee acts pursuant to an order of court, a bankruptcy trustee is generally afforded absolute immunity*); In re XRX, Inc.*, 77 B.R. 797, 798 (Bankr. D. Nev. 1987) (a trustee acting pursuant to a court order in making a disbursement is not subject to personal liability). As the Court held in *Bradford Audio*, the persons who act under my authority and direction should not be placed in the position of being guarantors of the correctness of my decisions. *Bradford Audio*, 392 F.2d at 73.

Exculpation for doing what a confirmation order requires is entirely proper under these authorities. In a chapter 11 bankruptcy case, the debtors in possession have the responsibilities and duties that a trustee otherwise would have. *See* 11 U.S.C. § 1107(a). Under the plan in this case, the Debtors and entities to be created by the plan (the Wind-down Debtor, under direction of Plan Administrator) must complete rebalancing and make distributions. The plan further contemplates that Binance.US will act as the "distribution agent" of the Debtors; until cryptocurrency distributions are completed, and in that capacity Binance.US will hold assets in trust for either the Debtors or customers, as applicable. The persons and entities who will carry out specific activities that are not only approved by my confirmation order, but also are required by that Order by virtue of section 1142 of the Bankruptcy Code, are entitled to know that they will not incur liability just for doing what I have approved and required, particularly when the SEC and all other Government agencies have had a full and fair opportunity to argue to me that the proposed transactions are illegal in any way and have not made any such contentions.

I do agree that a modification of the original exculpation provision is appropriate, and I have approved a modified exculpation provision that provides as follows:

> Effective as of the Effective Date, to the fullest extent permissible under applicable law and without affecting or limiting either the Debtor release or the third-party release, and except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur, and each Exculpated Party is hereby exculpated from, any liability for damages based on the negotiation, execution and implementation of any transactions or actions approved by the Bankruptcy Court in the Chapter 11 Cases, except for Causes of Action related to any act or omission that is determined in a Final Order to have constituted actual fraud, willful misconduct, or gross negligence; *provided* that nothing in the Plan shall limit the liability of professionals to their clients pursuant to N.Y. Comp. Codes R. & Regs. tit. 22 § 1200.8 Rule 1.8(h)(1) (2009).
>
> The Exculpated Parties have, and upon Consummation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the solicitation of votes.
>
> In addition, the Plan contemplates certain rebalancing transactions and the completion of distributions of cryptocurrencies to creditors. The Exculpated Parties shall have no liability for, and are exculpated from, any claim for fines, penalties, damages, or other liabilities based on their execution and completion of the rebalancing transactions and the distribution of cryptocurrencies to creditors in the manner provided in the Plan.
>
> For the avoidance of doubt, the foregoing paragraph reflects the fact that Confirmation of the Plan requires the Exculpated Parties to engage in certain rebalancing transactions and distributions of cryptocurrencies and the fact that no regulatory authority has taken the position during the Combined Hearing that such conduct would violate applicable laws or regulations. Nothing in this provision shall limit in any way the powers of any Governmental Unit to contend that any rebalancing transaction should be stopped or prevented, or that any other action contemplated by the Plan should be enjoined or prevented from proceeding further. Nor does anything in this provision limit the enforcement of any future regulatory or court order that requires that such activities either cease or be modified, or limit the penalties that may be applicable if such a future regulatory or court order is issued and is violated. Similarly, nothing herein shall limit the authority of the Committee on Foreign Investment of the United States to bar any of the contemplated transactions. Nor does anything in this provision alter the terms of the Plan regarding the compliance of the Purchaser with applicable laws in the Unsupported

> Jurisdictions before distributions of cryptocurrency occur in those Unsupported Jurisdictions.

My order does not purport to limit any contention regarding things that the Debtors may have done in the past that I did not specifically authorize or approve. It does not bar the Government from trying to stop transactions from occurring, and does not bar any regulatory contention in that regard. If the SEC or any other party believes tomorrow that it has grounds to go to court to enjoin further steps in the completion of the contemplated transactions, it is entitled to do so. I am not barring any such thing. I am simply saying that if we get six weeks down the road and then the SEC decides to take action, the people who have spent six weeks doing what I have ordered them to do will not be held liable on an *ex post facto* basis for having followed my order in the interim.

Where the Government has declined to argue that the rebalancing transactions that the plan contemplates are illegal in any way, and where the Government has declined to argue that the distributions of cryptocurrencies to creditors that the Plan contemplates (either through Binance.US or by Voyager if the so-called "Toggle" plan is pursued) are illegal in any way, then the individuals and entities who will be required by my confirmation order to engage in those activities are entitled to know that they have not been sentenced by me to incur statutory or regulatory liabilities just for doing what I have ordered. That is consistent with ordinary practice in bankruptcy cases, with the authorities that I have cited above, and with basic principles of equity and estoppel. It is a fair and proper consequence of the Government's own unwillingness or inability to challenge the legality of the contemplated transactions and of the fact that I am entering an order that not only approves those transactions but actually requires them to be carried out.

If the Government really wants to litigate the legality of the proposed transactions, it has been free to do so. Similarly, if the Government truly wishes for me to make a decision today as to whether the transactions are legal, then I will do so. Based on the evidence that has actually been offered to me, if I were to make that determination today I would have no choice but to conclude that the transactions are perfectly legal. No contrary evidence or argument has been offered to me. However, we have not attempted to foreclose future arguments by the Government, or the Government's assertion of changing or evolving regulatory views. We are simply protecting those persons who in the interim will be engaging in transactions that the Government has failed to challenge and that must be carried out under the authority of this Court's order.

The Government has argued that even an exculpation provision of this kind somehow amounts to a third-party release that offends the principles set forth in Judge McMahon's decision in *In re Purdue Pharma, L.P.*, 635 B.R. 26 (S.D.N.Y. 2021), or that it otherwise represents an action that is beyond my jurisdiction. I do not believe that is accurate at all. *See Blixseth v. Credit Suisse*, 961 F.3d 1074, 1081-83 (9th Cir. 2020) (distinguishing exculpation provisions from third party releases). I plainly have jurisdiction over the confirmation of the plan, over the actions that must be taken to confirm the plan, and therefore as to the effects that my Order may have on the liabilities of persons who will be required to do the things that the plan requires. The arguments in the Government's papers are mostly straw men, taking issue with purported legal justifications for the exculpation provisions that are not the real justifications for those provisions, and failing to discuss any of the authorities that are actually relevant. The Government's position that exculpation is entirely unauthorized and in excess of my authority also is belied by the Government's failure to object to similar provisions that have

routinely been included in thousands of confirmed bankruptcy plans, and the by failure of most of the Government entities in this case (with the sole exception of the U.S. Trustee) to object to the original exculpation provision, which I believe was broader than the one that I have approved. Even the U.S. Trustee's objection just asked for a more tailored version of the exculpation provision, and not the wholesale deletion that other Governmental entities belatedly have requested.

The Government has also suggested that I should just leave it for future courts to decide whether or not my confirmation order has immunized any particular conduct. I do not see how that makes any sense at all. I am the judge who has jurisdiction over the parties and who is confirming the plan, and therefore I am the one who by doing so will require that particular actions should be taken. If it is my Order that is to provide the source of any future immunity, then I should be the one who specifies what it is that the confirmation order has the effect of requiring the parties to do, so that any future court can properly assess the scope of the exculpation that has properly been granted. Asking other courts to guess as to the scope of the intended exculpation, or to second-guess my intentions as to whether particular actions needed to be taken or should have been taken, would be inappropriate and would be unfair to the parties.

Once again, I am not by any means preventing the enforcement of any law or regulation. I am not stopping any regulatory body from stepping in and attempting to enjoin any act or transaction on any applicable regulatory ground. I am simply saying that until such time as some regulatory or court order says that the parties should stop what they are doing, the parties who do what the confirmation order requires them to do should not be held liable for having done so.

I also have an objection by the State of New York to the effect that the Plan allegedly provides for an "unfair discrimination" in the treatment of New York customers as opposed to

customers in other states. The State of Texas has made a similar objection. It appears, though, that the Debtors and Binance.US have resolved a similar issue as to Vermont and possibly as to Hawaii. In any event, the State of Hawaii has not pressed any objection before me during this hearing.

The gist of the New York objection is that customers in 48 states where Binance.US has the required licenses may receive cryptocurrency distributions relatively quickly, but that Binance.US and the Debtors cannot legally do the same thing in New York. Accordingly, customers in New York would have to wait until such time as Binance.US may obtain the necessary approvals in New York. Under the Plan, if such approvals are not obtained within six months, the New York customers will receive cash distributions instead of distributions that include cryptocurrencies.

Curiously, although the State of New York has filed an objection, no New York account holder filed an objection on this ground. This perhaps raises a standing issue, but I do not believe I need to address that question, because I believe that in any event the objection does not have merit.

New York has argued that the plan unfairly discriminates between customers in New York and other states. "Unfair discrimination," though, is not really the right way to describe the objection. Section 1129(b) provides that a plan may be confirmed even if not all classes have voted to accept it, so long as certain conditions are met. One of those conditions is that the plan does not "discriminate unfairly" with respect to "each class of claims or interests that is impaired under, and has not accepted, the plan . . ." Here, the relevant class of creditors is class 3, which is made up of account holders. That class has overwhelmingly voted to accept the plan, not to reject it.

I think that what the state regulators really mean to argue is that the Plan does not provide the same treatment to all members of class 3, as is required by section 1123(a)(4) of the Bankruptcy Code. I think there was a basis for this objection insofar as it related to the treatment of account holders who chose not to receive cryptocurrencies from Binance.US and who instead wished to take cash distributions. The Plan, as proposed, would have allowed most customers to receive cash once three months had passed and they had not affirmatively elected to be customers of Binance.US. Customers in the Unsupported Jurisdictions, however, would have had to wait six months while Binance.US tried to work things out with regulators – even if the relevant customers did not want to be customers of Binance.US, and even if they wanted cash. I could not understand any basis for this different treatment, and as described above Binance.US and the Debtors have agreed to changes that address this issue.

I do not otherwise believe that the objection is correct. It is quite clear that the Debtors and Binance.US would like to make "in kind" distributions to all customers in all states. It is not the terms of the plan that prevent the Debtors and Binance.US from doing so. Instead, it is the different regulatory requirements and licenses in the different states that account for any different treatment that may occur. To put it another way: the plan provides, in essence, that the Debtors will make in kind distributions to customers as soon as they become customers of Binance.US and as soon as the applicable rules and regulations in a given state permit such distributions. However, we are not free to ignore the fact that in certain states that cannot be accomplished as readily as in others. That does not mean that the plan is providing for different treatment of different customers. It just means that the plan itself does not have the power to sweep away the different regulations that apply in different states, and does not have the power to grant licenses to Voyager and/or Binance.US that they do not already have.

Every customer's initial distribution rights will be determined on the same date. The different regulatory regimes in different states may mean that some customers receive distributions on different dates or even in different forms, but the Debtors cannot do anything about that. The only solution to the problem that New York has raised would be to force everyone in the entire country to delay their distributions just because the necessary approvals are not in place to make such distributions to New York customers. That would not make any sense, and New York acknowledged during argument that it is not requesting such a result and that the Bankruptcy Code does not compel such a result.

At one point, papers submitted on behalf of one of the States in the Unsupported Jurisdictions argued that cryptocurrency prices may vary over time, so that the consideration that customers receive may have different values when it is actually received. However, that often happens under bankruptcy plans. In the American Airlines case, for example, creditors were entitled to receive stock as distributions on their allowed claims. There were many disputed claims, however, and the people who held those claims only received stock as and when their claims were allowed. In the meantime the stock price changed, sometimes very significantly. But there was no way for the debtors in that case to control for those price changes, and no practical way for them to ensure that the stock that was reserved and later distributed would have the same value on every single distribution date. The creditors received the same amounts of stock, which is all that the Bankruptcy Code requires and, as a practical matter, the only thing that the Bankruptcy Code could require when property other than cash is being distributed.

Similarly here, the Debtors cannot "solve" for the fact that cryptocurrency prices inevitably will fluctuate. The distributions that are calculated for creditors will be done on the same day and on the same basis. However, some creditors will have disputed claims and will not

receive distributions until disputes are resolved. Other creditors may face delays due to regulatory issues, or simply due to delays in the submission and processing of the paperwork needed to open a Binance.US account. It is inevitable that some customers will actually receive distributions on different dates and that market values may fluctuate, but that does not amount to an "unequal treatment" proposed by the plan.

I therefore overrule the objections as to the Plan's treatment of customers in "Unsupported Jurisdictions."

Some owners of the VGX token have argued that they are being unfairly discriminated against. This is based primarily on the fact that there is no guaranty that the VGX token will continue to be traded in a meaningful way, and therefore no assurance that the VGX token will continue to have much, if any, value. I note that under the terms of the Plan the amounts of the allowed *claims* that customers have, based on their VGX holdings, will be based on the value that VGX had on the date these cases were commenced. To the extent that some of a customer's distributions will be in the form of VGX, however, the values of those distributions will be based on the updated value that VGX has on a specified date in advance of the actual distributions. The goal is to try, if possible, to make some "in kind" distributions if they can be made, thereby possibly reducing tax consequences, though we have no guarantee that will work.

I do not believe the Debtors are in a position to guaranty that VGX will continue to be traded, any more than the Debtors could guaranty that any of the other coins that will be distributed will continue to be traded. Similarly, the Debtors can make no guarantees as to what will happen to the future values of any of the coins. Those are all things that will depend on market forces. Customers who elect to receive in-kind distributions instead of cash distributions

will receive VGX only because they previously owned VGX. I find that this does not amount to a differential treatment or an improper discrimination in violation of any Code requirements.

Some suggestion was made to the effect that the Plan distributions will treat VGX as having a certain value, whereas that value might actually be illusory. Ordinarily the market price of an asset represents the market's assessment of the potential risk and rewards. Even when a stock or other marketable asset may appear to have little future prospect it may nevertheless carry an "option" value based on the possibility that circumstances will change; that is why "out-of-the-money" warrants often have actual market value. Such values are real values in the absence of proof to the contrary, and I have no such contrary proof here. I appreciate that there is perhaps more uncertainty as to the value of VGX, but that does not mean that VGX has absolutely no actual value, or that the provisions of the plan are improper in their treatment of VGX.

There were also objections that were filed as to the identity of the proposed Plan Administrator, Mr. Paul Hage. Many of the objections suggested that the job should not go to anyone associated with the Official Committee of Unsecured Creditors or their individual members, apparently because a number of account holders are not happy with the Committee's decisions and work. Mr. Hage testified about his qualifications and answered questions about his work in the case and as to whether he has any conflicts of interest that would prevent him from serving as the Plan Administrator. He testified that he was the personal attorney to an individual who was a member of the UCC and that at the outset of the case he also gave some advice to UCC members as to how they could organize the process by which they selected a firm to act as counsel to the Committee.

A number of customers postulated that the individual whom Mr. Hage represented was a close friend of Mr. Ehrlich and that this had improperly influenced the Committee member in considering the settlement with Mr. Ehrlich that is embodied in the plan. However, Mr. Hage testified credibly that the relevant Committee member was a large customer of Voyager whose friendly relationship with Mr. Ehrlich ended when Voyager closed down its platform. He further testified that the relevant Committee member actually spoke out against the proposed settlement when it was presented for the Committee's review, and that he ultimately abstained from voting after the votes of other committee members had already made clear that the Committee approved of the settlement terms.

I do not believe that Mr. Hage's limited connections to this Committee member give rise to conflicts of interest or that in the real world they would affect his work.

Some account holders objected on the ground that Mr. Hage has never been a Plan Administrator before. However, a person who has had as much extensive experience in the bankruptcy world as Mr. Hage has had, and who has represented debtors, creditors and other parties, is well qualified to do the work that a Plan Administrator will be required to do in these cases. There were also expressions of concern by some account holders as to whether Mr. Hage would effectively and aggressively pursue claims that the estate might have, but I believe he will do so.

Some other objections have been resolved that I do not need to discuss in detail here. The amended plan has deleted a provision deeming all claims to be objected to. The amended plan has changed a provision that previously stated that that the Wind-Down Debtor "shall have the sole authority on behalf of the Debtors" to object to claims. The parties have also changed a

provision saying that late-filed claims would be deemed disallowed, and the documents now say that late claims are disallowed subject to my approval.

Alameda/FTX at one point objected to the proposed treatment of claims based on loans that Alameda made to Voyager, but that objection has not been pursued. The treatment of the Alameda loan claim also is the subject of a separate stipulation to be presented at a future date. Essentially the plan now provides that the loan claim will be treated in the manner specified in the stipulation; or, if the stipulation is not approved, it will be subordinated; or, if the stipulation is not approved and the court does not order subordination, it will be treated as a claim in the class in which it properly falls.

An Ad Hoc Group of Equity Security Holders objected to the way the Plan described the treatment of Intercompany Claims, but the parties agreed to language that has been included in the plan documents and in the Confirmation Order to address their concerns. I was under the impression that this had resolved this objection until near the end of the hearing, when counsel to the Ad Hoc Group asked that I direct that a separate Plan Administrator be appointed for the ultimate holding company of the Debtors. I will not address that point in detail because the Debtors agreed that each Debtor will have an independent director who will have the right to appear and to be heard on any issue as to which the Debtors' interests are in conflict with each other. The identities of the independent directors have been disclosed, and the Ad Hoc Group of Equity Holders has agreed that these changes resolve the objections.

The Bank of New York filed a curious objection based on property in which it has a mortgage interest. Apparently the owner of the property recently purported to transfer the property to Voyager. My impression is that this came as a surprise to everyone. In any event,

language has been included in the Confirmation Order that resolves the issue and that makes clear that Voyager does not have any interest in that property.

Finally, one party objected to the plan on the ground that it does not provide for a recovery for the holders of equity at the ultimate holding company level. Actually, the plan makes clear that those equity holders will be entitled to distributions if the ultimate holding company has assets once it pays its own creditors in full, though the current predictions are that there will not be any.

There were two other points in the proposed plan and in the proposed Plan Administrator Agreement that I required to be changed and that have been changed. First, the prior versions stated that the Debtors and the Plan Administrator would have no responsibility to try to locate any person for whom a check or other communication is returned as undeliverable. These provisions are often proposed, but I do not believe that I personally have ever approved them. Instead, I require that reasonable efforts be made to locate the relevant person(s) before any distribution may be treated as having been forfeited.

Second, the proposed plan stated that professionals only needed to comply with the relevant Bankruptcy Code provisions regarding their retentions, and only needed approvals of their fees, until the "Confirmation Date," even though it is anticipated that this plan may only take effect on a future "Effective Date." Section 1129(a)(4) requires, I believe, that the application of the relevant Code provisions, and the Court's authority to review the reasonableness of professionals' compensation, continue up to and including the Effective Date. That change has been made.

Some other motions were addressed during the same hearing at which we considered the confirmation of the plan. Several *pro se* parties asked the Court to appoint a trustee, to disband

the Official Committee of Unsecured Creditors and to remove the advisors to the Official Committee of Unsecured Creditors. (ECF Nos. 843, 941, 1059, 1061, 1076, 1077.) The Bankruptcy Code provides that I may appoint a Trustee at any time before confirmation of a plan, and it gives me considerable discretion in deciding whether "cause" exists to do so. *See In re Adelphia Comm'ns Corp.*, 336 B.R. 610, 656 (Bankr. S.D.N.Y. 2006), *aff'd*, 342 B.R. 122 (S.D.N.Y.); 7 COLLIER ON BANKRUPTCY ¶ 1104.02[3]. Here, the motion for appointment of a trustee was argued just prior to the confirmation of a plan. As I noted during the hearing, there would have been no way, even if I had felt that circumstances called for the appointment of a trustee, that a trustee would have been in place before confirmation took effect and rendered the whole concept moot. I know that is frustrating for the account holders who filed the motions, and I also note that the motions make a lot of accusations that have not really been answered by the Debtors. However, at this late stage in the cases, the issues that were raised did not provide "cause" to interrupt the confirmation process and to throw everything into disarray.

Two *pro se* parties also asked that they be allowed to withdraw the assets that were listed in their accounts, rather than receiving merely *pro rata* distributions. (ECF Nos. 854, 947.) I simply cannot allow that. If one customer were to withdraw everything that had been listed in that customer's account, it would just mean that the next customer would get less. The whole point of the Bankruptcy Code is to make sure that everybody gets equal distributions. Since there is not enough to pay all claims in full, no customer can get a complete recovery of what was listed in his or her account. That is simply a basic matter of bankruptcy.

For the foregoing reasons, I will approve the Disclosure Statement and confirm the Debtors' plan of reorganization, and the confirmation order that I have entered will reflect those

rulings. I will also issue separate orders denying the motions seeking appointment of a trustee and the other motions discussed above.

Dated: New York, New York
March 11, 2023

/s/ **Michael E. Wiles**
Honorable Michael E. Wiles
United States Bankruptcy Judge

Exhibit B

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 22-10943-mew

- x

In the Matter of:

VOYAGER DIGITAL HOLDINGS,

Debtor.

- x

United States Bankruptcy Court

One Bowling Green

New York, NY 10004

March 7, 2023

2:10 PM

B E F O R E :

HON MICHAEL E. WILES

U.S. BANKRUPTCY JUDGE

ECRO: F. FERGUSON

HEARING re Court reading decision into the record.

Transcribed by: Sonya Ledanski Hyde

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P R O C E E D I N G S

THE COURT: All right. We're here for the resumption and hopefully completion of our confirmation hearing in the Voyager case. There were a few open issues. Number one, I see that the names of the independent directors have been filed and disclosed.

MS. OKIKE: Correct, Your Honor.

THE COURT: Is the representative of the Ad Hoc Equity Committee on the phone?

MS. MOYNIHAN: Yes, Your Honor. Kelly Moynihan from Patrick Townsend.

THE COURT: Are you pleased with the selection? Do you have any further objection to the people who've been selected and named?

MS. MOYNIHAN: No, Your Honor. No further objection. Thank you.

THE COURT: Very good. We had also left open a question of just how we were going to treat customer data and the transfers of data, particularly for customers who hadn't yet and may not ever become finance customers. Have we reached any agreements or resolutions of that point?

MS. OKIKE: Yes, Your Honor. Christine Okike of Kirkland and Ellis on behalf of the Debtors. I will read into the record the proposed resolution. So there will be a two-week period for customers to opt out of transferring

selfies uploaded, identifications, or bank statements, and bank account information. Any opted-out information would not be acquired by the purchaser in the transaction, and that notice will be provided by the Debtors at the Debtors' expense. The expense reimbursement start date for the Debtors, which was to begin on March 18, 2000 --

THE COURT: Wait a minute. Selfies? I couldn't write fast enough.

MS. OKIKE: Selfies, uploaded IDs. So driver's licenses, passports, other forms of identification.

THE COURT: Okay.

MS. OKIKE: Bank statements, and bank account information.

THE COURT: Okay.

MS. OKIKE: The expense reimbursement provision for the Debtor --

THE COURT: Social Security numbers?

MAN 1: Your Honor, that would be required (indiscernible).

THE COURT: Why? Just help me.

MAN 1: That is, along with names and addresses, an important part of identifying and establishing the basis for new customer chats should anyone elect to join the platform in the future.

THE COURT: But I cannot imagine a piece of

information more quickly and easily given to you if a customer wants to do that than their Social Security number. Why you need that in advance I'm having trouble understanding.

MAN 1: There's a couple of reasons, Your Honor. You know, I think -- and really this, if I may explain all of these issues?

THE COURT: Yeah.

MAN 1: I think there's -- the customer data, just to set the context, Your Honor, is really at the heart of the transaction for Binance.US. When we agreed to pay the $20 million purchase price, we didn't know how many customers would agree to join the Binance.US platform. And so the value of each individual customer's future actions on the platform are as unknown. The only known commodity that Voyager has to sell is the data, and that was at the heart of the deal.

So the information has, I think, three main value sources to Binance.US as a technology company that fundamentally depends upon data. One is the ability to simply reach out to a customer and market to them. Second, the information is valuable because whenever a customer onboards to the Binance.US platform -- and they may not do that today. They may do that well down the road. The cryptocurrency markets are extremely volatile, as we all

know. There's bear markets like we're in now, and there's bull markets. And when there's a bull market, many people join the platform that may not have had any intention to do so in the bear market.

Having the KYC information mitigates the actual monetary cost that Binance.US would have to pay affirmatively to conduct the KYC each time someone joins. And so having the Social Security number and other information that is not part of this excluded information that Ms. Okike mentioned would be valuable to avoid that actual cash expense to Binance.US.

Third, as a technology company that uses data to enable and empower its operations, even if someone doesn't join the platform, the data that Voyager has about their past activities is very valuable in enabling Binance.US to market and conduct and enhance its operations going forward. So that is the source of the value for the transaction --

THE COURT: What does somebody's Social Security number have to do with that third point you just mentioned?

MAN 1: Well, it enables part of the modern marketing process, right? That -- as Your Honor knows, right, we've received tons of emails, tons of direct mail. That's -- we throw it all out. We delete it. But when there's more targeted marketing that can go someone based on knowledge of their circumstances and past transaction

history, that maximizes the ability to get someone in the door for a retail operation.

THE COURT: If somebody has already opted out of selfies, uploaded IDs, bank statements, and bank account, you would need that information if they later wanted to open an account, right?

MAN 1: Not necessarily, Your Honor. The first level of KYC that applies to most customers does not require that information.

THE COURT: You don't require that information yourself before the account can actually be up and functioning?

MAN 1: My understanding is that not all of that information is required in all cases. The --

THE COURT: And why is -- you know, if Voyager sent other information to you, why does the absence of a Social Security number disable the -- you know, your customer data in the way you've kind of suggested to me? I don't understand that.

MAN 1: Well, my understanding is that when a new customer joins, they would be providing their Social Security number at that time. And then Binance.US has to pay a third party provider to conduct the KYC in order to run the check on that person.

THE COURT: Okay, but -- so -- but you seem to

have suggested that the KYC information that you've gotten from the Debtors would somehow not be very good without the Social Security number. Or are you saying you're actually going to do -- use the Social Security numbers in advance to do KYC checks on everybody who might in the future become a customer?

MAN 1: Your Honor, my understanding from discussions with my client, and obviously there's a number of technical details here, is that, you know, Voyager's already done KYC checks on all of their customers of course, right? And so part of this transaction is to acquire that information and have the KYC platform for all of these customers in place, and that's a very valuable part of the transaction alone.

THE COURT: Okay. So whatever this information is, Voyager gives it to you. Can it be given to you without the Social Security number? Because it seems to me if somebody wants to be a customer -- if somebody elects not to let you have the Social Security number and then changes their mind, all you do is plug that into what you have. Or if, as you say, you want to go out and hire somebody to do an additional check, you would have -- you're certainly not going to be put at any great delay because somebody can give you the Social Security number in an instant.

MAN 1: Well, Your Honor, if I may actually

express my personal experience, about a year ago when crypto markets were pretty hot before all of this, I actually tried to open an account. And I started doing it, and then I got busy and gave up because it took time and effort to go through. And I think part of the benefit of having this information in place at Binance.US is that it allows instantaneous KYC checks that have already been, you know, pre-done by Voyager and can be relied upon to some extent as well as avoiding the cost of a third-party service. And so --

THE COURT: But what I'm not understanding and you're not helping me with is you can have everything all set up, customer name, address, all that information that Voyager gives you. But the only thing if somebody elects within your two-week period not to let you have the Social Security number, all they would have to do is plug that remaining bit of information into the stuff that you have. I absolutely fail to understand why you need that information in advance.

MAN 1: Well --

THE COURT: It's information that a lot of people regard as very sensitive.

MAN 1: The -- that -- in completing the KYC check would come at cash expense to Binance.US. In addition, the delay that it takes and requirement for someone to go ahead

and enter their Social Security number and then run that check, even if it's done relatively quickly, that delay, that extra step could leave to slippage and breakage in a colloquial sense and lose a customer.

THE COURT: Let me try it this way. If somebody has not given you this other information and you have their Social Security number, then they decide they want to be a customer, and they tell you that, do you have an additional know-your-customer check that you have to do at that time?

MAN 1: My understanding is that if we acquired all of the information with the exclusion of the information we've agreed to leave behind, we would have the KYC information in place for Voyager customers.

THE COURT: So you'd have it in place. So if you get all of that same information except for the Social Security number, and then somebody wants to be a customer, why do you have to do anything other than plug in the Social Security number? You keep telling me you have to do a new know-your-customer check. I don't understand that. If you have all the other information just not the Social Security number, what's the big deal?

MAN 1: I don't know if that would require a new expense. It would certainly involve requiring additional information from the customer, an additional step in the process, and that could lose customers. And that's part of

the value for the Binance of the ease of getting people in the door in this transaction.

THE COURT: Adding their Social Security number would chase them away. I remind you that, you know, I'm mindful these are people who only are the people who have opted out of letting you have that information in the first place and who might've changed their minds and come back. Do you think they're going to be scared away because they have to enter a Social Security number? That seems ridiculous. Doesn't it? I'm trying to understand, but I'm not. You want the information, but I am absolutely at a loss as to why you need it and why it would involve any other expense to you. Please help me because maybe I'm just not understanding --

MAN 1: I think --

THE COURT: -- how this works. But what you're telling me doesn't help me at all.

MAN 1: Well, my understanding is it is relevant to the second category of expenses, the ease of bringing someone onto the system. In addition to that, it is relevant to the third category of value.

THE COURT: But in terms of the ease, if you have all the other information, the difference in ease is whether somebody's Social Security number is already there or whether they have to type in nine digits. For crying out

loud, that's nothing. That's absolutely nothing, right? And if what you're saying is, well, that's going to chase away people who have already in the first instance decided they don't want Binance to have their information but have later changed their minds, that seems preposterous to me.

MAN 1: The third category of information, Your Honor, is the data analytics part. And whether or not someone joins the platform, the data that Voyager has about their transaction history, and I know Social Security number would be relevant to that, will empower Binance.US' data analytics programs to enhance its own operations and maximize its own profitability.

THE COURT: How? Help me with that. What does having the Social Security number allow you to do in terms of that kind of data marketing that you couldn't do without the number if you have all the other information about the customer's name and past history, etcetera?

MAN 1: I think that specific question, Your Honor, to be fair, is a level of detail I'd have to speak to my client about.

THE COURT: Okay. I think -- I'm not convinced that you need the Social Security numbers, and you're going to have to convince me. Because we are here, based on your proposal, only talking about whoever would affirmatively opt out of these arrangements. And I -- as I said yesterday, I

understand that there are some legitimate reasons why you want to have some information, and certainly some contact information, etcetera. But that doesn't necessarily mean there is good reason for you to have every bit of sensitive information about a customer at once, particularly if a customer objects and may not want to be a Binance customer. And so I am trying to balance those two. And I understand you push back on some of this information, but as to the Social Security numbers, what you've told me so far is pretty unconvincing. Okay.

MAN 1: Okay. Well, what I'd suggest, Your Honor, is we can proceed to address the other issues and I'll --

THE COURT: Okay.

MAN 1: -- confer with my client. Thank you.

THE COURT: Very good. Is it too much to hope that you might have had discussions with the governmental authorities on the exculpation disputes and resolved them?

MS. OKIKE: Your Honor, that is too much to hope. We have had discussions.

THE COURT: Hope springs eternal.

MS. OKIKE: Your Honor, I would like to read the rest of the agreement with respect to the customer information just --

THE COURT: I'm sorry. Go ahead.

MS. OKIKE: -- on the record because it does

change certain provisions in the APA. But then I'm happy to address the exculpation. So the expense reimbursement start date for the seller will be moved back from March 18, 2023 to April 1, 2023. If --

THE COURT: Okay.

MS. OKIKE: -- the purchaser is ready to close by April 1, 2023, assuming the closing conditions are satisfied or waived by them, and Voyager is not, including because Voyager declines to waive any closing conditions other than breaches or defaults by the purchaser, then Voyager will cease to have the expense reimbursement protection.

THE COURT: Okay.

MS. OKIKE: And the last point is that both parties acknowledge that the closing condition relating to entry and finalization of the APA order, so the prior order of Your Honor authorizing entry into the APA has been satisfied. And to its knowledge, there is no breach of the APA by the other party as of the date of the confirmation order.

THE COURT: Okay.

MS. OKIKE: So Your Honor, with respect to the exculpation, we have provided language to the various governmental entities. Honestly, I'm not sure where the various entities stand. I believe Texas may be okay with the proviso that we are proposing with respect to the

provisions in the confirmation order related to the governmental entities. And that proviso basically says provided further, and it goes through all the things that the order is not doing in terms of enjoining governmental entities. And then says provided further that nothing in this paragraph shall limit the exculpation of the exculpated parties set forth in -- and then we put the exculpation into the confirmation order. So it's as set forth in Paragraphs 61 to 62 of this order.

THE COURT: Let me read for you and for the government my own proposal, all right? I have to note I believe is narrower than the original plan proposed to which none of these governmental entities objected. I propose to say the following. To the fullest extent permissible under applicable law, and without affecting or limiting either the Debtor release or the third-party releases, and except as otherwise specified in the plan, no exculpated parties shall have or incur, and each exculpated party is hereby exculpated from any liability for damages based on the negotiation, execution, and implementation of any transactions approved by the Court. That's the standard language we have that essentially says Creditors, shareholders, you can't sue saying somebody did something stupid when I've already made a decision that they haven't.

In addition, this is back to the language I

propose, the plan contemplates certain rebalancing transactions and the completion of distributions of cryptocurrencies to Creditors. The exculpated parties shall have no liability for and are exculpated from any claim for fines, penalties, or damages based on their execution and completion of the rebalancing transactions and the distributions of cryptocurrencies to Creditors in the manner provided in the plan. For the avoidance of doubt, the foregoing paragraph reflects the fact that confirmation of the plan requires the exculpated parties to engage in certain conduct, and the fact that no regulatory authority has taken the position during the confirmation hearing that such conduct would violate applicable laws or regulations.

Nothing in this provision shall limit in any way the powers of any governmental unit to contend that any rebalancing transaction should be stopped or prevented, or that any other action contemplated by the plan should be enjoined or prevented from proceeding further. Nor does anything in this provision limit the enforcement of any future regulatory or court order that requires that such activities either cease or be modified or limit the penalties that may be applicable if such a future regulatory or court order is issued.

Similarly, nothing herein shall limit the authority of the Committee on foreign investment of the

United States to bar any of the contemplated transactions. Nor does anything in this provision alter the terms of the plan regarding the compliance of the purchaser with the applicable laws in the unsupported jurisdictions before distributions of cryptocurrencies occur in those unsupported jurisdictions.

I think the language that I have just read is fairly narrow. And what it essentially says is, you know, I've got a plan in front of me. One of the things I'm supposed to consider is whether it's proposed in a means that is in compliance with law. I have a bunch of people, governmental authorities, who've done nothing except hint that maybe there's some issue, but nothing else. Nobody else made any other opposition.

And if and when I confirm the plan, people will be obligated to do what the plan says. They won't have a choice. And I think for a variety of reasons that I can say and that I can go into, they're entitled to the protection that I've just said and entitled to know that when they do what I compel them to do in between the time I do so and up until the time somebody else tells them they can't, they aren't going to be subject to some ex-post facto argument that, hey, we didn't tell you at the time even though we could've.

We didn't even make up our minds at the time, but

guess what? You're liable for penalties, and that court order wasn't just approval of a plan. It was a sentence that you, with -- under no volition of your own, would have to do something that was going to subject you to some liability. I think that would be an absurd situation for anybody to be in, and I think that language is perfectly appropriate under the applicable authorities.

Do the governmental authorities on the phone object to the language I just read?

WOMAN 1: Your Honor, this **(Indiscernible) from the State of Texas. I think that language is excellent. And subject to the deletion that's in paragraphs where we tried to craft such eloquent wording but didn't, I am fine with that wording. Thank you.

THE COURT: Okay.

MR. BARNEA: Your Honor, this is J.D. Barnea from the U.S. Attorney's Office. We were not able to get all of that language down. There may still be some concerns we have with it, but it's certainly an improvement over what we've seen, especially if it's combined with deleting the injunctive language that was in the proposed order previously. However, we still may have some concerns about it. I think we would need to see it written. If there's any way to send it around in writing, we'd appreciate the opportunity to take a look -- a closer look.

MS. CORDRY: And Your Honor, this is Karen Cordry. I represent a number of other states. We did not formally speak up yesterday because it seemed like the issues were being raised by other folks. I think the language you have there seems very appropriate. And I would note that this all came up with a proviso that was only introduced on March 3rd before the -- on March 2nd before the SEC said anything. So we think what you have there does go a very long way towards dealing with our concerns while also protecting the (indiscernible) efforts of the people on the -- you know, who can try to put this plan together.

I don't think any of us meant to try to bring those kind of damages and so forth. So if those assurances are helpful, I think that's -- I think the language seems fine. Again, sort of like the United States, I look -- didn't actually get every bit of it down, but it sounded appropriate as I was listening to it.

THE COURT: All right.

MR. SLADE: Your Honor, I have one thing.

THE COURT: Go ahead.

MR. SLADE: I apologize. Mike Slade for the Debtors.

THE COURT: Yep.

MR. SLADE: There was one sentence towards the end there where you said nothing limits the penalties that can

be imposed. I assume what you meant is if there's a future decision by the government that tells -- gives us rules --

THE COURT: Yeah, and if there's a --

MR. SLADE: -- and if we violate those rules --

THE COURT: If there's an order saying stop doing this and you violate that order, I'm not exculpating you from that.

MR. SLADE: That's right, but they can impose penalties for the work that we did in reliance on the order before they --

THE COURT: Exactly.

MR. SLADE: -- made their decision.

THE COURT: Exactly.

MR. SLADE: Okay. We're on the same page. Thank you, Your Honor.

MR. AZMAN: Your Honor, Darren Azman for the Committee. I just have three minor comments. I don't mean nick the language. I just wanted to clarify something --

THE COURT: Well --

MR. AZMAN: -- given the importance of the issues.

THE COURT: -- we don't -- you know, everybody wants to look at (indiscernible) so let me just say that's what -- I proposed something along those lines recognizing that there may be little tweaks. But I think that everybody's got the substance of it.

MR. AZMAN: I'll keep my comment to just one point then --

THE COURT: Okay.

MR. AZMAN: -- just to make sure it's clear. So you mentioned that the exculpated parties could not be liable for fines, penalties, or damages. I think it needs to be more broader. It needs to be any civil or criminal liability. I don't think fines, penalties, or damages necessarily includes somebody going to jail over it.

THE COURT: Okay.

MR. BARNEA: Your Honor, this is J.D. Barnea again. It would certainly not be appropriate for this Court to enjoin a criminal prosecution of any person for any reason.

THE COURT: Well, if what you're saying is that having sat on the sidelines and said nothing to me to indicate that there's anything illegal about what these people are going to do, that you want to reserve the right to put somebody in jail for doing a rebalancing transaction that they will have no choice but to do under the order that I entered, then I disagree with you. I think the very suggestion offends me to no end. I can't believe that you would even take the position in front of me that you should have that right. It's preposterous. It's absolutely preposterous. If you think something's that illegal, speak

up, but don't dare tell me that you kind of want to reserve that right to do that to somebody. Go ahead, Mr. Azman.

MR. AZMAN: Your Honor, this is not about hiding in the wings and hoping to arrest someone upon them taking some action. This is about the authority of a bankruptcy court to tell a criminal prosecutor that he's not allowed to do his job. We are not -- there is no intention here to ensnare people. We're not aware of anything specific that would be in that direction. It's simply that it's not appropriate for any court or any bankruptcy court to declare that someone is free from criminal prosecution.

If they commit a crime, they shall get prosecuted for it. If they have a defense that they were acting in reliance on a court order, that may well be an excellent defense, and perhaps that would be a reason not to prosecute them. But there's no authority that this court has to order a criminal prosecutor not to prosecute someone.

THE COURT: It's a defense to the extent that I say it's a defense, and that's what I'm doing. You know, I read the Government's paper, which essentially acknowledges that courts have held that people are entitled to qualified immunity for doing what they're approved to do, and especially what they're ordered to do under a court order. But to suggest that I should allow --

MR. AZMAN: Absolutely as an affirmative defense

in an enforcement proceeding, but not as a pre-determined bar by a bankruptcy court.

THE COURT: Okay. Please don't interrupt me in the middle of a sentence.

MR. AZMAN: I'm sorry about that, Your Honor.

THE COURT: What I was trying to say is the suggestion that I should be silent and just leave it for somebody else to decide whether my order has any such qualified effect, or what I myself intend my order to have as its effect, and what I'm telling people to do is ridiculous. People who will have to do what my order will compel them to do are entitled to know, okay? And they're entitled to clarity.

And some other court who doesn't know bankruptcy is entitled to know what I think people are being compelled to do, and what I think I am authorizing them to do, and what I am in effect, at least on an interim basis until somebody actually steps in and gets an order otherwise, I'm in effect saying by confirming this plan it is okay for you to do this, okay? And none of you have stepped forward to say otherwise.

So people are -- I think I'm the one that ought to be defining that, not some future court. And leaving it to some future court in complete uncertainty, I don't know how a bankruptcy case could function. And your arguments that I

can't do this are belied completely by the fact that there are literally thousands, thousands of confirmed bankruptcy plans that have done exactly this with no objection by you. You know, you've gotten yourselves all stirred up because the Debtors overreached in what they wanted. And now you want to object to completely ordinary, reasonable provisions that are well-based in authority to which you haven't objected to any of the other bankruptcy cases that I have ever handled. So I think your position's preposterous. Go ahead, Mr. Morrissey.

MR. MORRISSEY: Good afternoon, Your Honor. Richard Morrissey for the U.S. Trustee. The U.S. Trustee will certainly review the Court's language and hopefully we can come to an understanding. I just wanted to make two points, Your Honor, about what the Debtors are seeking here with respect to exculpation. And again, I hope the language that Your Honor just read to us will be consistent with our view.

The U.S. Trustee believes that the exculpation provision as written in the plan in these cases was different from the corresponding provision in (Indiscernible). As a factual matter, my understanding, Your Honor, is that there weren't regulatory actions pending. And in addition, there were no temporal problems, which is to say that parties in interest were not worried

about what exculpated parties might do in the future outside of the Court's purview. And I think I raised this point yesterday. So we think it was a broader release. And Your Honor, another issue is -- that I did not raise --

MAN 2: (Indiscernible) --

MR. MORRISSEY: -- yesterday has to do with --

MAN 2: -- (indiscernible). You did.

THE COURT: Who's talking -- whoever's talking on the phone needs to mute themselves because you're -- and wait until it's your turn to speak, okay?

MR. MORRISSEY: Thank you, Your Honor -- has to do with actions taken upon it by some counsel, which I think Your Honor used the word "defense" in speaking to Mr. Barnea before. I think that is certainly an affirmative defense in a future proceeding, but it's an issue as to whether that should be part of the ruling here.

THE COURT: All right. I'm not purporting in any way to modify to the extent to which reliance on the advice of counsel is or is not a defense for anybody. I'm simply saying that it's quite abundantly clear to everybody that the plan here contemplates rebalancing transactions and distributions of cryptocurrencies. Any governmental authority that thinks that those activities are illegal anyway is on notice of them and has had a full opportunity to come in and tell me why they are illegal, the Bankruptcy

Code says I shouldn't confirm it if the plan is proposed by any means that would violate any law.

I absolutely have been and made clear from the beginning that I was ready to consider any actual objections that there was a violation of law. I don't have any. I have hints that somebody might think, for reasons that I couldn't quite explain completely, that the two aspects or one aspect of the sale of VGX and perhaps something to do with Binance.US' business operations might raise regulatory issues, but no idea if that means that the transaction cannot be actually accomplished.

And therefore, based on the actual record in front of me, no reason at all to think that what the plan calls for people to do would be illegal. And so when I make that determination and then any fact by confirming the plan leave people with no authority but to do those things that I have in effect found are okay, I think it's preposterous to suggest that somebody -- people who do it would be personally liable.

You know, the alternative is to tell the Government you had your chance, you didn't speak up. You know, this is what the Debtors were trying to do last week. Therefore, forever shut up, there's nothing illegal about this. I'm not going to do that. I have no intention of doing that. That to me would overstep what is reasonable

here.

I wish, if the regulators had a problem, that they would've spoken up before me because I have absolutely no desire to set anybody on a course that raises any regulatory concerns. But for whatever reason, the governmental entities either were unwilling or unable to voice any opposition on those points. So if something happens, if they unlock their regulatory brakes and figure out that they have some objection, they can try to stop what's going on, I'm not going to prevent them from doing that. But the idea that they should also then be able to come in and claim any kind of liability for the people who have done what I've ordered them to do and the Government took no action to stop it just seems utterly ridiculous to me. Okay?

MR. MORRISSEY: Thank you, Your Honor.

MS. CORDRY: Your Honor, this is Karen Cordry again. If I could just say very quickly one point here which is that a typical exculpation provision does include in there in the language that the Debtor had written in another claim that we're exculpated from all of those sorts of causes of action. Unless there's a determination of actual fraud, willful misconduct, or gross negligence, which indicates that it's possible to have the basic transaction be approved, but they have some aspect of its being carried out constitute one of those problems.

And I think -- and I'm not trying to speak for the United States, but my sense is that that may be the kind of concern that is floating around there, is that the -- that's still -- I mean, it's not like we have been sitting here getting notices of every transaction that goes through in terms of the rebalancing and so forth. I have known basically from the terms that the overall rebalancing was illegal, but it is possible. And I think if we use the term "possible" that somebody could do something illegal in the context of that overall approved process. So I think that's sort of what's floating around out there.

THE COURT: Yeah. You know, I don't have a problem. I don't think anybody has a problem with that. Okay?

MS. CORDRY: Yep. So I think that's kind of where there was still the concern about.

THE COURT: Okay. All right. Everybody's going to want to see the language and make little tweaks. I don't -- I'm not in a position to be able to give it to everybody. I have one copy, which is the copy that I have for the purpose of making my decision right now.

MR. MORRISSEY: Your Honor, Richard Morrissey once again for the U.S. Trustee. I was going to raise an issue that's separate and apart from confirmation. I don't know if you wanted me to raise it now or wait until later in the

-- later today.

THE COURT: Well, I have a lengthy decision to dictate into the record, and last I heard I had a 5:00 deadline. Where do we stand on the 5:00 issue?

MAN 3: Your Honor, I haven't spoken with my client about it and whether we need more time than that. I hope not.

THE COURT: We obviously are going to -- because people are going to have to see, if nothing else, the other revisions that I have already told you I want to make to the confirmation order and this particular language. The idea that I can announce my decision and have an order in the next two hours and ten minutes is just not going to happen.

MAN 3: We'd like to keep things moving along, but what would Your Honor suggest?

THE COURT: I would suggest that people are going to want to -- once I finish my decision, which is going to take a while, people are going to want to see the order, and that you should extend it until 3:00 tomorrow. Okay.

MAN 3: Let me request that from my client. In the meantime, we could suggest perhaps sending the language around to the parties via email to the Debtors.

THE COURT: I don't know if anybody --

WOMAN 2: Your Honor, when the attorney for Binance speaks, he has to go near a microphone. Otherwise

the people in Court Solutions can't hear him.

THE COURT: I don't think anybody has the language I just read except for me because I wrote it out for myself here. I don't -- it's not in anything else I've given to anybody else, so...

MAN 3: Correct.

THE COURT: Okay.

MAN 3: Thank you, Your Honor. All right.

MR. MORRISSEY: Your Honor, the issue I was going to raise just so it's not a mystery to the Court and the parties has to do with Rule 3020. The version I have of the proposed order, it's Paragraph 118, Waiver of Stay. Your Honor, the U.S. Trustee would oppose the waiver of the stay. We think that the 14-day stay should be part of the order, and that Rule 20 should be abided by. Thank you, Your Honor.

THE COURT: All right. I understand the Government's position. When is -- if I don't enter a stay, when is the effective date likely to occur at the earliest?

MR. GOLDBERG: Your Honor, Adam Goldberg for Binance.US. We would be working to bring the plan effective as quickly as possible.

THE COURT: Okay.

MR. GOLDBERG: I'd (indiscernible) for the Debtors for anything else.

MS. OKIKE: Yes, Your Honor. I think -- Christine Okike for Kirkland and Ellis. We agree with that. I do think it's going to take, you know, some time, but we will be working expeditiously to effectuate the plan.

MR. KIRPALANI: Good afternoon, Your Honor. Susheel Kirpalani from Quinn Emanuel on behalf of the Special Committee of the Debtors. I just wanted to let the Court know, I'm sure you have your own way of wanting to announce things, but I wanted to confirm that Your Honor is aware, and if not I wanted to make Your Honor and all interested parties aware, that we have scaled back the releases.

THE COURT: I saw.

MR. KIRPALANI: And I've got even some additional line item nits to further scale it back because there were things in there --

THE COURT: Okay.

MR. KIRPALANI: -- that I missed. And so I could read those changes into the record, or I could do it any which way you'd like.

THE COURT: We'll final -- I saw an in-concept approve of what you've done, and we'll get the wordsmithing done as we enter the order.

MR. KIRPALANI: Okay. Thank you, Your Honor.

THE COURT: Okay. All right. I want to announce

my decision with respect --

MS. SCHEUER: Your Honor, if I may just have one moment. I'm sorry, Your Honor. Therese Scheuer for the SEC. Your Honor, the SEC would also like to request the opportunity to review the changes to the order and Your Honor's proposed -- Your Honor's --

THE COURT: Understood.

MS. SCHEUER: -- exculpation language.

THE COURT: Understood.

MS. SCHEUER: Thank you, Your Honor.

THE COURT: Of course. I understand. All right. We are here to consider the proposed confirmation of the plan of reorganization of the Voyager Debtors, and also to consider some other motions that have been filed by Creditors. The plan contemplates a transaction that is subject to some strict deadlines, so I'm going to dictate my findings and conclusions into the record so that our timing does not unintentionally trigger any termination rights on the part of the proposed purchaser in the pending transaction.

I'm asking the Debtors to have a transcript of my rulings prepared as promptly as possible and to be submitted to chambers in Word format. The decision that I dictate today will explain my rulings and my findings, and we will endeavor to enter an order as soon as we can, reasonably can

based on the rulings and findings. But once we receive the transcript, we will correct spelling, citations, inadvertent errors, and places where I may misspeak or where I may find that I was less clear than I would have liked during the course of my dictation. And that corrected decision will be entered as the actual official decision of the Court.

We had a lengthy hearing that began on Thursday, March 2 and continued through yesterday, Monday, March 6, and to some extent has continued for another hour's worth of argument today. We have had an unusually large number of participants in the hearing, including a large number of pro se parties who are Voyager accountholders.

I want to pause and thank the pro se parties for their participation and for the unusual amount of work and energy that they have put into following this case in comparison to how relatively smaller creditors tend to treat other cases that I have handled. I appreciate that they are not attorneys, and that they have labored under some significant disadvantages as a result. I tried wherever possible over the course of the hearing to give the pro se parties the chance to ask their questions even if at times we may have strayed somewhat from the issues that are strictly before the Court in this particular hearing.

Unfortunately, I did have to exclude one pro se party who refused to abide by my instructions and who was

disrespectful in his conduct. But the pro se participants clearly have made a very significant effort to be helpful and to follow and to abide by the rules as I explained them, and I greatly appreciate the fact that they did so.

The primary issue before me in this hearing is the Debtors' request for a final approval of their Disclosure Statement and confirmation of their proposed Plan of Reorganization. The plan, as I said, generally speaking provides for a sale of customer accounts to Binance.US, although accountholders can elect not to become customers of Binance.US. The plan also includes a backup option in the event that the proposed deal with Binance.US does not close or otherwise has stopped from being completed.

The Debtors have argued that the proposed deal with Binance.US -- by the way, if I inadvertently say "Binance", I mean "Binance.US" whenever I make my comments here -- that the proposed deal with Binance.US will maximize the ability to make distributions to accountholders in the form of cryptocurrencies rather than cash. This may have tax benefits to the accountholders, although the tax issues apparently are not completely clear, and nobody has presented evidence to me or made legal submissions to me about the tax issues or tax benefits.

The Debtors have also argued that the proposed deal with Binance.US would permit more cryptocurrencies to

be distributed in-kind than any of the available alternatives would provide. They have further argued that the Binance.US deal would limit the amounts of cryptocurrency sales that the Debtors would have to make, and thereby would reduce the extent to which sales by the Debtors might adversely affect market prices, particularly in the case of cryptocurrencies where normal trading volumes are not so robust as others.

The objections have focused on many things. Some objections have raised relatively common bankruptcy issues, such as objections to some of the releases that the Debtors have proposed. Other objections are focused more specifically on regulatory issues or on the wisdom of potential dealings with Binance.US.

Let me say at the outset and as background to my rulings that I cannot think of another case I have had that comes before me in quite a setting like this one does. I'm aware that there are some people who question the very concept of cryptocurrencies and the whole idea of cryptocurrency investment and trading. I note that no party in this case has taken such a position, and it's not for me to decide whether any particular investments are good ideas or not. But it certainly provides an unusual backdrop to this bankruptcy case.

I also am aware that Voyager operated and

Binance.US currently operates in a regulatory environment that can best be described as highly uncertain. There are firms that operate as cryptocurrency brokers or exchanges and have done so for several years without being subject to clearer and well-defined regulatory requirements. The regulators themselves cannot seem to agree as to whether cryptocurrencies are commodities, they may be subject to regulation by the CFTC, or whether they are securities that are subject to securities laws, or neither, or may in some cases one or the other, or even necessarily on what criteria should be applied in making a decision.

This uncertainty has persisted despite the fact that the cryptocurrency exchanges have been around for a number of years. The current regulatory environment can only be characterized as uncertain, but the future regulatory environment can only be characterized as, in my mind, virtually unknowable. There have been differing proposals in congress to adopt different types of regulatory regimes for cryptocurrency trading.

Meanwhile, the SEC has filed some actions against particular firms and with regard to particular cryptocurrencies, and those actions suggest that perhaps a wider regulatory assault may be forthcoming. The CFTC seems to have announced some positions that may be at odds with the SEC's views. But just how this will all sort itself

out, how the pending actions relating to cryptocurrencies will be decided, and just what future regulatory actions might involve, or how they will affect individual firms or the industry as a whole is very much unclear.

Complicating things further is the fact that Voyager operated and Binance.US continues to operate in an industry that has been the subject of some severe financial shocks over the past year. Many firms were adversely affected by the loan defaults of Three Arrows, including Voyager itself. The Three Arrows' defaults led to several bankruptcy filings across the country. The more recent and sudden collapse of FTX has reverberated even more throughout the industry and has also led to some financial problems at other firms.

Perhaps most worrisome for me are revelations of apparent misbehavior and misuse of customer assets at some firms. I certainly do not have all of the evidence as to what happened at FTX, and we will all have to wait until judgments can be entered in that case before we are sure exactly what happened. However, public statements by the persons currently handling the bankruptcy of FTX have so far indicated that there was an enormous disparity between the way that FTX actually operated and the way it actually used customer assets as opposed to what it had represented to its customers.

I'm also aware of the examiner's report about the business conducted at Celsius and how the actual behavior and custody of customer assets at that firm may have differed from public statements as to how customer assets were being treated and custodied. Once again, I certainly do not have all the evidence as to what actually happened in Celsius, and we'll have to see what further developments there are in that case. But the examiner's report certainly raised the prospect of a disparity during the way that particular firm actually operated and the representations it made to its customers about how assets were handled.

Perhaps to some degree, those kinds of events and the fact that regulatory regimes have been so unclear go hand in hand with each other. That I don't know for sure. In this particular case, some accountholders and some other parties have referred me to newspapers, or magazine articles, or to a recent letter sent by a group of U.S. senators all raising questions and accusations about how Binance.US does business and how its affiliated companies do business.

Despite the questions that have been raised in this regard, however, I have to note that I have been offered absolutely no, I mean literally zero, no actual admissible evidence that would support an accusation that Binance.US is misusing customer assets or is engaged in any

misbehavior of any kind at all. Instead, I am in the absolute unenviable position of having to make a ruling about the proposed transaction in the face of hearsay accusations of potential wrongdoing in an industry where other firms have apparently engaged in real wrongdoing.

Knowing that many people are raising questions, and certainly with no desire to put anybody's futures at stake, but with little or more accurately no evidence as to whether there was any good basis at all for any of the questions that have been raised about Binance.US. So with those observations to put things into context, let me turn to some of the actual objections that have been filed.

The first one that I will address is the objection filed by the Securities and Exchange Commission. The SEC has argued in its written objection that the Debtors cannot prove the feasibility of their proposed plan for two reasons. First, the SEC argued that in its view the Debtors had the burden to prove that the Debtors' own purchases and sales of cryptocurrencies would not constitute illegal purchases and sales of securities.

The objection did not take the position that any particular cryptocurrencies are securities or otherwise explain how or why the Debtors' activities, including their rebalancing activities, might be illegal, although their written objection did contain a vague footnote suggesting

that the VTX token was one as to which some unspecified issue might exist.

The SEC also suggested that the Debtors should be required to prove that Binance.US is not operating as a securities broker without registering as such. Once again, the SEC did not actually take the position that Binance.US is operating as an unregistered and unlicensed securities broker. Instead, it just suggested that the Debtors had the burden to prove the negative without offering any evidence or even any reasons to think that Binance.US actually was doing anything for which it required further SEC registrations.

I questioned the SEC about these objections at the outset of this hearing, and to some extent I rebuked the SEC attorneys for the vagueness of their submission, although in fairness to them, I think they were just the messengers and not necessarily the architects of the message that they were sent to deliver to me. Although the SEC contended that the Debtors somehow how to prove a negative, that is that the Debtors were not violating securities laws and that Binance.US is not violating registration requirements for brokers.

Once again, the SEC confirmed that it was not affirmatively contending that the Debtors were doing anything wrong, nor that Binance.US was doing anything

wrong. Nor did the SEC have any guidance to offer to any of us to suggest what it was that the Debtors allegedly were supposed to prove with respect to these issues, or how the Debtors could possibly prove what the SEC wanted them to prove without receiving any explanation at all from the SEC and suggest why the Debtors' activities or Binance.US' operations might raise legal issues.

Near the end of the hearing on Friday, the SEC asked to provide clarification of the SEC's legal position. It initially asked if it could state its position only to me on an in-camera basis, but I denied that request and ruled that, to the extent the SEC wanted to say something further about its objection, it ought to be stated in the public forum where all interested parties could hear and understand the SEC's position.

The SEC representatives then said the following on the record. First, we were told that the SEC staff believes that the VGX token has aspects of a security, but that the Commission itself has not taken any position on that subject. Second, we were told that the SEC staff believes that Binance.US is operating as a securities exchange without registering as such. Once again, the Commission itself has not taken any position on that subject.

Although the SEC offered these clarifications as to what the SEC staff apparently believes, it emphasized

that only the Commission may take a formal position on behalf of the SEC, and that the views of the staff did not necessarily constitute or certainly did not constitute the official views of the SEC. Furthermore, although the SEC had obtained clearance to reveal the staff's contentions, the SEC confirmed that it was not authorized and did not intend to provide any evidence on these issues or even any further explanation as to the bases for whatever beliefs the SEC staff may have.

So to the extent that the SEC nevertheless contends that these issues are bars to the confirmation of the Debtors' plan, I am forced to disagree. In the first place, I reject the contention that the Court and the Debtors somehow were supposed to figure out for themselves just what it is that the SEC might argue about the VGX token, or about particular activities in which Binance.US might be engaged, as well as the reasons why those matters might have raised securities issues, and then somehow to offer evidence and legal argument to rebut them.

This bankruptcy case has been pending since July 2022. Customers and Creditors have been denied access to their assets for many months, and they deserve to have a resolution of this case. Bankruptcy cases also are very expensive, and each and every delay means that administrative expenses eat away at the recoveries that

Creditors may eventually receive.

I have a proposed Plan of Reorganization in front of me, and I have an obligation to make a ruling now as to whether it can be confirmed. I cannot simply put the entire case in an indeterminate and expensive deep freeze while regulators figure out whether they do or do not think there is any problem with the transactions that are being proposed.

As I said at the outset of the hearing, if a regulator believes there is a legal issue with respect to something that is proposed in front of me, I am more than anxious to hear an explanation and to consider that issue. I have no desire to approve anything that raises legal issues. But I expect a regulator not only to tell me that it has an actual objection if there is a legal issue, but also to tell me what the issue is and why it is an issue, that the other parties may address it and so that I may make a proper and well-considered ruling on the point.

Here, I don't know how any party could possibly be expected to address the SEC's comments with the limited guidance that the SEC has provided. The SEC has not explained by the VGX token in its mind should be regarded as a security or what aspects of a security it thinks it has leaving me only to guess as to what the arguments might have been.

Similarly, the SEC did not explain why it thought Binance.US might be operating as a securities broker. I do not know, for example, if there is one specific cryptocurrency token that may have been traded by Binance.US and that the SEC thinks was a security for which the relevant remedy might simply be to stop trading in that token, or whether the SEC has different theories. If we were to try to address the issues, we would have to guess just what the issues were and would not even have any idea if we were even discussing the right points.

I understand and appreciate that the SEC is limited in what it can say about potential enforcement actions, but I cannot conclude from this record that an enforcement action is even likely, let alone whether it is meritorious, or even the bases for any of the issues that an enforcement action might raise.

I also cannot determine, even if an action were meritorious, whether it would affect the transactions that I am being asked to approve. On this very point, for example, I asked the SEC's counsel at the outset of this hearing to explain what the consequences would be if Binance.US were to be found to have been acting as a non-registered broker/dealer. I asked if that would just mean that Binance.US might have to stop certain activities while it pursued a license, or if it would be that Binance.US would

have to shut down all of its activities. The SEC said it could not answer the question.

Notwithstanding that statement, the SEC took the position yesterday that the Debtor's disclosure statement allegedly was deficient because it did not more specifically predict and describe what the results of a regulatory action against Binance.US might be. As I said yesterday, I do not know how the Debtors could've been expected to be more specific about that question when the SEC itself told me it could not answer the question.

In addition, the SEC's argument on these points has all been phrased in terms of whether the Debtors can prove the feasibility of their proposed plan. Feasibility in bankruptcy parlance is a shorthand reference to the provisions of Section 1129(a)(11) of the Bankruptcy Code, which states that in order to confirm a plan, a court must find that the confirmation "is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtor or any successor to the Debtor under the plan unless such liquidation or reorganization is proposed in the plan."

Here the only issues the SEC has raised are, A, whether one specific token, VGX's, is a security; and B, whether Binance.US needs to register as a securities broker. There is no reason why these issues affect feasibility of

the kind that is discussed in Section 1129(a)(11). As I've said, the SEC has been aware that the VGX token for some time it has not even reached a conclusion of its own as to whether it is a security, let alone taken any action to stop trading in the token.

In addition, even if there are problems with the sale or distribution of VGX, there's no reason why, to my knowledge, why that should interfere or impede or affect the remainder of what the Debtors are proposing. Similarly, even if Binance.US were to be told to stop its business entirely, the Debtors' plan in this case provides that what the parties have called a toggle option under which the Binance.US deal could be stopped and the Debtors would instead make distributions to the extent they could without using Binance.US.

There would have to be some practical changes as a result, and the recoveries that accountholders would receive would likely diminish, but the plan itself includes the toggle option. So there's no reason to think that the issues that the SEC has raised as to Binance.US would mean that the plan couldn't proceed or that it would need a further liquidation or reorganization of the kind that is not already contemplated by the plan. For that reason, the issues raised by the SEC do not really go to the feasibility of the plan as that term is used in Section 1129(a)(11) of

the Bankruptcy Code.

I appreciate that the SEC made some effort to tell me something about what the staff is thinking, but in the end it did not support the highly conditional objection that the SEC filed. This is a court. One of the requirements for confirmation of plan is that the plan has been proposed in good faith and not by any means forbidden by law. Obviously, I have no intention of approving anything that is illegal. As I said during the hearing, and I think I may be repeating myself now, I expect that if a regulator believes that what is being proposed in a plan would violate any applicable statute or regulation, that the regulator will bring that to my attention so the issue can be resolved.

The SEC and all other government agencies have had a full and fair opportunity to object here if they believe that the rebalancing transactions that are being proposed or the distributions of cryptocurrencies that are being contemplated are illegal in any way. Or if they're in violative of any statute, rule or regulation, they have not actually made any objection on those grounds. They have only vaguely hinted at issues that have not even been described in a manner that would permit the Court or the parties to address them.

I have to make decisions based on actual admissible evidence. I have no evidence here from the SEC

or any other party that could support a contention that Voyager is purchasing or selling any token that should be considered to be an unregistered security, or that Binance.US is engaged in any activity for which it is required to register as a broker dealer.

I therefore reject and overrule any contention that the transactions contemplated by the plan would be illegal, and any suggestion that for regulatory reasons the Debtors would be unable to complete their proposed liquidation. The Debtors have offered evidence that Binance.US has the operational and financial capability to perform its obligations and have not been given any evidence to suggest that Binance.US could not legally perform those obligations.

For similar reasons, I reject the contentions by the SEC and others to the effect that the Debtors allegedly did not offer sufficient disclosure about potential regulatory risks. The disclosure statement that was distributed included specific disclosures about regulatory issues faced in so-called unsupported jurisdictions where Binance.US does not have certain regulatory licenses.

It also stated that the Debtors' business is subject to an extensive and highly evolving regulatory landscape that involves significant uncertainties, that it is possible that governmental bodies might disagree as to

whether particular laws or regulations are applicable to the Debtors or to the contemplated transactions, that the Debtors could not predict whether regulators would take the position that additional regulatory approvals are required for the completion of the contemplated transactions, and could not guarantee that there would not be regulatory issues.

The disclosure statement also stated generally that consummation of the transactions might depend on obtaining approvals of some governmental units, and that failure to obtain those approvals could prevent or impose limitations or restrictions on the consummation of the transactions contemplated by the plan.

Voyager also disclosed all of the regulatory inquiries it had received from federal and state authorities, and nobody has contended to the contrary. Although I note that none of those inquiries related to the two issues that the SEC said that its staff had concerns about. The disclosure statement disclosed a subpoena from the SEC that Voyager had received in January 2022 relating to the Voyager rewards program and apparently to questions about whether Voyager needed to register as an investment company.

The disclosure statement revealed that the SEC had made a follow-up request for some financial statement

information and other internal documentation in July 2022, and that the CFTC had made inquiries and sent a subpoena in August and September 2022. And other state and federal inquiries are also described.

I do not believe that the disclosure statement, which was circulated in January 2023, needed to be any more specific than that, than what it said, particularly with regard to issues that SEC itself did not identify until March 2023, and that the SEC itself has not been able to explain in anything other than an extremely conclusory form.

A number of questions have also been raised about the extent to which accountholders would be protected if they were to become customers of Binance.US. These objections have been posed by the SEC, the Office of the United States Trustee, the State of Texas, and the State of New York. Nobody suggests that the Debtors had information that they were hiding from anyone or that the Debtors had and failed to disclose. Nobody has contended that the Debtors made any misrepresentations as to the Debtors' own conclusions about Binance.US.

Instead, the objecting parties have suggested that the Debtors should have obtained or should obtain different or more complete or better assurances from Binance.US as to how it handles and will handle customer assets, and then have argued that the prior disclosures supposedly were

inadequate because they did not already anticipate or include the results of these additional discussions or assurances that the objecting parties think the Debtors should obtain.

Although these objections have been framed as complaints about the disclosures that were included in the disclosure statement, I do not believe that is an accurate way to characterize them. As I said during the hearing, it is more accurate to say that these are substantive questions masquerading as disclosure issues. They are substantive complaints about what the Debtors have done or should be doing to assure themselves of a lack of problems before the transaction closes rather than proper objections to the disclosures that the Debtors already made.

The Debtors have made clear that their due diligence as to Binance.US does business is a constant ongoing project, and that the Debtors will continue to ask questions and to seek assurances as issues are raised. We would all be horrified if the Debtors did not do so. It is simply wrong for various parties to suggest that the January 23, 2023 disclosure statement was somehow inadequate because it did not describe all of the follow-up conversations that had not yet taken place, or all of the follow-up assurances that had not yet been received by the Debtors.

If I were to impose such a standard, it would

mean, in effect, that the Debtors would have to stop their due diligence inquiries once a disclosure statement had been approved for fear that the prior disclosures would immediately be rendered deficient and that the entire expensive process would have to start over again to bring everything forward to what the Debtors had more recently discovered. That would be an absurd result.

I do not find anything deficient in what the disclosure statement actually said. First, the disclosure statement revealed that cryptocurrencies would be transferred to Binance.US only as and when they were to be distributed to customers, and that until such time as the distributions were completed, Binance.US would receive and hold the cryptocurrencies "solely in a custodial capacity in trust and solely for the benefit of accountholders who each open an account on the Binance.US platform."

Second, Pages 34 to 36 of the disclosure statement revealed that the Debtors had sought and obtained various assurances from Binance.US, including that Binance.US had the financial resources to complete the proposed transaction, that Binance.US maintains 100 percent reserves for its customers' digital assets, and had substantial capital remaining even if all customers were to withdraw all of their digital assets, that Binance.US does not lend any of its customers' assets or offer margin products on its

platform, that customer assets transferred to Binance.US would be held by Binance.US pursuant to its standard digital asset wallet infrastructure, which is stored on Amazon Web Services servers located in Northern Virginia and Tokyo, and that Binance.US has various security protocols in place to ensure the safe storage of customer assets, and that those security protocols have achieved various third-party expert certifications attesting to their compliance with industry standards.

During the hearing, the Debtors also described other requests for information that they had made and other assurances they had sought. That included testimony that Binance.US had been asked to provide and had provided a sworn statement as to certain of its business practices. At my request, the Debtors obtained the consent of Binance.US to offer that sworn certificate as evidence of the diligence the Debtors had conducted and as evidence of the bases for the conclusions the Debtors had reached.

The certificate was admitted into evidence and filed on the docket so that all parties could see it. It is dated February 28, 2023, and it states that Binance.US holds digital assets deposited by its customers solely in a custodial capacity and on a one-to-one reserve basis, that Binance.US segregates the customer assets from the company's digital assets on its general ledger, that only employees of

Binance.US are able to move or withdraw customer assets, that Binance.US does not lend or rehypothecate customer assets, and that Binance.US maintains security protocols and procedures that are reviewed by independent parties, and that comply with various applicable standards.

This evidence does not satisfy everyone. It's apparent that there are some objectors who are worried about news reports and who would prefer to have nothing to do with Binance.US. During cross-examination, more than a few objectors pointed out that FTX had also made representations to the Debtors, and that those statements turned out to be false. Though in fairness, the witnesses have testified that they have ramped up their investigations and increased the information and assurances that they have sought from Binance.US in light of what happened with FTX.

I do not mean to cast dispersions on Binance.US when I say this, but it is of course true that in the end we can never be 100 percent sure that a representation is true and correct even when made under oath. At the same time, however, we do not usually presume that people are lying and we certainly do not usually presume that buyers are dishonest, particularly absence of any evidence suggesting that they actually are.

My role as the bankruptcy judge is, in the first instance here, to determine whether the proposed plan

complies with the provisions of the bankruptcy code itself. As to the business details and the business wisdom of the arrangement, and as to the selection of the proposed purchaser, my role is more limited. So long as the provisions of the plan comply with the bankruptcy code requirements, my authority is limited to a determination of whether the Debtor's desire to do this particular transaction is within the scope of the Debtors' reasonable business judgment. See In re Borders Group, Inc., 453 B.R. 477, 482 (Bankr. S.D.N.Y. 2011) and cases cited therein.

Furthermore, as I've said several times, in considering that issue, I am required to make decisions based on the evidence that is submitted to me. I understand the point of view of the skeptics here. Given what has happened in this industry, I cannot help but be worried myself about how any firm might handle customer assets in this business. But the plan fact of the matter is that I have been given absolutely no admissible evidence, literally none, that would support a conclusion that Binance.US will misuse customer assets or that it cannot be trusted. The evidence that is actually before me requires me to conclude that the Debtors are exercising reasonable business judgment in electing to proceed with the transaction.

I'm going to continue in a moment, but we're going to take a brief break while I give my throat a brief rest.

(Recess)

THE COURT: Please be seated. All right. I had just explained why I believe that the evidence requires me to conclude that the Debtors are exercising reasonable business judgement in electing to proceed with the transaction.

That does not mean that I thought that every detail of the proposed transaction was necessary or even appropriate. During the course of the hearing, I asked the Debtors and Binance U.S. to consider certain changes to the terms of their proposed arrangement that I believed would not affect the primary business terms but that would help to address other concerns and questions that had been raised.

First, after our hearing in January, the Binance U.S. deal was clarified to say, and my order entered in January clearly says that from the time when assets are transferred to Binance U.S. until the time they are distributed to accountholders, Binance U.S. would be acting as a distribution agent for Voyager. Accordingly, during that time, Binance U.S. would only be a nominal owner of the assets. They would not have any beneficial interest in the assets during that distribution period, and instead, the assets would be held strictly in trust for and in a custody arrangement for either the debtors or the accountholders respectively. Binance U.S. has also previously confirmed

that customers may immediately withdraw assets from Binance U.S. if they choose to do so.

During the hearing, I suggested that it might make sense if what I have referred to as the distribution period, the period during which Binance is deemed to have no beneficial interest in the assets, were to continue for some time after a customer's account is credited so that customers who wanted to make immediate withdrawals could do so without sacrificing any of the protections that the provisions of the order might provide to them in that regard.

Binance U.S. has not only agreed to that suggested change, I think the parties have gone further. They have agreed with the Debtor to include language in the plan documents to the effect that the assets transferred to Binance by Voyager, if I'm reading it correct, will always be held in strict trust and in custody for customers and that Binance will not have beneficial interest of those assets. That language now appears in Article 4, Section C of the plan.

Second, I asked that the parties consider a change to the proposed treatment of accountholders who live in what the parties have called unsupported jurisdictions, which are four states in which Binance does not have the licenses necessary to distribute cryptocurrencies to customers. I

noted that under the parties' contract, customers in other states who do not become customers of Binance U.S. or who would just prefer cash distributions for other reasons will be given cash distributions at the end of a three-month period. I understand and will address below the issues that have been raised regarding the fact that customers in most states will be able to receive distributions in the form of cryptocurrencies whereas customers in the unsupported jurisdictions will have to wait six months to see if Binance U.S. can obtain the needed approvals and will only be able to get cash distributions if Binance U.S. cannot get such approvals.

The question that I raised with the parties, however, is as to accountholders in unsupported jurisdictions who do not want to become Binance U.S. customers and who would prefer to take a cash distribution. Customers in most states can get -- excuse me. Under the original proposal, customers in most states could get such cash distributions after three months. And so I raised the question as to why customers in unsupported jurisdictions should not have that same opportunity. I suggested that it could be made available by giving customers a simple opt-out form by which they could elect to take cash distributions and thereby would be entitled to them at the completion of the same three-month period. Binance U.S. agreed to this

proposed change and the change has been incorporated in the plan documents.

Third, I know that the parties' agreement includes provisions requiring the transfer of customer data from Voyager to Binance U.S. Voyager has argued that its customer arrangements permit the transfer of that data. No party has offered me any contrary evidence or contention.

Under the parties' agreement as I understand it, the only customer data that has been transferred so far is as to customers who have already made elections to be customers of Binance U.S. However, if there is an approval of the transaction, there would be a wholesale transfer to Binance U.S. of all remaining customer data, which would mean that Binance U.S. would receive all customer data for all Voyager customers even if those customers elect not to do business with Binance U.S.

I asked whether these terms could be modified to provide further protections with regard to the sensitive customer information of customers who might choose not to be Binance customers and who may not wish Binance U.S. to have their information.

I recognize that one of the things that Binance U.S. is buying here is the right to market itself to Voyager's customers. I asked, however, whether the transfer of customer data to Binance could be limited to customer

contact information in the first instance with the limitation of the transfer of other more sensitive information about bank accounts, social security numbers, et cetera, to such time as a particular customer actually elects to be a Binance U.S. customer.

And in response to my concerns, the parties have tentatively agreed that customers will have a two-week opt-out period in which time they would be able to notify the parties and to opt out of any transfer of any selfies or uploaded IDs or bank statements or bank account information, thereby giving them the chance to prevent the transfer of that information to Binance.

In my mind, there's still one open issue, which is as to the transfer of social security numbers and whether customers within that same two-week opt-out period should have the right to prevent the transfer of their social security numbers automatically to Binance U.S.

Binance U.S. has suggested to me that somehow this information is important to making it -- putting Binance U.S. into a position where it could readily open a customer account if a customer wishes to do so. But I don't really understand if Binance has all the other information just how hard it would be for a customer at that time simply to enter a social security number. Yes.

MR. GOLDBERG: Your Honor, I can provide

additional information on this point now or at any other time.

THE COURT: Go ahead.

MR. GOLDBERG: Thank you, Your Honor. I apologize for interrupting, but I thought this was a good time.

For the record, Adam Goldberg of Latham & Watkins on behalf of Binance U.S.

I've consulted with my client on this issue and can provide additional details of why the social security numbers are of great value to this transaction.

There are essentially two levels of KYC checks pursuant to the FinCEN CIP rule, that is the Financial Crimes Enforcement Network, which is a Bureau of the Department of Treasury Customer Identification Program.

The first level is basic KYC, and that requires a name, date of birth, address and social security number. The second is advanced. And that requires selfies, identification documents, and other document uploads. Binance U.S. has agreed to forego the transfer of the information that goes to the advanced KYC, which is of higher long-term value, but is prepared to do so based on Your Honor's comments.

The social security networks allow Binance U.S. to clear all of Voyager's customers through the basic level one KYC at no additional cost. And that KYC clearance would

remain in place forever, indefinitely, under the current regulations.

If we don't have that information, the KYC data that would be otherwise acquired, not including social security numbers as Your Honor has requested, that would become stale and would eventually require, should a customer later elect to join the Binance U.S. platform, for example at a time of a bull run in the crypto markets and they change their mind, the cost at present could be up to $20 per customer. And recall there are a million customers in this case, perhaps without coincidence, of the alignment of those figures.

So without the social security numbers, Binance U.S. would essentially be acquiring a mailing list for customer marketing, which is of far inferior value relative to the ability to pre-clear for KYC. So we respectfully submit, Your Honor, that the transfer of social security numbers is permitted under the policy and that that transfer is supported by the Debtor's business judgement, the value to the estate, and the overwhelming creditor vote.

THE COURT: Thank you. That's very helpful. But I think you said at an earlier time during the hearing that if a customer has a Binance account and closes it, that the customer can elect to have Binance wipe out all of the data it has for that customer. Is that right?

MR. GOLDBERG: Yes. That's right, Your Honor. There are a few requirements, such as that there is no pending trades on the account. But yes, the customer can delete their account.

THE COURT: So what about for people who haven't become Binance customers? Do they have an equivalent point at which they can ask you to wipe out the information that you have on them?

MR. GOLDBERG: They would have to -- under the current system, they would have to join, create an account, and then they could delete that account.

THE COURT: Seems like an odd step to require people to go through. Is there some point at which -- I understand you want a marketing period. Isn't there some point at which you can say that those people who haven't joined you in six months can have the same option to tell you to delete their information as somebody who had already joined you would have?

MR. GOLDBERG: Your Honor, I completely understand your logic here. And it has some resonance. But I think the context of this deal is really from a retail perspective. We want the ability to welcome a customer at any time. And that's the value of this transaction. We want a customer to be able to come into the store and see the platform. And if they want to delete themselves after

that, they are welcome to do so. And that's the business agreement that was reached among the parties.

So they could join the platform, never buy or sell anything, and then cancel out and tell you to get rid of the information.

MR. GOLDBERG: That's right, Your Honor.

THE COURT: All right. Thanks. I appreciate the explanation.

MR. GOLDBERG: Thank you.

THE COURT: All right. To get back to my decision, I have raised issues about the information that would be transferred and as to abilities of any customers to control the information that's been transferred. Binance U.S. has agreed that there will be a two-week period during which customers can opt out of the transfer of selfies, uploaded IDs, bank statements, and bank account information. I have raised the question about the transfer of social security numbers and Binance has now given me a better explanation of why it wants that information.

I have a lingering concern that, as I just said to counsel, the testimony is that customers who actually open Binance accounts can close them immediately and can immediately tell Binance to dispose of all the information that Binance has obtained about them, whereas customers who don't open accounts can only exercise that right if they

first go through the process of opening account and never even putting anything in it and then giving that same direction to Binance. I'm still not a thousand percent convinced that there isn't some way to give Binance the marketing opportunity it wants here while eventually making it easier for customers to have their data expunged, whether at the end of a six-month period or some other period. And I will leave open the possibility of such a provision in the final order and just ask Binance, since I have only just this very instant raised this question, if it will yet take that additional question from the pestering judge back to its client and find out if there's something we can do. Okay?

MR. GOLDBERG: Thank you, Your Honor.

THE COURT: By the way, do we have confirmation that we don't have a 5:00 deadline? Because at this pace, I won't even be finished with my decision by then.

MR. GOLDBERG: Your Honor, Binance U.S. agrees to your request of 3:00 p.m. tomorrow.

THE COURT: Thank you very much. All right.

I think that these proposed modifications, subject to answering that one issue that I have just left, clears up many of the objections and issues that came up during the hearing. There are still some other issues that I will now proceed to discuss.

The Office of the United States Trustee raised some other objections to the disclosure statement. One objection was their contention that the disclosure statement was not clear as to who would hold cryptocurrencies and in what capacities. I actually think the disclosure statement was clear on that point. It said, as I noted above, that cryptocurrencies would only be transferred to Binance U.S. as and when they would be distributed to accountholders, that until the distributions were complete, Binance U.S. would only have a nominal and not a beneficial interest in the assets to be transferred, and that all such assets would be held in custody and in trust either for the Debtor's or for the account holders as applicable.

I believe that these disclosures were sufficient. And, as I have described above, the parties have actually agreed to additional language to provide further assurances to customers in this regard.

The SEC complained that the Debtors did not disclose or that there are meaningful economic benefits to the Binance U.S. transaction apart from the $20 million that Binance would pay -- Binance U.S. would pay in excess of the cryptocurrencies being transferred. I am going to overrule this objection.

The liquidation analysis that was attached to the disclosure statement included projections as to what

creditors' recoveries would be under the Binance U.S. proposal, under the alternative toggle proposal, and under a Chapter 7 liquidation. It stated that for various reasons that were explained in the footnotes, the Debtors believe that the Binance proposal would make approximately $90 million more available for distribution, resulting in approximately five percent greater recoveries for creditors when compared to the toggle option and about a 14 percent increase when compared to a possible Chapter 7 liquidation. I think those calculations were sufficient to disclose what the Debtors believed as to the benefits of the Binance U.S. proposal.

Now, during the hearing, there were many questions about these calculations. The Debtors testified that their current estimates are that the Binance deal will produce approximately $100 million more in distributable assets than the so-called toggle plan would provide. The Debtors explained the assumptions that underlie those calculations, and of course many of them are based on assumptions of what might happen in the market under certain conditions, and therefore they are not guarantees by any means. But I did find the explanations and testimony to be reasonable and credible. And I note that no contrary evidence was presented.

The State of Texas contended that the disclosure

statement was insufficient because it did not make sufficient disclosures about certain features of the Binance U.S. terms of use. However, I note that the disclosure statement contains many direct links to those terms of use and all of the arguments about provisions that Texas believes customer should know about are taken directly from the terms of use to which the customers were directed. This is not an argument about actual disclosures and about actual information available to customers so much as it is a contention made in hindsight that the Debtors should have put greater emphasis on particular provisions that Texas at this stage thinks are important and that the Debtor should have highlighted them somehow more prominently in the disclosure statement instead of making available by referring customers to the places where they could be found.

I do not find this to be a reason to reject the disclosure statement or a basis on which to decide that the disclosure statement was not adequate and sufficient. I must note that the State of Texas reviewed the proposed disclosure statement before I gave preliminary approval to it in January 2023 and that the State of Texas filed some objections and comments at that time and that in those objections, Texas did not ask for any further disclosures about the Binance U.S. terms of use. That just supports my conclusion that this is not really a complaint about

something that was material and that had to be disclosed or highlighted so much as it is a kind of belated decision by one party that maybe something could have been given greater emphasis. But if I were to apply that standard to every disclosure statement that I ever see, I'm not sure any of them would ever pass.

Texas has also complained that the disclosure statement allegedly did not disclose the potential effects that a preference lawsuit by Alameda could have on creditor recoveries. However, the figures quoted in the objection as to how much recoveries would be affected were taken from Exhibit C to the disclosure statement itself, at Page 198 of 140, ECF Document 863.

During argument, Texas contended that the information was too hard to find, but I note that the information was added to the disclosure statement after there was discussion of the point in January 2023. And at that time, I approved the addition of the information at exactly the place where it ultimately appears. To my recollection, no party complained at that time that it should be placed elsewhere.

Texas has also complained that the disclosures about creditors' recoveries -- complained in its written objection, I should say, that the disclosures about creditors' recoveries might suggest that recoveries under

the plan could be less than they would be in a Chapter 7 liquidation. I don't think Texas is actually continuing to press this objection. But just for completeness in the record, I will describe it and describe the reasons why I think it has been withdrawn.

The problem with the written objection is that it was based on an apples to oranges comparison. More specifically, Texas compared what the plan recoveries would be if Alameda has a very large, $400 million administrative claim against the estate compared to what the Chapter 7 recoveries would be if Alameda does not have such a claim.

The truth, however, is that if Alameda has a large administrative claim, it would have the same claim in both the plan in Chapter 7 liquidation contexts and would have the same proportionate impact on the recoveries in both contexts. So it therefore would not affect the Debtor's conclusion that the plan recoveries will be better than recoveries in Chapter 7 would be.

A number of parties have also objected to the releases that have been proposed in the plan. Some of these objections are based on misconceptions as to exactly how the releases work. Just to be clear, the Debtors have proposed to release some claims that the Debtors themselves otherwise would be able to pursue or that the estate would be able to pursue. Some other parties, Binance U.S. itself for

example, and the Debtor's officers and directors, have agreed to release claims that they might own against the Debtors and a long list of other parties.

In addition, creditors were given the opportunity, and shareholders, to elect to grant releases, or in bankruptcy terms, to opt in to releases if they chose to do so. However, the forms that were sent to creditors made clear that nobody was obligated to opt in and that the choice was strictly voluntary.

Many bankruptcy plans provide and there is case authority for the proposition that an affirmative vote in favor of a plan is itself a consent to the grant of releases that are set forth in the plan. But the plan in this case does not say that. Instead, the plan here provides that no creditor or shareholder has released any claims that are owned by that person or entity unless that person has affirmatively granted such a release by executing the opt-out release form.

I believe that this disposes of the objection filed by the Federal Trade Commission and quote relevant portions of the objections posed by the United States Trustee and by certain customers, including Mr. Newsom and Warren, Mr. Hendershott, Mr. Jones, and Mr. (indiscernible). They objected to the approval of non-consensual third-party releases, but there are no non-consensual third-party

releases here. There is a separate issue regarding the exculpation provisions of the plan that I will discuss in a moment, but there are no non-consensual third-party releases.

There are also challenges to some of the settlements and releases of the Debtor's own claims that are included in the plan. The United States Trustee filed an objection stating that the released party and releasing party definitions should not include the winddown debtors. My understanding is that that change has been made and that this particular objection is moot.

The Debtors have also proposed a settlement of claims against the Debtors' CEO, Mr. Ehrlich, and a former chief financial officer, Mr. Psaropoulos. The Debtors offered evidence that two independent directors had been in charge of the investigation of claims against certain insiders, that the special committee hired outside counsel, the Quinn Emanuel firm, to assist in that investigation, that the special committee had concluded that the only claims against insiders that were worth pursuing were claims against Mr. Ehrlich and Mr. Psaropoulos relating to the Three Arrows loans, that the special committee further concluded that those claims would be subject to various defenses and that the Debtors did not believe and that the directors, excuse me, did not believe that the claims were

slam dunks, that the committee had investigated -- special committee had investigated the officers' resources and that the proposed settlements would provide for payments that represent a significant portion of the officers' available assets, that the Debtors would release other claims against the two officer but would not actually release claims relating to the Three Arrows loans and instead would only agree that any further recoveries on the Debtor's claims as to those loans would come from insurance proceeds and not from the individual assets of the settling defendants.

The Debtors also reserve their rights to undo a transaction by which Voyager allegedly paid as much as $10 million just before its bankruptcy filing for an additional $10 million of director and officer liability coverage.

When considering a settlement such as this, the applicable Second Circuit authority makes clear that my role is to determine whether the Debtors' decision to settle was a reasonable one after considering a number of factors.

In this case, consistent with the applicable caselaw, I have considered the nature of the claims that would have been asserted, the legal defenses that could have been asserted, including the business judgement defense, the testimony about additional defenses that could have been asserted under the terms of certain exculpatory language in the Debtor's bylaws or other governing documents, the

benefits of the proposed settlement, testimony that the settlement was the result of arm's length bargaining, the testimony about the size of the settlement payments in relation to the settling parties' resources, the fact that the settlements preserve the Debtor's rights to pursue the Three Arrows claim further, though further recoveries on such claims would be limited to insurance proceeds, the competency and experience of the counsel retained by the special committee, and the support for the settlement by the official committee of unsecured creditors. See Iridium Operating LLC v. Official Committee of Unsecured Creditors (In re Iridium Operating LLC), 478 F.3d 452, 462 (2d Cir. 2007), citations omitted.

I conclude after considering the relevant factors that the settlement with Mr. Ehrlich and Mr. Psaropoulos is a reasonable one and should be approved. I understand that this is very disappointing to some of the pro se parties who have appeared, a number of whom expressed a strong resentment towards the two settling parties and who expressed a strong desire to pursue them more vigorously and to demand a higher percentage of their net worth as a part of any settlement. I sympathize with their frustrations, but the only actual evidence I have on these relevant points is the evidence that I have described. And I am forced to conclude from that evidence that the settlement is in fact a

reasonable one.

The releases that the Debtors proposed to give were not limited to the releases to be granted as part of the settlement with Mr. Ehrlich and Mr. Psaropoulos. Instead, the Debtors also proposed to grant broad release of claims that the debtors might have against a number of other parties. The parties who would be the beneficiaries of those releases included the Official Committee of Unsecured Creditors and its members together with a long list of released professionals which appeared to include all of the law firms and other advisors in these cases, plus all "released Voyager employees", a term which was defined as "all directors, officers, and persons employed by each of the Debtors and their affiliates serving in such capacity on or after the petition date but before the effective date."

The scope of the releases that the Debtors proposed to give to such persons was extremely broad. The releases proposed to free all released parties from all cause of action, known or unknown, that the Debtors could have asserted in their own right "or on behalf of the holder of any claim." I really do not understand this latter phrase at all. If it is somehow intended to mean that a third party's own claim would be released on the theory that the Debtor somehow could have asserted it in some kind of representative capacity, it is too vague and excessive and I

won't allow it.

The plan also proposed to release all of the released parties from any claim of any kind that the Debtors might have against those released parties. And the phrase goes on and on. "Based on or relating to or in any manner arising from in whole or in part the Debtors...their capital structure, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors, the subject matter of or the transactions giving rise to any claim or interest that is treated in the plan, the business or contractual arrangements between any debtor and any released party, the Debtor's out-of-court restructuring efforts, intercompany transactions between or among a debtor and another debtor, or upon any other act or omission, transaction, agreement, event, or other occurrence related to the Debtors taking place on or before the effective date but with an exclusion for actual fraud, willful misconduct, or gross negligence."

The evidence before me, however, did not suggest that the Debtors or the special committee had done any investigation or made any careful consideration of all of the types of claims that would be covered by this sweeping language. I believe Mr. Kirpalani acknowledged that much during oral argument yesterday.

As I said yesterday, this is not a release that is tailored to claims that have actually been renewed and

passed by the Debtor. Instead, it is a release that is deliberately as broad and all-encompassing as possible untethered to any actual review of many of the claims that would be subject to the release.

I therefore do not believe that the evidence before me justifies and warrants the full scope of those releases as they were proposed, that the Debtors have since proposed to modify the terms of the proposed releases so that they will be limited to new defined term language matters that the special committee actually investigated. I may have to look at some of that language myself and will possibly have tweaks to it in the final confirmation order. But in concept, I think that complies with the comments that I made yesterday or my rulings today and that it will be acceptable.

I want to pause to reemphasize a point that came up several times during the hearing. A number of accountholders or shareholders complained during the hearing that they felt that they had been misled as to Voyager's financial condition. If a customer or shareholder believes he or she was misled or that he or she took actions that he or she otherwise would not have taken and suffered damages as a result based on any claim of misrepresentation of Voyager's financial condition, claims based on those injuries would belong to the customers or shareholders.

They would not belong to the Debtors or the estate.

The Debtor's proposed releases would release claims that the Debtors were injured due to mismanagement or bad decisions by officers or employees. The claims for injuries directly suffered by customers or shareholders, injuries that were not just derivative of injuries directly suffered by the Debtors are not affected.

The Office of the United States Trustee also objected to the scope of the proposed exculpation provision in the plan. Broadly speaking, that provision states that certain parties do not have liability for certain transactions and actions that occurred during the course of the bankruptcy case or that will occur in the implementation of a confirmed plan.

It is routine that bankruptcy plans contain provisions that state that fiduciaries and other parties do not incur liability by having engaged in transactions that the court has approved and having taken actions that the court has directed them to take.

In this case, the version of the plan that was circulated to creditors and other parties-in-interest in January, Docket Number 852, included a proposed exculpation provision that was fairly broad. It stated in relevant part that exculpated parties would have no liability or anything they had done during the course of the bankruptcy cases that

-- or anything that they would do in the course of administering the plan and further stated that they would be deemed to be in compliance with all applicable laws regarding not only the solicitation of votes, but the distribution of considerations pursuant to the plan. And therefore, an account of those distributions would not be liable at any time for violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the plan or such distributions made pursuant to the plan.

I have previously issued a decision as to what I regard as the proper scope of an exculpation provision and the legal justifications for it. See In re Aegean Marine Petroleum Network Inc., 599 B.R. 717 (Bankr. S.D.N.Y. 2019).

As I noted in Aegean, exculpation provisions are to some extent based on the theory that court-supervised fiduciaries are entitled to qualified immunity for their actions. However, a proper exculpation provision is also a protection for court-supervised and court-approved transactions. As I noted there, parties should not be liable for doing things that a court authorizes them to do and that a court decides are reasonable and appropriate things to do and in many instances that a court may direct them to do. See e.g. Airadigm Communications Inc. v. FFDD (In re Airadigm Communications Inc.), 519 F.3d 640, 655-657

(7th Cir. 2008) approving a plan provision that exculpated an entity that funded a plan from liability arising out of or in connection with the confirmation of a plan, except for willful misconduct.

In re Granite Broadcasting Corp., 369 B.R. 120, 139 (Bankr. S.D.N.Y 2007), approving an exculpation provision that was limited to conduct during the bankruptcy case and noting that the effect of the provision is to require that any claims in connection with the bankruptcy case be raised in the case and not saved for future litigation.

My reasoning in the Aegean case has been approved and adopted by other courts in other cases. See e.g. In re Latam Airlines Group S.A., 2022 Bankr. LEXIS 1725 (Bankr. S.D.N.Y. June 18, 2022), In re In re Murray Metallurgical Coal Holdings, 623 B.R. 444 (Bankr. S.D. Ohio 2021). Such provisions are proper to protect those who are authorized and who may be directed by the confirmation of a plan to carry out the terms of the plan. See In re Ditech Holding Corp., 2021 Bankr. LEXIS 2274 (Bankr. S.D.N.Y Aug. 20, 2021).

In this case, the Debtors and the United States Trustee apparently had discussions, and my understanding is that they had tentatively agreed that the proposed exculpation language in the plan and confirmation order

would be scaled back to be more in the lines of what I ordered in the Aegean case. This became a much bigger issue, however, when at the end of last week, the Debtors filed revisions to their proposed confirmation order that included a number of paragraphs and additions to paragraphs that could have been read as barring all federal and state governmental entities and any other parties at any time from making any assertion of any kind that the Debtors, Binance U.S. or their representatives had done anything of any kind that violates any federal or state law or regulation.

It is not my intention to approve anything of that breadth, and I believe I made that clear as soon as the issue came up yesterday.

As we discussed the issue yesterday, however, the parties circled back to the proposed exculpation provisions. And certain governmental entities who previously had taken no position whatsoever and made no objection whatsoever to the original exculpation provisions suddenly took the position that as a matter of law, no exculpation provision of any kind can be granted insofar as it would relate to any federal or state statute or regulation.

As somebody put it during argument yesterday, the government's position was that any officers or directors or entities who will implement a confirmed plan just have to take their chances as to whether the government might

contend that what they're doing is illegal and even as to whether the government might seek to punish them for doing not only what I had authorized, but what I had directed them to do as a matter of the confirmed plan.

Frankly, I think this position by the government is wholly unreasonable and is based on a serious misunderstanding of just what it means when a court confirms a plan of reorganization and the legal reasons for the exculpation.

The approval of a plan of reorganization does not just give a debtor an option to proceed with what the plan provides. Instead, Section 1142(a)(1) of the Bankruptcy Code states that "The debtor and any entity organized or to be organized for the purpose of carrying out the plan shall carry out the plan and shall comply with any orders of the court." 11 U.S. Code § 1142(a)(1).

Section 1142 thereby imposes an affirmative statutory obligation on the debtors, other entities, and their personnel to do what the plan contemplates. In effect, the confirmation order acts as a court order that the plan be carried out. In this case, confirmation of the plan will require the debtors, Binance U.S. and their respective personnel and representatives, to complete the rebalancing transactions that the plan contemplates and to make the distributions of cryptocurrencies that the plan

contemplates. Once in confirm the plan, they will have no choice but to do so.

Here, all of the relevant governmental entities have been on notice of the proposed transactions. They had every opportunity to tell me if they believed that anything contemplated by the plan would violate any applicable statue, rule, or regulation. Four states have taken the position that Binance U.S. cannot open customer accounts in those states without additional approvals, and the plan specifically takes account of those objections and that fact. No other regulators have contended during the confirmation hearing that there is anything illegal in what the plan contemplates. As noted above, the SEC has hinted vaguely that it thinks there might be issues with the Debtor's sales of VGX and/or with some unspecified aspect of Binance U.S.'s business. But the SEC has explicitly stopped short of contending that anything actually is illegal and has repeatedly declined to offer evidence or to take a more firm position on these points.

In short, what the government is requesting is that I enter a confirmation order that will have the effect under Section 1142 of the Code of compelling employees, officers, professionals, and entities to do the rebalancing transactions that the plan contemplates and to make the distributions that the plan requires while in the view of

the government those same people and entities might then be liable for fines, sanctions, damages, or other liabilities just for doing what my confirmation order affirmatively obligates them to do. And the government contends that this daunting prospect of future liability should hang over the heads of the parties and their personnel even though the government itself has had every opportunity to identify any legal issues that are posed by the transactions and is not prepared today to say that there is anything wrongful about what we are currently contemplating.

That position is absurd. If the government really wants to litigate the legality of the proposed transaction, it has been free to do so and should have done so during this hearing. Similarly, if the government truly wishes for me to make a decision today as to whether the transactions are or are not legal and to make that binding, then I will do so. But if I have to do that based on the evidence that has actually been offered to me and if I were to have to make that decision today, I would have no choice but to conclude that the transactions are perfectly legal because nobody has offered any evidence to the contrary to me. We're not attempting to do that to the government, although I think maybe the Debtors were attempting to do that by the proposals they made at the end of last week.

We're not trying to restrict the SEC or any other

governmental entity's ability to argue in the future that the transactions that we are authorizing and directing should be stopped or prevented from going further for regulatory reasons of any kind.

However, it is entirely appropriate that I ensure that in the meantime, that the people and entities who will be directed and required by my confirmation order to complete the transactions contemplated by the plan will not themselves face liability for having already done things that I required them to do and that the government elected not to challenge at the time that requirement was imposed.

I do agree that a modification of the original exculpation provision is appropriate, and I am prepared to hold that the exculpation provision should be modified to say something along the lines of the following, recognizing that there will be some inevitable further wordsmithing and that the proposed order will reflect that wordsmithing. What I have in mind is language to the following effect.

To the fullest extent permissible under applicable law and without affecting or limiting either the debtor release or the third-party release and except as otherwise specified in the plan, no exculpated party shall have or incur and each exculpated party is hereby exculpated from any liability for damages based on the negotiation, execution, and implementation of any transactions approved

by the Bankruptcy Court. That's the standard part of the language that essentially just says that if you have pursued a transaction that I have approved, you can't be sued later by somebody saying it was unreasonable. Any claims about the reasonableness of the transaction should have been made to me.

The proposed language would continue, in addition, the plan contemplates certain rebalancing transactions and the completion of distributions of cryptocurrencies to creditors. The exculpated party shall have no liability for and are exculpated from any claim for fines, penalties, damages, or other liabilities based on their execution and completion of the rebalancing transaction and the distributions of cryptocurrencies to creditors in the manner provided in the plan.

For the avoidance of doubt, the foregoing paragraph reflects the fact that the confirmation of the plan requires the exculpated parties to engage in certain conduct and the fact that no regulatory authority has taken the position during the confirmation hearing that such conduct actually would violate applicable laws or regulations. Nothing in this provision shall limit in any way the powers of any governmental unit to contend that any rebalancing transaction should be stopped or prevented or that any other action contemplated by the plan should be

enjoined or prevented from proceeding further, nor does anything in this provision limit the enforcement of any future regulatory or court order that requires that such activities either cease or be modified, nor does anything limit the penalties that might be applicable if such a future regulatory order is issued and violated. Similarly, nothing herein shall limit the authority of the committee on foreign investment of the United States to bar any of the contemplated transactions, nor does anything in this provision alter the terms of the plan regarding the compliance of the purchaser with applicable laws in the unsupported jurisdictions before distributions of cryptocurrencies occur in those unsupported jurisdictions.

This morning when this language was discussed, somebody asked if we could add a typical exclusion for liabilities that reflect actual fraud or willful misconduct. I don't think anybody objects to the addition of such an exclusion.

As I understand it, the government has argued that even an exculpation provision of this kind somehow amounts to a third party release that offends the principles set forth in Judge McMahon's decision in the Purdue Pharma case or that it otherwise represents an impermissible effort to interfere with the discretion of regulatory authorities or otherwise exceeds my jurisdiction.

I think most of the arguments that the government has made in that regard are complete red herrings. They pose reasons and explanations and legal justifications for what I am doing that are absolutely not the actual legal justifications for what I am doing and then rebut those irrelevant purported legal justifications.

The actual authorities on which I have relied, including my own Aegean decision and the decisions that I cited in there are not even discussed in the objections and supplemental submissions that the government authorities made to me.

I am not barring the government from trying to stop transactions from occurring. I am not barring any regulatory contention at all. I am simply saying that when the government has declined to argue that the rebalancing transaction that the plan contemplates are legal and/or the government has declined to argue that the distributions of cryptocurrencies to creditors that the plan contemplates, either through Binance, or by Voyager if the so-called toggle plan is pursued, are illegal in any way, that individuals who entities who upon confirmation will be required to engage in those activities are entitled to know that I am not thereby sentencing them to an ex post facto contention or finding that they have unknowingly and unwittingly and involuntarily incurred statutory or

regulatory liabilities for doing what I have ordered that they can do and what my confirmation order compels them to do. That is fully consistent with ordinary bankruptcy practice with the authorities that I have cited above and with basic principles of equity and estoppel. It is a fair and proper consequence of the government's own unwillingness or inability to challenge the legality of the contemplated transactions during the hearing that I have held and of the fact that I am entering an order that as a statutory matter not only approves those transactions, but actually requires them to be carried out.

I note that the government itself has conceded in the supplemental papers that it filed that many courts have considered participants in bankruptcy proceedings to be protected by a species of qualified immunity for undertaking transactions specifically approved by the bankruptcy court. I think that in effect that is all that I am doing here. And I am not by any means preventing the enforcement of any law or regulation. Also, I am not stopping any regulatory body from stepping in and attempting to enjoin any act or transaction on any applicable regulatory ground. If the SEC or any other party believes tomorrow that it has grounds to go to court to enjoin further steps in the completion of this transaction, it is entitled to do so. I am not barring any such thing. I am simply saying that if we get six weeks

down the road and then the SEC decides to take action, that in fairness to the people who have spent six weeks doing what I have compelled them to do, those people cannot have liabilities and sanctions and penalties imposed upon them.

I also have a suggestion by the government both today and in the papers that I should simply say nothing about these issues and that if somebody is entitled to immunity of any kind for doing what I have ordered them to do, well, they can just raise that sometime in the future in some other regulatory context and we can just guess as to whether another court might agree with me or whether another court might agree that I even intended to grant such freedom to such people and that otherwise those people should just be left at risk as to what a future court might decide.

I don't see how that makes any sense at all. If the whole idea here is that I am directing something that gives rise to qualified immunity, I should be the one that says what the scope of that immunity is. Not only does it make sense for me as the court that's making the order to give that guidance and to make that decision, the people who are actually going to be required to do what I am compelling are entitled to know that that's what I am doing, and they are entitled to know that when they do what I have told them to do, it is not subject to the risk that, as I said, that they are being involuntarily sentenced to some sanctions for

having done so. So in that respect, I think the government's suggestion is completely off-base.

I also note that the government has taken very -- have made very broad-ranged accusations that somehow this is completely beyond my jurisdiction and completely unusual and completely beyond my authority. I think it's completely within my authority for the reasons that I have cited. And I also note that that contention by the government is belied by the literally thousands of confirmed bankruptcy plans over the past more than 20 years I am sure that have included similar exculpation provisions without any complaint whatsoever by any of these same governmental authorities. In fact, I have approved similar provisions in my time as a bankruptcy judge and recall no objections to them of the kind that the governmental authorities have raised over the past two days.

I also have an objection by the State of New York to the effect that the plan allegedly provides for an unfair discrimination in the treatment of New York customers as opposed to customers in other states. The State of Texas has made a similar objection. It appears though that the Debtors and Binance U.S. have resolved a similar issue as to Vermont and possibly as to Hawaii. In any event, the State of Hawaii has not pressed any objection before me during this hearing. The gist of the New York objection is that

customers in 48 states where Binance has the required licenses may receive cryptocurrency distributions relatively quickly but that Binance and the Debtors cannot legally do the same thing in New York. Accordingly, customers in New York would have to wait until such time as Binance may obtain the necessary approvals in New York. Under the plan, if such approvals are not obtained within six months, the New York customers will receive cash distributions instead of distributions that include cryptocurrencies.

Curiously, although the State of New York and the State of Texas have filed objections, it does not appear that a single New Yorker accountholder has objected on this ground, and perhaps only one Texas accountholder. This perhaps raises a standing issue as to the State of New York, but I do not believe I need to consider that question because I believe that in any event, the objection does not have merit.

New York has asserted that the plan unfairly discriminates between customers in New York and customers in other states. Unfair discrimination technically is not really the right way to describe the objection. Section 1129(b) of the Bankruptcy Code provides that a plan may be confirmed even if not all classes have voted to accept it so long as certain conditions are met. One of those conditions is that the plan does not discriminate unfairly with respect

to each class of claim or interest that is impaired under and has not accepted the plan. Here, the relevant class is Class Three, which is made up of accountholders. That class has overwhelmingly voted to accept the plan.

I think what the state regulators really mean to argue is that the plan allegedly does not provide the same treatment to all members of Class Three as is required by Section 1123(a)(4) of the Bankruptcy Code.

I think there may have been a basis for this objection insofar as it related to the treatment of accountholders who chose not to receive cryptocurrencies and who instead wished to take cash distributions. The plan as proposed would have allowed most customers to receive cash once three months had passed and they had not affirmatively elected to be customers of Binance. Customers in the unsupported jurisdictions, however, would have had to wait six months while Binance tried to work things out with regulators even if they did not want to be Binance U.S. customers and even if they wanted cash. Binance, however, as I have noted, has agreed to change this provision and now the treatment of creditors who want cash is exactly the same in all states.

I do not otherwise believe that the objection is correct. It is quite clear that the Debtors and Binance U.S. would like to make in-kind distributions to all

customers in all states. It is not the terms of the plan that prevent the Debtors and Binance from doing so, it is the different regulatory requirements and licenses in the different states that account for any different treatment that may occur. Or to put it another way, the plan provides in essence that the Debtors will make in-kind distributions to customers as soon as they become customers of Binance and as soon as the applicable rules and regulations in a given state permit such distributions.

However, we are not free to ignore the fact that in certain states, that cannot be accomplished as readily as in others. That does not mean that the plan is providing for different treatment of different customers, it just means that the plan itself does not have the power to sweep away the different regulations that apply in different states and does not have the power to grant licenses to Voyager and/or Binance that they do not already have.

Every customer's initial distribution rights will be determined on the effective date -- excuse me, on the same date. The different regulatory regimes in different states may mean that some customers receive distributions on different dates or in different forms, but the Debtors cannot do anything about that. The only solution to the problem New York has raised would be to force everyone in the entire country to delay their distributions until such

time as the necessary approvals are in place, if ever, to make distributions to New York customers. That would not make any sense and it is not required by any provision of the Bankruptcy Code, and the State of New York acknowledged during argument yesterday that it is not requesting such a result.

At one point I believe one of the unsupported jurisdictions argued that cryptocurrency prices can vary over time so the value of the consideration that customers receive may be different when the customers actually receive it. But that often happens under bankruptcy plans.

In the American Airlines case, for example, creditors were entitled to receive stock as distributions on their allowed claims. There were many disputed claims, however. And the people who held those claims only received stock as and when their claims were allowed.

In the Meantime, the stock price changed, sometimes very significantly. But there was no way for the debtors to control for those price changes and no practical way for any debtor to ensure that the stock that was reserved and later distributed would have the same value on every distribution date. The creditors received the same amounts of stock, which is all that the Bankruptcy Code required, and as a practical matter, the only thing that the bankruptcy could require when property other than cash is

being distributed.

Similarly here, the Debtors cannot solve for the fact that cryptocurrency prices inevitably will fluctuate. The distributions that are calculated for creditors will be done on the same day and on the same basis. However, some creditors will have disputed claims and will not receive distributions until disputes are resolved. Other creditors may face delays due to regulatory issues or simply due to delays in their own submission and processing of paperwork needed to open the Binance account. It is just inevitable that some customers will actually receive distributions on different dates and that market values on those dates may fluctuate, but that does not amount to an unequal treatment proposed by the plan. I therefore overrule the objections as to the plan's treatment of customers in unsupported jurisdictions.

There were also objections that were filed as to the identity of the proposed plan administrator, Mr. Paul Hage. Many of the objections suggested that the job should not go to anyone associated with the Official Committee of Unsecured Creditors or their individual members apparently because a number of accountholders are not happy with the Committee's decisions and its work.

Mr. Hage testified about his qualifications and answered questions about his work in this case and also

whether he has any conflicts of interest that would prevent him from serving as the plan administrator. He testified that he was the personal attorney to an individual who was a member of the Unsecured Creditors' Committee and that at the outset of the case he gave some advice to committee members as to how they could organize the process by which they selected a law firm to act as counsel to the committee.

A number of customers postulated that the individual who Mr. Hage represented was a close friend of Mr. Ehrlich, the CEO of the Debtors, and that this had improperly influenced the Unsecured Creditors' Committee in considering the settlement with Mr. Ehrlich that is embodied in the plan.

However, Mr. Hage testified credibly that the relevant committee member was a large customer of Voyager whose friendly relationship with Mr. Ehrlich ended when Voyager shut down its platform. Mr. Hage further testified that the relevant committee member actually spoke out against the proposed settlement when this was presented for the committees' review and that he ultimately abstained from voting after the votes of other committee members had already made clear that the creditors' committee approved of the settlement terms.

I do not believe that the evidence supports the contention that Mr. Hage's limited connections to this

committee member gave rise to conflicts of interest or that in the real world they would affect his work.

There were objections as to whether Mr. Hage should be appointed because he has never been a plan administrator before. Anybody who has extensive experience in the bankruptcy world and has represented both debtors and creditors is qualified to do the work that a plan administrator in a case such as this will be required to perform. And Mr. Hage absolutely has those qualifications in spaces.

There were also expressions of concerns by some pro se investors that I can only say amount to a desire to have more of a pit bull as a plan administrator, someone who will be absolutely more aggressive and satisfy the desires of some people for more aggressive treatment of the people who ran Voyager and more aggressive pursuit of potential litigation claims.

I understand what's behind that attitude. It does not actually in the real world translate into what makes for an effective plan administrator, or in my personal experience, what makes for an effective litigator. People who aren't lawyers sometimes think that it is the snarliest and nastiest people who are the most effective litigators. People who actually do litigation and certainly judges know that those are often the people who are the least effective

litigators. They are the most annoying and they may satisfy clients' desires to inflict pain on an adversary, but by all means they are absolutely not necessarily the most effective. So I don't think that particular criticism of Mr. Hage is well-taken and I find that he is qualified for the work and that his appointment is reasonable.

An ad hoc group of equity securityholders objected to the way the plan described the treatment of intercompany claims. I was under the impression that had been resolved until yesterday. Some additional questions were raised. I won't go into those in detail because the Debtors have now agreed and have disclosed the names of the people who will serve as independent directors of each of the separate debtor estates, and it is clear that if there is a conflict of interest between those estates, that the independent directors will have the right to appear and be heard on any issue involving where such a conflict exists. And I understand that those provisions had been included in the plan documents and that this objection is resolved.

A lot of other objections have been resolved and don't need to be discussed in detail here. The amended plan, as requested by the U.S. Trustee, has deleted provisions deeming all claims to be objected to. The proposal that the winddown debtor would have the sole authority to object to claims has been deleted. Provisions

regarding the treatment of late claims have been modified to make clear that they will be disallowed only as I so order. Some Alameda FTX had at one point had objections, but it has dropped its objections.

The Bank of New York had an absolutely curious objection based on the odd fact that somebody apparently purported recently to transfer some real property to Voyager's name and Bank of New York has a mortgage lien on that property. That one was relatively easy to dispense with, and the confirmation order will provide Voyager is not claiming any ownership or interest in that property and that the automatic stay is no bar to the Bank of New York doing whatever it needs to do to enforce its mortgage.

I had previously indicated yesterday that I thought that the plan needed to be modified to say that -- to delete the provisions that said that the plan administrator and the Debtor do not have responsibility to try to locate people for whom checks or other communications were returned as undeliverable. Those provisions have been changed and I am satisfied with those changes.

I also said that the proposed provisions regarding professional fees had to be modified to make clear that their fees and their compliance with the provisions of the Bankruptcy Code have to continue through the effective date, not just through the confirmation date. I haven't actually

seen if those changes have been made, but I cannot imagine that they are controversial at all.

Finally, there are a few other objections that were made but that I do not believe had merit. One owner of the VGX token argued that owners of VGX are being unfairly discriminated against. This is based primarily on the fact that there is no guarantee that the VGX token will continue to be traded in a meaningful way and therefore assurance that the VGX token will continue to have much if any value.

I note that under the terms of the plan, the amount of the allowed claims that customers have based on their VGX holdings will be based on the value that VGX had on the date that the cases were commenced and not based on its current value.

However, to the extent that some of the customers' distributions will be in the form of VGX, the values of those distributions will be based on the value that VGX has on a specified date in advance of the actual distributions.

The goal is to try, if possible, to make some in-kind distributions if they can be made, thereby possibly reducing tax consequences. But we have no guarantee that will work from a tax perspective.

I do not believe the Debtors are in a position to guarantee that VGX will continue to be traded any more than the Debtors can guarantee that any of the other coins that

will be distributed will continue to be traded. Similarly, the Debtors can make no guarantees about what will happen to the future values of any of the coins. Those are all things that will depend on market forces.

Customers who elect to receive in-kind distributions instead of cash distributions will receive VGX if they previously owned some VGX. But I don't think this amounts to a deferential treatment or an improper discrimination in violation of any code requirements.

The gist of the suggestion I think yesterday was that it is okay to treat other cryptocurrencies as having values based upon their market prices, but that somehow the market prices of VGX are actually illusory. Ordinarily, the market price of an asset represents the market's assessment of the potential risk and rewards associated with that asset. Even when a stock or other marketable item may appear to have little future prospect of value, it may nevertheless carry an option value based on the possibility that circumstances will occur that will lead to future values. Those option values or other market values are real values in the absence of proof to the contrary. And I certainly understand the objectors' worries about VGX, but I have no contrary proof here or nothing that would allow me essentially to say that the VGX token should be excluded from the distribution process and treated just as though it

didn't exist and just as though its value was a nullity.

I have one objection to the effect that the plan does not provide for a recovery for the holders of equity at the ultimate holding company level. In fact, the plan makes clear that those equity holders will be entitled to distributions if that ultimate holding company has assets once it pays its own creditors in full, although the current predictions are that that will not happen.

I believe I have addressed all of the objections that have been filed. And for the reasons stated, I have overruled the remaining objections. I therefore will confirm the plan subject to the changes that I have described.

As to the confirmation order, there are a number of provisions that seem to me to be superfluous or repetitive or otherwise unnecessary, or in a few instances improper. And I have made substantial revisions to the proposed confirmation order. And this morning, without making any changes that would suggest how I would rule here, I gave a form of confirmation order to the Debtors that showed those other changes that I would require in the event I were to confirm the plan. There are a lot of questions and a lot of things that are in the draft order that may not necessarily work in light of other provisions that I understand are in the plan, but I'm not going to try to

address those now. We will over the course of the next day or so try to work out the terms of the final confirmation order and any of those remaining issues will be resolved in that process.

Is there anything else that anybody thinks I need to address in the course of this decision on the confirmation?

MR. ARONOFF: Your Honor, this is Peter Aronoff from the U.S. Attorney's Office for the Southern District of New York.

We had filed a letter around midday today requesting that the Court modify the provision in the confirmation order regarding the 14-day default stay (indiscernible). I know other parties have also raised that. I just wanted to (indiscernible).

THE COURT: I suspect that's why Mr. Morrissey is also standing up. I'm not going to give you the 14-day stay, but I'm not going to force some poor district judge to live with the kind of schedule I've been living with over the last five days. And so I will give you a -- if we enter an order tomorrow, I will stay its effect until Monday.

MR. ARONOFF: Understood, Your Honor.

THE COURT: Before I say that I'm going to do that, is that going to violate some term of the Binance U.S. deal?

MR. SLADE: That's why I was looking at Mr. Goldberg.

MR. GOLDBERG: Your Honor, Adam Goldberg with Latham & Watkins. Binance U.S.'s goal is to complete this transaction as quickly as possible. If I could have two minutes to confer with the Debtors, we could see if that's an issue.

THE COURT: Okay.

MR. GOLDBERG: Your Honor, that would -- we are okay with that provision. Thank you.

THE COURT: Okay, thank you. All right. I do have another issue, but do you have a point on the confirmation itself, Mr. Morrissey?

MR. MORRISSEY: Your Honor, on the stay issue, frankly, Your Honor, I have to get back to the U.S. Trustee regarding whether Monday is okay. The issue obviously is, as I'm sure the people here are aware, is whether we would need to request a stay pending appeal. We would all like to avoid that scenario. But I have to find out whether the extension until Monday will put that issue to bed, at least for now. Thank you, Your Honor.

THE COURT: All right. Okay. I also have before me a motion to appoint a trustee or motions to --

MS. DIRESTA: Your Honor, can I ask a question about the customer data?

THE COURT: Let me finish this first. Okay?

MS. DIRESTA: Okay, thank you.

THE COURT: But promise I won't forget you.

I have a motion to appoint a trustee or motions to appoint a trustee and/or to remove the Unsecured Creditors' Committee members and replace its advisors.

The Code provides that I may appoint a trustee for cause at any time before the confirmation of the plan, of course based on my decision that we are now less than a day away from the entry of an order confirming a plan. There is no way, even if I were to order the appointment of a trustee, that one would be in place before the whole issue would be moot, as the confirmation order will have been entered. I know that's frustrating for the people who have raised the motion, but I also think that while the motion makes a lot of accusations that actually have not really been answered by the Debtors, at this late stage in the case and right during the middle of the confirmation process, I can't see how the issues that were raised were of a kind that would provide cause to interrupt that process and to throw everything back into disarray. It just wouldn't have made sense to me if for reasons I said yesterday I didn't really think that there was cause at this stage of the case.

I also have two motions for returns of assets that essentially argue that customers should be allowed to take

out everything that was in their accounts and shouldn't be given only partial distributions as the plan contemplates. I simply cannot allow that. No bankruptcy case could allow that. If one customer started doing that, it would just mean that the next customer would get less. And the whole point of the Bankruptcy Code is to make sure that everybody gets equal distributions. And since there's not enough to go around here, nobody can get everything that was in their accounts. That's simply a basic matter of bankruptcy. So I will deny those objections.

And you had a question about the customer information? On the phone? I'm surprised I don't already --

MS. DIRESTA: Yes. Thank you, Your Honor.

THE COURT: I'm surprised I don't already recognize your names or your voices, but I'm afraid I don't.

MS. DIRESTA: Gina DiResta, Your Honor.

THE COURT: Yes.

MS. DIRESTA: So I wanted to ask, my home address, is that part of the level one or level two KYC that was being mentioned?

THE COURT: Do you know the answer?

MS. DIRESTA: Because I want to know if my home address is going to stay with Binance or not.

MR. GOLDBERG: Adam Goldberg of Latham & Watkins

on behalf of Binance U.S., Your Honor. Home addresses would be part of level one data that would be transferred.

THE COURT: I'm sure that's level one.

MS. DIRESTA: Okay. And then what about the biometric? You didn't mention that.

MR. GOLDBERG: Could you specify what you mean?

MS. DIRESTA: When you have to hold the phone to your face and it does this biometric configuration of your face and captures your data and it stores all of that.

MR. GOLDBERG: I mean, I would think that's part of the selfies that would be available. So customers will be entitled to opt out of the transfer of that data to Binance U.S.

THE COURT: Your phone recognizes your face. That's just on your phone, isn't it?

MR. SLADE: Yeah. I think the biometrics is an Apple function, not --

MS. DIRESTA: No, it gets sent.

THE COURT: It gets sent? That's news to me.

MS. DIRESTA: Yeah, the biometric information does get sent to the company.

MR. GOLDBERG: Your Honor, we have agreed that we are not acquiring selfies or this data for customers that opt out.

THE COURT: Do you mind adding biometric data to

what you're agreeing to exclude?

MR. GOLDBERG: Yes, Your Honor.

THE COURT: Okay. So they will exclude that.

MS. DIRESTA: Okay. And with regard to the social security information. And the attorney for Binance was saying that it would be costly and it would cost $20 per customer and there's a million customers. I just want to address the math on that. On paper, there's about 1 million customers of Voyager. I believe there's about 700,000 accounts that have under $100. And I believe there's about 400,000 accounts that are under $10. So those are kind of more like (indiscernible) accounts. And you can kind of see that with how many people actually participated in voting, which is under 62,000 people. And then supposedly 175,000 people have already opened accounts. There are only 2,117 people who voted no to the plan like I did. So if you assume that in a two-week opt-out period that all 2,117 people were to opt out, that only equates to $32,340 that Binance would have to pay if you pretend that all of those people decide to turn around and open an account. So I just (indiscernible) company that deals in billions of dollars, that that's a lot of money and that that would break them. And if they think it will, I'm happy to pay the $20 to reinstate all of my KYC information for level one in the event I ever lose my mind and decide to open a Binance

account. But I just don't think when you look at it mathematically there's justification for holding the social security number. I just don't think it's justified based on the math.

THE COURT: Can you take that back to your client, Mr. Goldberg?

MR. GOLDBERG: Your Honor, Adam Goldberg from Latham & Watkins on behalf of Binance U.S. I will of course take that back to my client, but I fully expect the answer will be we are not making any changes to the deal that has been proposed and that is supported by 97 percent of customers voting.

MS. DIRESTA: Thank you for allowing me to speak, Your Honor.

THE COURT: Okay.

MR. LOREN: Your Honor, this is John Loren, pro se creditor. I have a few questions regarding Binance.

THE COURT: Just hang on. Hang on one second, Mr. Loren.

Mr. Goldberg, I've given you a lot of these things to take back. In the real world, I don't know how many people will take advantage of this election that I am making available and just what effect it would be or especially what effect it would be if, as the customer just suggested, people who made the election and then wanted to be Binance

customers would have to pay you the $20 that you say it would cost. I understand you don't want to do this and wouldn't want to do this if, you know, it would mean 700,000 potential customers are going to leave you. I find it hard to believe that that's really what we're talking about here. And it certainly makes me more comfortable if customers have the right to stop their social security information. So just keep that in mind and talk to your client as a practical matter about whether it's really so important that they want to make me try to figure out what I have to do here and whether it's a small enough issue that they could just do what I've asked. Okay?

MR. GOLDBERG: I understand, Your Honor. Just to give you some insight onto this issue, we sought to negotiate a way to leave behind all of this data with the Debtor. It would require a meaningful price modification per customer that opted out. And the Debtors flatly rejected that. Understandably. This is I think in the end therefore an issue of business judgement of the Debtors in selling their assets. Thank you, Your Honor.

THE COURT: Thank you. All right. Mr. Loren, you had a question.

MR. LOREN: That is correct, Your Honor. Thank you for your time. I have two questions in regards to the Binance withdrawal process. There are fees to withdraw

crypto from Binance. Will that fee be waived for Voyager users or are we expected to pay Binance to withdraw?

THE COURT: Does anybody here know?

MR. GOLDBERG: Your Honor, I don't know. I think all of that would be disclosed on the Binance U.S. website.

THE COURT: I don't think any of the attorneys here know the answer to your question.

MR. LOREN: Okay. I am on the Binance website, and there are fees to withdraw. So (indiscernible) pay Binance to get our money. The second question is in regards to the daily withdrawal limit. I believe there's a limit of $5,000 U.S. Dollars per day to withdraw from Binance. Will that be waived for Voyager users? Will my claim take a month to get my money out of Binance?

MR. GOLDBERG: Your Honor, Adam Goldberg with Latham & Watkins on behalf of Binance U.S.

I am being told that the limit depends upon the level of KYC that a customer complies with. So if they achieve the KYC two level with the additional document uploads, then there would be different withdrawal limits. But I would expect all of this information is available through Binance U.S. website and customer service inquiries.

MR. LOREN: Got it. Because the website I see is showing $5,000 withdrawal per day. And that's going to take me a month to get my money. And I have to pay them to get

my money, too. It's very sad.

THE COURT: Let me ask you to -- I certainly have no ability to answer this question or to deal with it. This is a practical question. Let me ask you to get in touch or ask the Debtor's counsel to get in touch with you and see if they can facilitate putting you in touch with somebody who can give you a very precise answer to your questions. Okay?

MR. LOREN: Okay. Thank you for your time.

THE COURT: All right. Anything else?

MR. SLADE: Not from us, Your Honor. Thank you very much.

THE COURT: All right. Yes.

MR. ARONOFF: Your Honor, it's Peter Aronoff from the U.S. Attorney's Office again. I'm trying to run some things down here, talking with several people.

Just returning to the question of the stay. You know, we were obviously trying to move as quickly as possible to try to make a decision about whether to seek an appeal. That would require some coordination from the government. And this is an issue that from my perspective only arose just within the last few days. And so we're now -- we're moving as quickly as we can, but it takes time.

I believe this is a situation where having a little more time on the stay now will lessen the need for emergency applications when it's possible wouldn't be

necessary if we just have an extra few days. And so I would ask that the Court --

THE COURT: Listen, you discuss that with the parties if you can work that out with the parties. If you can convince them that there's some prospect that you're not actually going to pursue the issue, you can look at it further. I don't know, maybe you can work something out with them. But in the first instance, do that. Okay?

MR. ARONOFF: Okay. Thank you, Your Honor.

THE COURT: All right. Your judge is very tired and he's going to --

MR. HENDERSHOTT: Your Honor.

THE COURT: Yes.

MR. HENDERSHOTT: Your Honor, Tracy Hendershott, pro se creditor. One question and one comment if I may.

THE COURT: Yes.

MR. HENDERSHOTT: The question is actually for pro se creditor Lisa Trevino, who has had to focus on her day job today. And she asked me to just put into the record if there was any follow-up with her action to getting data back that she requested from the Debtors. Your Honor, once this confirmation is done today, she wasn't sure if she was able to engage with you any further to follow up on that. So I committed to her I would ask that in the hearing on her behalf.

MS. OKIKE: Your Honor, Christine Okike on behalf of Kirkland & Ellis. We will provide her with the data. And if she needs an extension of the deadline with respect to the merit objection, we'll allow for that.

THE COURT: Very good.

MR. HENDERSHOTT: Thank you. I will relay that to her. Thank you both.

And then just one comment. I did want to clarify, Your Honor, your interpretation of our request for having a third party (indiscernible) -- I'm drawing a blank. I'm tired. We're all tried -- for the winddown trustee. We weren't looking for a snarling bit pull, Your Honor. We were looking for effectiveness. You've seen the UCC go along with every single exception and (indiscernible) all along we just didn't have confidence that there would be a level of (indiscernible), which is different. Effectiveness is different than a snarling pit bull. I just wanted to clarify that.

THE COURT: All right.

MR. HENDERSHOTT: Thank you, Your Honor.

THE COURT: Well, if that's true, maybe I'll delete that part of my discussion and commentary from the final version of the decision.

MR. HENDERSHOTT: Thank you, Judge.

THE COURT: I thought I understood it differently.

But thank you for the clarification.

MS. OKIKE: Your Honor, on behalf of the Debtors, we just want to thank you for taking extensive time to really help us navigate through very complex and challenging issues. So we really appreciate it.

THE COURT: okay.

MR. GOLDBERG: Gratitude to Your Honor and all of your staff and chambers. Thank you. The Committee thanks you as well.

THE COURT: Thank you all for your submissions, and we are adjourned.

(Whereupon these proceedings were concluded at 5:14 PM)

I N D E X

RULINGS

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

Veritext Legal Solutions

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Date: March 10, 2023

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Exhibit C

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	**Chapter 11**
VOYAGER DIGITAL HOLDINGS, INC., et al.,	:	**Case No. 22-10943 (MEW)**
Debtors.	:	**(Jointly Administered)**

DECISION AND ORDER DENYING THE GOVERNMENT'S MOTION FOR A STAY OF THE CONFIRMATION ORDER PENDING APPEAL

A P P E A R A N C E S:

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I entered an order confirming the Debtor's plan of reorganization in these cases on March 8, 2023 (ECF No. 1157), and the corrected and operative version of the order was entered on March 10, 2023 (the "**Confirmation Order**") (ECF No. 1166.) I had previously dictated a decision into the record on March 7, 2023, and the corrected and final version of my decision (the "**Decision**") was entered on the docket on Saturday, March 11, 2023 (ECF No. 1170), with some typographical errors corrected in a further Order entered March 13, 2023 (ECF No. 1173). The United States Government, through the Office of the United States Trustee and the Office of the United States Attorney for the Southern District of New York, has moved for a stay of the Confirmation Order pending an appeal, or in the alternative for a stay of the "exculpation" provisions that are included in the Confirmation Order and in the underlying plan of reorganization. The Government has submitted a memorandum in support of its motion (the "**Govt. Mem.**," ECF No.1182) and the Debtors have submitted a memorandum in opposition to the motion (the "**Debtors' Mem.**," ECF No.1186), as has the Official Committee of Unsecured Creditors (the "**UCC Mem**.," ECF No. 1187). The Court heard argument on the motion on March 15, 2023.

Discussion

Rule 8007 of the Federal Rules of Bankruptcy Procedure provides that a party seeking a stay pending appeal must apply in the first instance to the bankruptcy court. Fed. R. Bankr. P. 8007(a)(1)(A). The decision to deny a stay is within the discretion of the bankruptcy court. *In re Overmyer*, 53 B.R. 952, 955 (Bankr. S.D.N.Y. 1985). The relevant criteria have been worded somewhat differently in different cases, but as a general matter the court must consider: (1) whether the movant has made a "strong showing" that it is likely to succeed on appeal, (2) whether the movant will suffer irreparable injury absent a stay, (3) whether another party will

suffer substantial injury if a stay is issued, and (4) how public interests may be affected. *See 461 7th Ave. Mkt., Inc. v. Delshah 461 Seventh Ave., LLC (In re 461 7th Ave. Market, Inc.)*, No. 20-3555, 2021 U.S. App. LEXIS 36995, at *1 (2d Cir. Dec. 15, 2021).

I conclude based on these factors that the Government is not entitled to a stay. However, at the Court's request the parties have agreed (and the Court has ordered) that a stay will remain in effect through Monday, March 20, 2023. This modest extension of the current stay is made in recognition of the likelihood that a stay application will be made to the District Court, and to afford the District Court a reasonable opportunity to read the relevant papers and to make its own ruling.

1. Likelihood/Possibility of Success on Appeal

The Government contends that it is likely to succeed on appeal. However, if one were to read the Government's papers without having first read my Decision, one would have little to no idea of what I had actually ordered, or the bases on which I had done so. The Government has not even discussed the actual theory upon which I relied in support of the exculpation provision that I approved. Nor has it even discussed the many court decisions (including Second Circuit authorities) that I cited in support of the relief that I ordered.

I explained in the Decision that my order will have the effect, under section 1142(a) of the Bankruptcy Code, of requiring the Debtors to engage in the purchase and sales of cryptocurrencies in order to "rebalance" the Debtors' cryptocurrency portfolios, and will require the Debtors, the Wind-Down Debtors, the Plan Administrator and Binance.US (acting as the Debtors' distribution agent and as a trustee for that purpose) to distribute cryptocurrencies to customers. *Id.* at 34-35. I explained further that I believed that under a long line of authority parties should not be liable for doing things that my order will require them to do, particularly

where the Government (during the confirmation hearing) has not actually contended that any of these activities would be illegal. *Id.* I cited some decisions on this point when I announced my original decision in open court,[1] and when I issued my final decision I cited additional Second Circuit and other authorities that are directly on point.[2] The Debtors have cited many additional authorities in the memorandum they filed today. *See* Debtors' Mem. at 14-17. The Government contends that it will likely win on appeal, but in making its arguments the Government has not even discussed any of the authorities that I cited, or the actual theory on which I relied.

Instead, the Government's papers exaggerate and in some places mischaracterize what I have done and the authorities on which I have relied, and in other instances rely on hyperbole or on "straw man" arguments.

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1 *See* Decision at 31-32, *citing Airadigm Commc'ns., Inc. v. FCC (In re Airadigm Communs., Inc.)*, 519 F.3d 640, 655-57 (7th Cir. 2008); *In re Granite Broad Corp*., 369 B.R. 120, 139 (Bankr. S.D.N.Y. 2007);*In re LATAM Airlines Grp. S.A.*, 2022 Bankr. LEXIS 1725, at *159 (Bankr. S.D.N.Y. June 18, 2022) ; *In re Murray Metallurgical Coal Holdings, LLC*, 623 B.R. 444, 504 (Bankr. S.D. Ohio 2021); *In re Ditech Holding Corp.*, 2021 Bankr. LEXIS 2274, at *25-26 (Bankr. S.D.N.Y. Aug 20, 2021).

2 *See* Decision at 35-36, *citing Bradford Audio Corp. v. Pious*, 392 F.2d 67, 72-73 (2d Cir. 1968) (receiver was immune from liability for having done what a court order approved and directed the receiver to do); *Dana Commercial Credit Corp. v. Center Teleproductions, Inc. (In re Center Teleproductions, Inc.),* 112 B.R. 567, 577-78 (Bankr. S.D.N.Y. 1990) (trustee granted absolute immunity from action brought by an entity with a security interest in property where trustee acted pursuant to court order); *see also Boullion v. McClanahan,* 639 F.2d 213, 214 (5th Cir. 1981) (holding that where a bankruptcy trustee sought and obtained court approval for his actions he was entitled to absolute immunity); *T& W Inv. Co. v. Kurtz*, 588 F.2d 801, 802 (10th Cir. 1978) (finding immunity appropriate when "every action by [the receiver] objected to in this suit was known to and approved by the state court judge supervising the receiver," the plaintiff "had an opportunity to and did object throughout the state court proceedings" and "the receiver was in fact following the orders of the court and complying therewith"); *Phoenician Mediterranean Villa, LLC v. Swope (In re J&S Props., LLC)*, 545 B.R. 91, 103 (Bankr. W.D. Pa 2015) (where a bankruptcy trustee acts pursuant to an order of court, a bankruptcy trustee is generally afforded absolute immunity*); In re XRX, Inc.*, 77 B.R. 797, 798 (Bankr. D. Nev. 1987) (a trustee acting pursuant to a court order in making a disbursement is not subject to personal liability.)

(a) Jurisdiction

The Government argues that I overstepped my jurisdictional authority, contending that that I did not have the power to do anything in these chapter 11 cases other than to resolve pre-petition claims. (Govt. Mem. at 21-22.) However, one of the things that must be resolved in every chapter 11 plan, and in a confirmation order with respect to a plan, is what will happen to a debtor's assets – *i.e.,* whether they will be sold, retained or distributed. *See* 11 U.S.C. § 1123(a)(5). In this case, the Debtors' assets consist primarily of cryptocurrencies. The plan requires the purchase and sale of cryptocurrencies (as part of rebalancing efforts in preparation for distributions) and it requires the distribution of cryptocurrencies to account holders. Indeed, it would be impossible to have a liquidation of the Voyager Debtors without some or both of those activities.

The Debtors proposed a plan of reorganization, and I was required to make a ruling as to whether it could be confirmed. Where regulatory issues were actually identified (such as with respect to distributions of cryptocurrencies in "Unsupported Jurisdictions,") those issues were accounted for in both the plan and in my Confirmation Order. However, the federal authorities made clear during the confirmation hearing that they do not actually contend that the contemplated rebalancing activities or proposed distributions of cryptocurrencies would violate any applicable laws. As I explained in my Decision, the evidence and argument before me during the confirmation hearing did not suggest there were any illegalities in what the plan contemplated, and compelled a conclusion that the transactions could and should proceed.

No party has disputed my jurisdiction over these cases, or my jurisdiction and my power to enter a confirmation order. The effect of my order (under section 1142(a) of the Bankruptcy Code) is that certain parties will be obligated to do what the plan calls for regarding the

rebalancing of the cryptocurrency portfolios and the distribution of cryptocurrencies to customers. I have left open the right of the Government to seek to stop the activities at any time if the Government believes that they should be stopped. All I have done – based on the authorities I cited and which the Government has not even discussed – is to confirm that, in the meantime, the people who are required to do things pursuant to my confirmation order will not be held liable for having done what I have required. So long as I have jurisdiction to issue the confirmation order (which I plainly do), and so long has my order requires that certain actions be taken (as it plainly does), then that ruling is proper under the authorities that I have cited.

(b) Clarity of the Provision

The Government has argued that my Confirmation Order is not sufficiently clear as to what conduct it purports to immunize and that it is subject to misinterpretation. (Govt. Mem. at 22.) The full text of the language that I approved is as follows:

> Effective as of the Effective Date, to the fullest extent permissible under applicable law and without affecting or limiting either the Debtor release or the third-party release, and except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur, and each Exculpated Party is hereby exculpated from, any liability for damages based on the negotiation, execution and implementation of any transactions or actions approved by the Bankruptcy Court in the Chapter 11 Cases, except for Causes of Action related to any act or omission that is determined in a Final Order to have constituted actual fraud, willful misconduct, or gross negligence; *provided* that nothing in the Plan shall limit the liability of professionals to their clients pursuant to N.Y. Comp. Codes R. & Regs. tit. 22 § 1200.8 Rule 1.8(h)(1) (2009).
>
> The Exculpated Parties have, and upon Consummation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the solicitation of votes.
>
> In addition, the Plan contemplates certain rebalancing transactions and the completion of distributions of cryptocurrencies to creditors. The Exculpated Parties shall have no liability for, and are exculpated from, any claim for fines, penalties, damages, or other liabilities based on their execution and

> completion of the rebalancing transactions and the distribution of cryptocurrencies to creditors in the manner provided in the Plan.
>
> For the avoidance of doubt, the foregoing paragraph reflects the fact that Confirmation of the Plan requires the Exculpated Parties to engage in certain rebalancing transactions and distributions of cryptocurrencies and the fact that no regulatory authority has taken the position during the Combined Hearing that such conduct would violate applicable laws or regulations. Nothing in this provision shall limit in any way the powers of any Governmental Unit to contend that any rebalancing transaction should be stopped or prevented, or that any other action contemplated by the Plan should be enjoined or prevented from proceeding further. Nor does anything in this provision limit the enforcement of any future regulatory or court order that requires that such activities either cease or be modified, or limit the penalties that may be applicable if such a future regulatory or court order is issued and is violated. Similarly, nothing herein shall limit the authority of the Committee on Foreign Investment of the United States to bar any of the contemplated transactions. Nor does anything in this provision alter the terms of the Plan regarding the compliance of the Purchaser with applicable laws in the Unsupported Jurisdictions before distributions of cryptocurrency occur in those Unsupported Jurisdictions.

The first paragraph of this exculpation provision states that parties are exculpated from liability for things that I authorized during the course of the bankruptcy case, with an explicit exclusion for fraud, willful misconduct or gross negligence. This language is much narrower than the provision that the Debtors had originally proposed. More importantly, the language describing the matters that are covered (*i.e.,* liability for damages based on the negotiation, execution and implementation of transactions or actions approved by the Bankruptcy Court) is precisely the modification that the United States Trustee suggested in the objection that it filed. As the Debtors have pointed out, the language also is comparable to (if anything, it is narrower than) the language that has been approved in countless other bankruptcy cases, usually without any objection by the Government and without any suggestion that it has been misinterpreted or misapplied. *See* Debtors' Mem. at 14-16, 17-18.

The second paragraph of the exculpation language just implements the terms of section 1125(e) of the Bankruptcy Code, and the Government does not challenge that provision.

The third and fourth paragraphs of the exculpation provisions that I approved are specifically limited to the fact that the parties must buy and sell cryptocurrencies as part of the portfolio rebalancing that the plan requires, and must distribute cryptocurrencies to customers. The point is to protect the parties from belated allegations that those very activities are somehow violative of law and that parties should be penalized just for doing what I have ordered them to do. The Government nevertheless has strained to find potential ambiguities in these terms. It theorizes, for example, that my Order might somehow be interpreted as immunizing fraud, or theft, or tax avoidance. (Govt. Mem. at 27-28.) Those contentions are red herrings; I do not believe that the Government actually thinks that my Order has such effect, or that anyone could reasonably contend that it has such effect. The last two paragraphs make clear that they protect people for doing the things that they are required to do under the plan and under my order. Although the plan and the Confirmation Order require the parties to sell cryptocurrencies, they certainly do not require (or permit) anyone to commit fraud in the course of doing so, or to engage in theft in the course of doing so. (Govt. Mem. at 27-28.) Similarly, there is nothing in the plan that requires or permits the Debtors to evade their tax obligations, and there is nothing in my Order that reasonably could be construed to mean that the Debtors do not have to pay taxes. (Govt. Mem. at 26-7.) Nor is there anything in the plan that requires or permits the parties to violate environmental laws, or that could be reasonably construed as having done so.

(c) Third Party Release Arguments

The Government continues to argue that I have granted "third party releases" and that the case authorities relating to "third party releases" would not authorize what I have done. (Govt. Mem. at 22-23, 24.) But I have repeatedly made clear that I am not relying on the authorities and

arguments that purportedly justify the "third party releases" that are at issue in the cases cited by the Government.

Cases that have approved "third party releases" rely on general contentions that a bankruptcy court may do what is "necessary" to the confirmation of a plan, coupled with contentions that releases of claims that third parties have against other third parties are necessary to secure settlements or other contributions to a plan. *See, e.g., In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 143 (2d Cir. 2005); *In re Purdue Pharma, L.P.*, 635 B.R. 26, 106 (S.D.N.Y. 2021). I have made it quite clear that I have not relied on any of those authorities or arguments in this case. In fact, I have previously expressed my own strong skepticism about third party releases that are granted on these theories. *See In re Aegean Marine Petroleum Network, Inc.*, 599 B.R. 717, 726-27 (Bankr. S.D.N.Y. 2019).

The exculpation provision that I have approved is based on entirely different principles and authorities, as explained above and as also explained in my prior *Aegean* decision and in my Decision in this case. The Government's contention that every exculpation provision somehow should be treated as though it is an outgrowth of the "third party release" cases, and that all other legal theories in support of exculpation should just be ignored, is without merit.

(d) Section 1142(a)

The Government argues that section 1142(a) of the Code does not by its own terms refer to an exculpation of parties. (Govt. Mem. at 23-24.) But by focusing solely on the language of section 1142(a) the Government has focused on only part of the relevant equation. My confirmation order will have the effect, under section 1142(a), of affirmatively requiring that certain actions be taken. The proposed exculpation results from the theory that people who must

do what my confirmation order requires are entitled to protection. That protection derives from my confirmation order and from the many other authorities cited above.

(e) Whether Prospective Conduct Should Be Covered

The Government persists in characterizing what I have done as a "release," and having applied this label the Government then argues further that a "release" should only focus on past conduct. (Govt. Mem. at 22, 25, 27-8, 29.) Again, the argument is based on a false analogy and a false label, and just ignores the actual theory on which I approved the exculpation provision. The whole point, in this case, is that the confirmation order will require certain actions to be taken in the future. Parties who act under the direction of that Order are entitled to know that they are not being ordered (in effect) to incur liabilities for having done so. As the Debtors have pointed out, courts regularly have approved exculpation provisions that cover prospective conduct that will occur during the implementation of a plan. *See* Debtors' Mem. at 16-17. If anything, the language in this case regarding proposed rebalancing trades and cryptocurrency distributions is far narrower and far more specific than the terms that have been approved in other cases.

(f) Notice to the Government

The Government asserts that it did not receive fair notice of the proposed exculpation terms. (Govt. Mem. at 25-6.) However, the initial version of the Plan that was filed on December 22, 2022 (ECF No. 777) included a broad exculpation provision in Article VIII.C. That provision would have immunized the "Exculpated Parties" based on any act or omission arising on or after the Petition Date – whether I had approved it or not – with exceptions for fraud, willful misconduct or gross negligence. That would have been far broader than the first paragraph of the exculpation provisions that I approved. The Debtors' proposal also would have

deemed the Exculpated Parties to have acted "in compliance with the applicable laws" with regard to the distributions contemplated by the plan, and proposed that the Exculpated Parties "shall not be" liable "at any time" for the violation of any applicable law, rule, or regulation governing such distributions. This, too, was broader than the language that I eventually approved, as it would have declared for all time that the Debtors' activities were deemed to be lawful and presumably would have thereby barred any legal effort to stop them.

The Debtors' proposed language appeared in every amended version of the Plan that was filed. *See* ECF Nos. 830, 1117, 1125. Notably, the SEC and the Office of the United States Attorney did not object to any of those provisions. The Office of the United States Trustee filed an objection (ECF No. 1085), but that objection just asked that the proposed exculpation be narrowed, not eliminated.

The first draft of the proposed confirmation order, submitted on February 28, 2023 (ECF No. 1120) included a paragraph that would have exempted the Government from the proposed exculpation provision. *Id.* ¶ 141. However, no such exemption was included in the plan itself, and the draft of the proposed order was filed well after the objection period had already passed. It appears that this language was included in the first draft of the confirmation order as a possible resolution of a separate objection that the FTC had filed regarding the FTC's ability to pursue claims based on pre-petition business activities of the Debtors and their personnel. In any event, the Debtors removed this provision in the next version of the proposed confirmation order that they filed. (ECF No. 1130.) The Government officials who currently object to the Confirmation Order do not contend that had negotiated for the inclusion of such a term in the confirmation order, or even that they were aware of it at the time. What actually got the Government's attention on March 2, 2023 was the Debtors' request to *expand* the previous exculpation

provision and to state explicitly that the Government would be barred from ever contending, in any context, that the relevant transactions violated any rule or regulation.

I agree that the extra and expanded language that the Debtors proposed on March 2, 2023 was overreaching and was made without adequate notice. At the same time, however, the Government should not be permitted to pretend that March 2, 2023 was the first time it received notice of the proposed exculpation provisions. The Government was on notice of those proposed exculpation terms since December 2022, and the relief that I ultimately granted was actually narrower than the relief that the plan sought.

(g) Coverage of Non-Fiduciaries

The Government argues that parties should not be the beneficiaries of exculpation unless they are "estate fiduciaries." (Govt. Mem. at 28-29.) As I explained in *Aegean*, however, the point of an exculpation provision is not only to protect court-supervised fiduciaries, but also to protect parties who engage in court-supervised and court-ordered transactions. *See Aegean,* 599 B.R. at 720-21. If parties are authorized (or directed) to do things under my Order, they deserve protection. *Id.* Other courts, based on similar reasoning, have extended exculpation provisions to persons who were not fiduciaries of the estate. *See* Debtors' Mem. at 16-17.

Furthermore, in this case, the Debtors plainly are fiduciaries, and the persons who implement the rebalancing trades and distributions on behalf of the Debtors will be acting under the authority I have granted to the Debtors. In addition, Binance.US will distribute cryptocurrencies to customers as a distribution agent of the Debtors, and in that capacity Binance.US will receive and distribute cryptocurrencies "in trust" for the Debtors.

The Office of the United States Trustee at one point contended that exculpation provisions in favor of Debtors or other fiduciaries should not extent to employees or other people

who act for the Debtors. However, the Debtors are corporate entities; they can only act through human beings. It would make no sense to say that the Debtors themselves are exculpated from liability, but that the human beings through which the Debtors act are not similarly protected.

(h) Other arguments

I do not believe there is merit to the Government's other arguments.

I have not "enjoined" the Government's exercises of police and regulatory powers, I have not "prospectively immunized" the parties from enforcement actions, and I have not barred regulatory actions to stop the contemplated transactions. (Govt. Mem. at 21-2.) The Government's arguments to the contrary are just hyperbole. I have made it quite clear that the Government can step in at any time if (due to changing or evolving regulatory views) the Government thinks the rebalancing transactions or cryptocurrency distributions should be stopped. My order also made quite clear that I have not purported to limit the liability of any person for anything they have done that I have not explicitly authorized and/or directed them to do. The Order that I have entered is narrow in scope and is limited to the protection of people who, at least for now and in the absence of regulatory action, will have to do what my order requires.

Notwithstanding the Government's argument (Govt. Mem. at 25), there plainly was a "case or controversy" as to whether the parties who would be required to do certain things following a plan confirmation would nevertheless potentially be subject to personal liability to the Government for having done what a confirmation order requires. As I explained in the Decision, the Government did not actually contend that any of the transactions required by the plan would be illegal in any way. However, the SEC revealed cryptically at the close of the day on March 3, 2023 that the staff of the SEC believed that the VGX token had "aspects" of a

security (without specifying what those aspects were) and that Binance.US was operating as an unregistered securities dealer (without specifying why the staff thought so). The SEC further stated that the staff's views are not the views of the Commission itself; that the Commission itself was not taking the position that the proposed transactions were illegal; and that the SEC did not intend to offer any evidence or any further explanation as to exactly what the staff's concerns were. On the following Monday, March 6, 2023, the Government argued that the persons who would implement the plan should just "take their chances" as to whether the Government might later contend, after the fact, that the transactions were improper and that such persons were subject to penalties or other liabilities – even though (as noted) the Government was not prepared to oppose the confirmation of the plan, and even though the confirmation of the plan would require people to engage in the very cryptocurrency trades and cryptocurrency distributions that the Government wanted to reserve the right to penalize. I am not quite sure just what could have brought that particular issue into more direct focus.

The Government continues to argue that any immunity that derives from a court's order should just be an affirmative defense in future proceedings, and that the persons who may have to assert such defenses (and the courts who need to rule on them) should be left without any guidance, from me, as to what exactly it is that I think the confirmation order requires and what activities parties will be conducting under the authority of my order. (Govt. Mem. at 27.) I have already explained, in my Decision, why I do not think that makes sense. I see no reason why a future court should have to guess as to just what activities I have authorized and that I thereby intend to be subject to the relevant immunities.

Finally, the Government argues that in some bankruptcy cases exculpation provisions have not covered claims that the Government may have. (Govt. Mem. at 29-30.) That is true,

but it certainly has not always been the case, and the fact remains that the Government has been subject to countless court-approved exculpation provisions in other cases. *See, e.g.,* Debtors' Mem. at 17-18.

2. Balance of Hardships/Equities

The Government has not contended that it faces an "irreparable injury" in the absence of a stay except for the risk that an appeal might be rendered equitably moot if a stay were not granted. It is not entirely clear to me that this would be the case. For example, the Government has criticized my Order as allegedly being unclear or overbroad in what it covers. I believe, as explained above, that the Government's arguments in that regard are red herrings, and I do not believe there is any actual ambiguity in how the exculpation will be applied with respect to cryptocurrency sales and distributions, or that further clarifications actually are required. However, if the Government really thinks that my Order could be misinterpreted, and if the real purpose of an appeal is to obtain further clarification (for example) that my Order does not authorize the Debtors to commit fraud in their purchase or sales of cryptocurrencies, or that it does not permit a theft of cryptocurrencies, or that it does not free the Debtors of any tax liabilities, then I cannot imagine that appeals on such grounds would be barred based on equitable mootness. I do not believe that anybody contends or would ever contend that my Order authorizes any of the kinds of fraud, theft, or tax avoidance that the Government has identified, or that immunization from such misconduct somehow was an intended and inextricable feature of the plan and confirmation order.

The real point of my order, of course, is to protect parties who must buy, sell and distribute cryptocurrencies from being subjected to liability based on belated contentions that those very actions might be contrary to the securities laws, commodities laws or other laws. I

certainly could understand and agree that an appeal on that particular ground would be considered equitably moot at to transactions that had already been completed in reliance on the authority of my order. Curiously, though, during argument today the Government stated that it would not likely seek to impose penalties upon people for things they had already done in reliance on my order, and that any suggestion to the contrary was merely hypothetical. If that is so, then the Government's entire argument about the "equitable mootness" risk is merely hypothetical, because the Government cannot identify anything that it actually would want to do, or should be allowed to do, that would be rendered equitably moot in the absence of a stay.

The Government argues in its papers that I have somehow "tied its hands" in dealing with cryptocurrencies, and that my order will somehow stop the Government from addressing "fraud and abuse" in the cryptocurrency field generally or from addressing "[o]utright fraud, scams and theft in digital asset markets." (Govt. Mem. at 30-31.) During argument today the Government similarly argued that my Order will somehow prevent the Government from taking action to protect the public health, safety and welfare. These arguments are sheer hyperbole. I could not have said any more clearly that the Government is free at any time to take action to stop the Debtors' cryptocurrency trades and/or cryptocurrency distributions if the Government decides that those activities should be stopped. My Order just says that in the meantime the people and entities who do what my order requires will not themselves be liable for having done so. I fail to see how that possibly threatens the public health, safety or welfare, or how it ties the Government's hands in any way. If the Government has not already taken regulatory actions with respect to cryptocurrencies, or if it delays in taking any further regulatory actions, those delays will certainly not be attributable in any way to my order.

The Government also argues that a stay will not harm the Debtors because the proposed transaction with Binance.US may not close until later this month. To the extent that what the Government wants is a reasonable time to seek a stay from the District Court, the parties have agreed to provide that by extending the stay through March 20, 2023 at 5:00 p.m. However, the Government presumably does not contend that the entire appeal process could be resolved in the next few weeks. The stay that the Government is actually seeking would extend long past the time when the Binance.US deal is scheduled to close. A stay could threaten the availability of that transaction, and the uncontroverted evidence before me at the confirmation hearing is that a loss of the Binance.US transaction would lead to a reduction of approximately $100 million in the assets available for distribution to creditors. The stay the Government seeks would also postpone the Debtors' ability to implement their "toggle" plan, and would further delay distributions to customers.

Every delay in these cases means that further administrative expenses will be incurred, which just further reduces creditor recoveries. Delays themselves also are a massive issue for the Debtors' customers. The automatic stay and other provisions of the Bankruptcy Code have had the effect of delaying customers' access to their investments since July 2022, and many of those customers invested significant portions of the life savings or retirement savings in cryptocurrencies held by the Debtors. The harm that a stay would pose to the Debtors, and their constituents, is therefore quite significant and immediate. I am compelled to conclude that the harm that the Debtors and their constituents would suffer if a stay were to be granted exceeds any harm that the Government might incur due to the absence of a stay.

3. Public Interest

Finally, the public interest does not favor a stay. Notwithstanding the Government's efforts to manufacture ambiguities or excesses, (a) the first paragraph of the modified exculpation provision that I approved is almost identical to what the U.S. Trustee requested in its written objection, and (b) the last two paragraphs make clear that they do not prohibit any regulatory action, including actions to stop the cryptocurrency sales and distributions that the plan contemplates. The only thing my order does in that regard is to say that the parties who will engage in those activities under the authority and direction of my order – after the Government stated that it did not contend that the activities were illegal – should not in the interim be liable for doing what my order requires. I cannot imagine any "public interest" or equitable consideration that would require a different result.

The public interest also favors the timely resolution of bankruptcy cases. As noted above, a stay would adversely affect many thousands of customers.

Conclusion

As noted above, the parties have consented to a stay through 5:00 p.m. on March 20, 2023. For the reasons stated above, the Government's request for a further stay pending appeal is denied.

Dated: New York, New York
March 15, 2023

/s/ **Michael E. Wiles**
Hon. Michael E. Wiles
United States Bankruptcy Judge