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Hot Off the Blockchain: Current Crypto Case Law

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Characterization of Digital Assets in Bankruptcy

- Under the Bankruptcy Code, virtually *all legal or equitable interests* of a debtor in property become part of the bankruptcy estate upon filing (11 U.S.C. § 541(a)).
- Digital assets such as cryptocurrencies fall into this broad definition, but the precise characterization depends on the *nature of the debtor's rights and control* over the asset.
- Unlike cash or securities held by a broker, many crypto platforms historically commingled customer assets with operating funds or rehypothecated them through lending programs.
- This creates disputes over whether assets are held in *custody*, *on behalf of* customers, or as part of the *debtor's own property*.

In re Celsius — Property of the Estate & Contract Law

- One of the most influential early crypto bankruptcy decisions involved **In re Celsius Network LLC**. In that case, the bankruptcy court held that a significant portion of digital assets deposited in Celsius' "Earn" accounts were *property of the estate*, not customer property. The court based this primarily on:
  - The plain language of the platform's **Terms of Use**, which granted Celsius *title and ownership* of digital assets deposited by customers.
  - The enforceability of "clickwrap" agreements under governing law (New York law required offer, acceptance, and intent to be bound).
  - The fact that the assets were not segregated or held in a fiduciary-like custodial account but were used by Celsius for its own purposes.
- As a result, customers in the Earn program became **general unsecured creditors** rather than owners of specific crypto assets. This has significant implications for priority, setoff, and recovery rights.
- Notably, the holding is fact-specific: courts will look closely at *contract terms, custody practices, and commingling* in determining whether assets are excluded from the estate.

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Tracing, Constructive Trusts, and Priority Disputes

- When assets are commingled, tracing becomes critical.
- Courts may consider equitable remedies such as **constructive trusts** or tracing principles to determine who has valid claims to assets. In many crypto bankruptcies, this analysis turns on:
  - Whether the customer ever held *identifiable property interests* separate from the debtor's estate.
  - Contractual language regarding title transfer or custodial duties.
  - The ability to trace specific assets after commingling.
- While detailed modern opinions on tracing in crypto bankruptcies are still developing, the issue is one of the *highest stakes* in litigation over customer versus estate property rights.

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The GENIUS Act: Stablecoins & Super-Priority Claims

- The GENIUS Act, signed into law on July 18, is one of the most significant changes to U.S. bankruptcy law since 2005.
- The law requires permitted stablecoin issuers to back their coins one-to-one with liquid assets and treat those reserves as property of the customer, not the issuer.
- Stablecoins pose additional legal questions in bankruptcy:
  - In bankruptcy, if the reserves are insufficient, stablecoin holders may receive a superpriority claim.
  - If the reserves sit outside the estate and function more like a protective trust then they may be unavailable as DIP collateral or to fund professional fees.

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FTX Bankruptcy & Ancillary Legal Issues

- The FTX bankruptcy remains the largest and most complex crypto insolvency to date:
  - FTX filed for Chapter 11 in November 2022 after a liquidity crisis and alleged misuse of customer funds, leading to a multijurisdictional restructuring.
  - Litigation surrounding FTX has included disputes over customer ownership of assets, jurisdictional claims, and the *valuation of crypto claims*, with courts applying unique valuation frameworks due to the volatile and often illiquid nature of the assets.
  - While not strictly bankruptcy law, enforcement issues such as **OFAC sanctions and restricted jurisdiction transfers** (e.g., to creditors in sanctioned countries) are part of the broader FTX litigation and regulatory landscape that practitioners must navigate. These issues intersect with compliance obligations and creditor protections.

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Crypto Chapter 11 Proceedings: Overview

by Practical Law Bankruptcy & Restructuring*

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A Practice Note providing an overview of the key issues arising in crypto-related Chapter 11 proceedings. This Practice Note examines how cryptocurrency exchanges and yield-earning platforms function and how customers may be treated in the bankruptcy of such a platform. It addresses the critical question of whether customer digital assets are considered property of the bankruptcy estate, a determination often influenced by the platform's terms of service, the commingling of assets, and whether assets are held in trust. This Note also discusses a crypto platform's eligibility to be a debtor under Chapter 11, exploring the potential application of stockbroker or commodity broker regulations that could mandate a Chapter 7 liquidation. Additionally, it analyzes the implications of the Uniform Commercial Code (UCC), including the new Article 12 for controllable electronic records (CERs), on these proceedings. Key Chapter 11 plan considerations, such as the treatment of customer claims, regulatory compliance hurdles, and plan feasibility, are also explored in the context of recent, prominent crypto bankruptcies.

With the onset of major distress in the **cryptocurrency** market in 2022, referred to as the "crypto winter," several crypto and **digital asset** exchanges and yield-earning platforms (collectively, crypto platforms) filed US bankruptcy proceedings under **Chapter 11** and **Chapter 15** of the **Bankruptcy Code**. These included the filings of Voyager Digital Holdings, Inc. (Voyager) and Celsius Network LLC (Celsius) in July 2022 (see Legal Update, Cryptocurrency Lenders File for Chapter 11 Bankruptcy Protection), FTX Trading Ltd. and BlockFi Inc. in November 2022 (see Article, Expert Q&A on the FTX Bankruptcy: What Parties Can Expect), and Genesis Global Holdco, LLC and Bittrex, Inc. in 2023.

This Note provides an overview of some of the key issues that have arisen in these proceedings, including an explanation of how crypto platforms function and how customers of crypto platforms may be treated in US bankruptcy proceedings. This Note also examines whether a crypto platform is eligible to be a debtor in bankruptcy, whether customer digital assets are property of a crypto platform's bankruptcy **estate**, plan **confirmation** considerations, and other issues.

Crypto Platforms Explained

Crypto platforms provide a marketplace for parties to buy, sell, hold, trade, lend, and invest in cryptocurrency. Crypto platforms can be custodial, meaning that the platform has control over customers' crypto assets (see Crypto Assets Held in Custody or in Trust) or noncustodial, where the customer has control over its own crypto and holds the key to the e-wallet holding its crypto (see Noncustodial Accounts). Custodial platforms may commingle customer holdings in a single crypto wallet controlled by the platform (see Customer Account Terms of Service).

Cryptocurrency Ownership

Crypto transfers and transactions take place on a **blockchain**. The blockchain is a type of distributed ledger and every cryptocurrency has its own blockchain. The blockchain is publicly available and is akin to a shared spreadsheet that can only be edited by adding to the end of the chain. Every ("on-chain") cryptocurrency transaction is recorded in the blockchain for the particular cryptocurrency. Blockchains are often designed so that there is no record of the identity of crypto owners or the persons behind the transactions. Cryptocurrency transacted on the blockchain moves from e-wallet to e-wallet. Ownership of an e-wallet is determined by whoever holds the private key. Consequently, the owner of crypto within an e-wallet is the holder of the private key.

For example, the Bitcoin (BTC) blockchain was deliberately designed to provide transparency regarding the address with which an amount of BTC is associated, but there is no record of the identity of the owner of the BTC. Therefore, if X controls a digital wallet, but Y obtains X's private key to the wallet, Y has the power to move the BTC out of X's wallet. The BTC system does not provide a way for a user to recover BTC that is lost in this way, because knowledge of the private key is the mechanism by which the BTC network determines which party has the right to transfer BTC.

Crypto Lending Models

Crypto lending has become one of the most popular applications of crypto and blockchain technology. Crypto lending allows borrowers to secure financing by posting crypto as **collateral** (see Practice Note, Practice Point: Crypto Finance). The two primary crypto lending models are:

- The centralized finance (CeFi) lending model (see CeFi Lending Model).
- The **decentralized finance** (DeFi) lending model (see DeFi Lending Model).

CeFi Lending Model

In the CeFi crypto lending model, the crypto platform acting as lender retains custody of the borrower's crypto collateral and helps the disbursement of a fiat (US dollar or other cash) loan to the borrower. The lender remains responsible for managing the crypto collateral. If the borrower fails to make an interest payment or if the value of the collateral decreases and the borrower fails to provide additional collateral in response to a **margin** call from the crypto lender, then the lender may **liquidate** the collateral and terminate the loan. Examples of CeFi crypto lenders have included BlockFi, Celsius, Voyager, and Nexo.

DeFi Lending Model

Under a DeFi model, the crypto loan is fully automated using **smart contracts** on the blockchain. The borrower's crypto collateral is held in an e-wallet that can be accessed by a smart contract. If certain conditions are met, the smart contract automatically triggers events, such as:

- Loan fund disbursement.
- Repayment receipt.
- Liquidation of collateral if the value of the collateral decreases below a set amount. Typically, the smart contract protocol is programmed to liquidate collateral if its value declines below a predetermined level.
- Release of borrower collateral back to the borrower at the appropriate time.

Examples of DeFi lending platforms include Compound and Aave. For further details on DeFi platforms, see Practice Note, Decentralized Finance (DeFi): Overview.

Key Insolvency Risks for Crypto Lending Platforms

Crypto lending models involve certain risks that are not inherent in traditional finance (TradFi). For example:

- **Price volatility in the crypto markets.** In a downturn, where cryptocurrency valuations depreciate, CeFi crypto lending platforms issue margin calls for additional collateral to cover their **exposure** from the reduction in the value of the crypto collateral they hold. This contributed to Voyager's Chapter 11 filing, which was the first by a crypto platform (see Voyager Digital Holdings Declaration in Support of First Day Motions). Similarly, sudden crypto market downturns may trigger automatic collateral liquidation by the smart contracts operating within DeFi lending platforms, which protects the DeFi platform but poses risk to the borrower.

- **Contagion.** Crypto platforms are generally not insured by the **Federal Deposit Insurance Corporation** (FDIC) (see Legal Update, FDIC Issues Advisory to Insured Institutions and FDIC and FRB Issue Letter to Voyager Digital Regarding Misrepresentations on Deposit Insurance for Digital Assets). The FDIC requires traditional banks to maintain certain levels of capital and **liquidity**. If a significant percentage of borrowers were to default on their crypto loans, a crypto lending platform could find itself with insufficient liquidity to continue to operate and to return borrower collateral. The failure of a major crypto lending platform could also send ripples across the cryptocurrency markets. For example, many cryptocurrency lenders, including Celsius, Voyager, and Genesis loaned cryptocurrency to crypto fund Three Arrows Capital Ltd., which subsequently defaulted on the loans. Similarly, BlockFi loaned cryptocurrency to FTX, which defaulted on its loans. This caused a domino effect when these lenders were then unable to meet obligations to their customers.

- **Cybersecurity gaps.** An ongoing risk for crypto platforms is cybersecurity. In DeFi platforms, cybersecurity hacks, human coding error, or lax security can create vulnerabilities in underlying smart contract protocols (see Practice Note, Decentralized Finance (DeFi): Overview: DeFi and Cybersecurity). Data breach and ransomware can create a major risk for CeFi platforms as well. Cybersecurity risk assessments, audits, and cyber insurance can reduce these risks. For more information, see Practice Note, Cybersecurity in Bankruptcy.

- **Lack of clarity regarding legal status.** Certain countries (such as El Salvador and the Central African Republic) consider cryptocurrencies to be a form of money or a financial instrument. However, the legal status of cryptocurrency as a form of property – and determining legal ownership of that property – is often unclear. Cryptocurrencies may be classified as **general intangibles** or **investment property** under the **Uniform Commercial Code** (UCC) (see Application of the UCC to Crypto Assets), but they are different from property that financial institutions have historically handled in the ordinary course of business. This uncertainty creates risk regarding how cryptocurrency held by crypto platforms may be treated in a bankruptcy proceeding (see Funds Held by Bankrupt Crypto Platform May Be Property of the Bankruptcy Estate). These risks have been exacerbated by the position taken by the SEC under prior administrations that most crypto assets are unregistered securities (see Practice Note, Regulation of Crypto-Asset Securities in USA). For more information on the characterization of crypto assets in Chapter 11, see Practice Note, Crypto Assets in Bankruptcy: Characterization and Valuation of Cryptocurrency in Chapter 11.

Crypto Platforms: Eligibility to File for Chapter 11

Under section 109(a) of the Bankruptcy Code, only a person that resides or has a **domicile**, a place of business, or property in the in the US on the **petition date** is eligible to be a debtor under Title 11. This requirement applies across all chapters of the Bankruptcy Code, including Chapter 15 (see *Drawbridge Special Opportunities Fund LP v. Barnet (In re Barnet)*, 737 F.3d 238, 247 (2d Cir. 2013) and Legal Update, In re Barnet: Second Circuit Applies Debtor Eligibility Requirements to Chapter 15 Cases).

Chapter 11 relief is available to most corporations, **partnerships**, and **limited liability companies** (LLCs), which includes many crypto platforms. Chapter 11 relief is not available to:

- Banking institutions and insurance companies, the insolvency proceedings of which are governed outside of the federal bankruptcy scheme by state and federal regulatory laws (see Banking Institution Exclusion and Practice Note, Summary of the Dodd-Frank Act: Resolution of Failing Financial Institutions).
- Stockbrokers and **commodity brokers**, who are eligible to file for **Chapter 7** relief (see Stockbroker and Commodity Broker Exclusions and Practice Note, Broker-Dealer Insolvencies Under the Bankruptcy Code and SIPA).

There is no requirement that a debtor be insolvent to file for Chapter 11 protection. In fact, the only requirement for filing a voluntary case is that the debtor seeks relief from its creditors in good faith. For more information on Chapter 11 eligibility, see Practice Note, Bankruptcy: Overview: Who Can Be a Debtor.

Banking Institution Exclusion

While an argument can be made that certain cryptocurrency platforms function similarly to banks, it is unlikely that a crypto platform would be treated as a banking institution or financial institution that is subject to the exclusions under section 109(b) of the Bankruptcy Code. The FDIC has issued a number of letters specifying that it does not insure crypto platforms (for example, see Legal Update, FDIC Issues Advisory to Insured Institutions and FDIC and FRB Issue Letter to Voyager Digital Regarding Misrepresentations on Deposit Insurance for Digital Assets). The FDIC letters make clear that crypto platforms are nonbank entities the deposits of which are not insured by the FDIC. See also, *In re Coinbase Glob., Inc.*, 2025 WL 843852, at *2-3 (N.D. Ill. Mar. 18, 2025), holding that major crypto platform Coinbase is not a bank or a financial institution under the Right to Financial Privacy Act.

Stockbroker and Commodity Broker Exclusions

A cryptocurrency platform that qualifies as a "stockbroker" or "commodity broker" under the Bankruptcy Code is not eligible for Chapter 11 but instead must file for Chapter 7 bankruptcy relief. Whether a particular crypto platform might qualify as a stockbroker or commodity broker under the Bankruptcy Code depends on how the Bankruptcy Code applies the definitions of these terms:

- The Bankruptcy Code defines "commodity broker" as a "**futures commission merchant**, foreign futures commission merchant, clearing organization, leverage transaction merchant, or commodity options dealer ... with respect to which there is a customer" (§ 101(6), Bankruptcy Code).
- The Bankruptcy Code defines "stockbroker" as a "person with respect to which there is a customer ... that is engaged in the business of effecting transactions in securities for the account of others or with members of the general public, from or for such person's own account" (§ 101(53A), Bankruptcy Code).

Whether crypto assets qualify as securities is an unresolved question that has been the subject of proposed legislation (see Practice Note, Cryptocurrency and Virtual Currency Regulatory Tracker: Proposed US Federal Cryptocurrency Legislation) and conflicting caselaw (see Practice Note, Regulation of Crypto-Asset Securities in USA: Application of Howey Test to Crypto Assets).

On June 7, 2022, US Senators Kirsten Gillibrand (D-NY) and Cynthia Lummis (R-WY) introduced the Lummis-Gillibrand RFIA (S.4356, 117th Cong. 2022), one of the more noteworthy federal crypto regulatory proposals to date (along with FIT21 (the Financial Innovation and Technology for the 21st Century Act)), would have created a regulatory framework for digital assets. A revised version of the bill was introduced on July 12, 2023 (S.2281, 118th Cong. 2023). Under the revised proposal, the Lummis-Gillibrand RFIA included amendments to, among other things, the Bankruptcy Code's definition of "commodity broker" to include "crypto asset exchange," which the RFIA defined as "a centralized or decentralized platform which facilitates the transfer of crypto assets" and "a trading facility that lists for trading at least one crypto asset."

As proposed by the RFIA, the only bankruptcy relief available to a crypto asset exchange would have been Chapter 7 liquidation under the commodity broker liquidation Subchapter of Chapter 7 (§§ 761 to 767, Bankruptcy Code). By limiting bankruptcy relief to the commodity broker liquidation Subchapter, the RFIA would have, among other things, put crypto asset exchanges into an established framework that specifically governed the treatment of customer property versus non-customer property, customer rights, and the portability of customer positions in crypto assets. This legislation serves as an example of how bankruptcy of crypto entities could be treated under federal legislation.

While a liquidation is generally not in the best interest of a debtor and its creditors, Chapter 7 provides certain protections for customer property in a commodity broker liquidation that could benefit crypto asset holders. For example, a commodity broker's customers have **priority** rights to "customer property" held by the debtor that may put them ahead of **general unsecured creditors**. For more information on commodity broker liquidations, see Practice Note, Broker-Dealer Insolvencies Under the Bankruptcy Code and SIPA.

Funds Held by Bankrupt Crypto Platform May Be Property of the Bankruptcy Estate

Section 541(a) of the Bankruptcy Code defines the scope of **property of the estate**, which broadly includes all legal or equitable interests of the debtor in tangible and intangible property, wherever located and by whomever held, as of the filing of a bankruptcy case, subject to limited exceptions (see Practice Note, Property of the Estate: Overview). Whether customer cryptocurrency held by a bankrupt platform is property of the bankruptcy estate depends on how the cryptocurrency is held.

Crypto platform custodial accounts are usually held for the benefit of the customer, but this does not necessarily create a trust relationship in favor of the customer (see Crypto Assets Held in Custody or in Trust). Although the amount and value of a customer's cryptocurrency may be reflected on the platform display as appearing in the customer's hosted e-wallet, the crypto asset itself may actually be commingled by the platform in a common pool of assets that may include the platform's own assets and assets of other customers (see Customer Account Terms of Service). These accounts are also typically governed by terms of use (see Customer Account Terms of Service).

Noncustodial accounts can also vary in structure raising questions about their treatment in bankruptcy (see Noncustodial Accounts).

Unlike traditional bank accounts or brokerage accounts, crypto assets are not backstopped or guaranteed by any governmental or other agency such as the FDIC or the **Securities Investor Protection Corporation** (SIPC). If a crypto platform files for Chapter 11 bankruptcy protection and its customers' assets are held in commingled accounts at the platform

level, a bankruptcy court would likely deem these assets property of the platform's bankruptcy estate (see Crypto Assets Held in Custody or in Trust). Customers of the bankrupt platform would hold **general unsecured claims** against the estate of the bankrupt platform for the value of their crypto assets that the platform held at the time of its filing, but they would not have the protections afforded traditional investment or bank account holders (see Practice Note, Crypto Assets in Bankruptcy: Characterization and Valuation of Cryptocurrency in Chapter 11: Valuation of Cryptocurrency).

Note, however, that UCC Article 8 (see Article 8 of UCC Applicable to Financial Assets) and amendments to the UCC to add a new Article 12 (see New Article 12 of UCC Applicable to Controllable Electronic Records) recognize that if the arrangement between the platform and its customers is characterized as custodial, the crypto assets held by the platform should be distributed to satisfy customer claims.

Crypto Assets Held in Custody or in Trust

A crypto platform customer's cryptocurrency holdings may not be part of a bankrupt crypto platform's estate if the crypto platform has entered into either:

- An express trust agreement with a customer naming the customer as beneficiary (see Express Trusts).
- A custody agreement providing for a separate, identifiable account for the customer, rather than general terms of service governed by a user agreement that allow the platform to control and use the customer's cryptocurrency (see Bailments).

Beneficial interest in custodial trust assets remains with the trust **beneficiaries** and are not available for **distribution** to creditors. In contrast, if a crypto platform's customers are not direct beneficiaries of trust or custody agreements with the platform, their account holdings likely fall under section 541 of the Bankruptcy Code's broad definition of property of the estate (see Customer Account Terms of Service).

Express Trusts

An express trust may be direct or intermediate. In a direct trust, funds are placed in trust for individual customers of a platform. In an intermediate trust, the funds are placed in trust for the platform. This is a significant distinction because with an intermediate trust, the platform is the trust beneficiary. With a direct trust, the interest of the bankrupt crypto platform in the customer's cryptocurrency would be limited to **legal title** (§ 541(d), Bankruptcy Code), and the estate must return the crypto assets to the platform's customers, as **beneficial owners**. Customers could still face liquidity disruption if required to obtain a court order authorizing the transfer of the assets to them from the platform. In cases where there is a third-party custodian, the legal and beneficial title to the crypto assets remain outside of the estate.

Platform customer user agreements typically do not provide for the creation of an express trust. Therefore, an express trust is uncommon for most individual crypto platform customer accounts (see Customer Account Terms of Service). However, certain **institutional investors** may have express direct trust agreements with platform custodians. These trust agreements are created by bilateral contracts rather than user agreements.

In the *Voyager Digital Holdings* case, the bankruptcy court granted the debtors' unopposed motion to permit withdrawals by customers of funds held in "for the benefit of" (FBO) accounts at a third-party bank (see *In re Voyager Dig. Holdings, Inc.*, 2022 WL 3146796 (Bankr. S.D.N.Y. Aug. 5, 2022)). The court ruled that the funds held in the FBO accounts were not

property of the Voyager bankruptcy estate based on a finding "that the Debtors do not have either legal title or equitable interests to the funds in the FBO accounts" (*In re Voyager Dig. Holdings, Inc.*, 2022 WL 3146796, at *3).

The court further found that "[t]he Debtors had administrative rights to direct cash movements, but that is all" (*In re Voyager Dig. Holdings, Inc.*, 2022 WL 3146796, at *3). The court cautioned that its decision was based on the facts and arguments presented without opposition from competing creditors. Therefore, it "is not intended to be a ruling as to the rights that customers might have in cryptocurrency cases generally, or as a ruling on any issues that competing creditors might raise in other cases" (*In re Voyager Dig. Holdings, Inc.*, 2022 WL 3146796, at *3).

A constructive trust is a judicially created implied trust and is a remedy used when a party has been unjustly enriched by acquiring title to identifiable property at the expense of another or in violation of another's rights. Whether a constructive trust exists in a particular case is a matter of state law.

Bailments

A bailment is a delivery of property from one person to another for a specific purpose under a contract providing that the property will be returned when that purpose has been accomplished or the bailor returns the property. When platforms transfer custodial customer account holdings into e-wallets that also hold other customers' holdings, the assets become commingled. This commingling of custodial assets complicates the question about whether the transfer can be considered a bailment versus a sale. Typically, when the commingled assets are money, courts have held that commingling of customer funds defeats a bailment and creates a sale (see *Picard v. JP Morgan Chase Bank (In re Bernard L. Madoff Inv. Sec. LLC)*, 721 F.3d 54, 73 (2d Cir. 2013) (applying NY law); *Hossain v. Rauscher Pierce Refsnes, Inc.*, 15 F. App'x 745, 748 (10th Cir. 2001) (applying Kansas law)).

Wyoming's special purpose **depository institution** (SPDI) system appears to ensure that custodial holdings would be treated as bailments rather than as property of the estate (see Practice Note, Cryptocurrency and Virtual Currency Regulatory Tracker: Wyoming).

Customer Account Terms of Service

A cryptocurrency platform's terms of service or user agreement often include language stating that although the crypto assets are being held for the customer's benefit:

- The assets are not segregated.
- The platform has no obligation to segregate an individual customer's crypto assets from other customers' assets or from the platform's assets.
- The platform has the right to move, lend, stake, or otherwise use the customer's assets.

The terms of service may also indicate that the platform maintains control over the private keys associated with the e-wallet addresses holding customer assets.

In *In re Celsius Network LLC*, the SDNY Bankruptcy Court found that terms of service governing approximately 600,000 accounts in the debtor crypto platform's interest bearing Earn program created valid and binding contracts between the debtor

and account holders (see 647 B.R. 631, 651-55 (Bankr. S.D.N.Y. 2023)). The court ruled that these contracts unambiguously transferred title of the approximately $4.2 billion in cryptocurrency assets deposited into Earn program accounts from account holders to the debtors (see *In re Celsius Network*, 647 B.R. at 656 and Legal Update, Goodwin Procter: Who Owns Digital Assets When a Cryptocurrency Platform Files Bankruptcy? The Terms of Use Answer the Question).

The court also noted that because the debtors owned the cryptocurrency assets in the Earn accounts, the account holders were unsecured creditors whose recovery would depend on the distributions to unsecured creditors under a confirmed Chapter 11 plan or under the Bankruptcy Code's priority rules in the event of liquidation (see *In re Celsius Network*, 647 B.R. at 637-38, 657-58).

The *Celsius* decision is not binding on courts in other cases and may be distinguishable from other cases based on differences in the particular terms of service or allegations of fraud, misrepresentations, or other criminal activity. However, it is noteworthy precedent.

Commingling of Crypto Assets

Even if a cryptocurrency platform acknowledges that customers have title and some form of control over assets in their accounts, the platform itself has a possessory right to the assets and the right to move, pool, and even use the assets under terms of service to which customers have agreed (see Customer Account Terms of Service). If a platform has access to a customer's assets and at any point commingles those assets with other assets, a customer asserting a trust relationship must trace the assets to recover them (see *Halperin v. Moreno (In re Green Field Energy Servs., Inc.*, 585 B.R. 89, 105 (Bankr. D. Del. 2018) (quoting *Redrock Admin. Servs. LLC v. Magna Ent. Corp. (In re Magna Ent. Corp.)*, 438 B.R. 380, 395 (Bankr D. Del. 2010) ("To establish that there exists a trust, a [party] must 'identify and trace the trust funds if they are commingled.'")); see also *Off. Comm. of Unsecured Creditors v. Cath. Diocese of Wilmington, Inc. (In re Cath. Diocese of Wilmington, Inc.)*, 432 B.R. 135, 150 (Bankr. D. Del. 2010) (when trust fund funds have been commingled, claimants must meet their burden of identifying and tracing those funds); and see *Off. Comm. of Unsecured Creditors of Columbia Gas Transmission Corp. v. Columbia Gas Sys. Inc. (In re Columbia Gas Sys. Inc.)*, 997 F.2d 1039, 1063 (3d Cir. 1993) (holding that a determination that funds are held in trust does not automatically entitle claimants to the full payment of amounts owed; instead, claimants bear the burden of identifying and tracing their trust property)).

When funds are commingled, a claimant does not have rights in the funds unless the claimant both:

- Demonstrates that the trust relationship and its legal source exists.
- Identifies and traces the trust funds that have been commingled.

(See *In re Columbia Gas Sys. Inc.*, 997 F.2d at 1063.)

Lowest Intermediate Balance Test

In instances where a trust claimant cannot identify and trace commingled property, courts apply the lowest intermediate balance test (LIBT) to determine the trust beneficiaries' rights in the commingled account (see *In re Columbia Gas Sys.*, 997 F.2d at 1063-64); *Cath. Diocese of Wilmington*, 432 B.R. at 151 & n.42 (citing *Conn. Gen. Life Ins. v. Universal Ins.*, 838 F.2d 612, 619 (1st Cir. 1988)); *Asurion Ins. Servs., Inc. v. Amp'd Mobile, Inc. (In re Amp'd Mobile, Inc.)*, 377 B.R. 478, 489 (Bankr. D. Del. 2007)).

For example, where a debtor is holding cash in a bank account in trust for a creditor, if the debtor wires additional funds into the account, it is not possible to identify which specific dollars in the account were the trust *res* and which were the additional wired funds. To account for these situations, courts apply the LIBT. Under the LIBT, if commingled collateral in an account has been reduced below the level of the initial transfer, but not depleted, then the trust-beneficiary claimant is entitled to no more than the lowest intermediate balance in the account. Therefore, even if a customer establishes a trust relationship and traces its assets to a specific account, the customer's ability to recover the assets in full depends on the application of the LIBT.

Noncustodial Accounts

Crypto platforms often offer noncustodial wallet options. Assets in noncustodial wallets are segregated, and only the customer has access to the e-wallet and control over the assets it contains. Customers are free to move assets from custodial wallets to noncustodial wallets outside of the platform. These include:

- Hot wallets, which are wallets connected to the internet.
- Cold wallets, which are wallets in which assets are stored offline.
- Warm wallets, which are available through downloadable software that provide additional layers of security.

If the customer and not the platform is the only party with access to a noncustodial wallet within a platform's ecosystem, then the account may not be property of the estate. Even if the platform could assert control over the crypto assets in the customer's non-custodial wallet, the customer should have a colorable claim that those assets are not property of the estate because the platform is holding the assets in trust for the customer.

Application of the UCC to Crypto Assets

Article 9 of UCC Applicable to Personal Property

Under the UCC, cryptocurrency may be classified as:

- **Personal property**, which includes investment property. Classifying cryptocurrency as investment property has become common in transactions involving security interests in cryptocurrency when there is an indirect holding framework, such as where property is held by a broker or third-party intermediary.
- A general intangible.

In the US, Article 9 of the UCC governs the process of making an otherwise valid security interest in personal property enforceable against third parties. This process is called **perfection**. Perfection requirements vary by state and category of the property, with the categories being defined in the UCC. For more information, see Practice Note, UCC Creation, Perfection, and Priority of Security Interests.

For more information on the creation and perfection of security interests in cryptocurrency, see Practice Note, Security Interests: Bitcoin and Other Cryptocurrency Assets.

Article 8 of UCC Applicable to Financial Assets

Article 8 of the UCC provides a set of rules governing custodial holdings of certain investments. Article 8 creates a form of **tenancy in common** in a custodial pool of **financial assets**. Where Article 8 applies, cryptocurrency deposits are held in a form of constructive trust in the holdings of cryptocurrency, which provides the platform's customers with priority in the custodial pool of crypto assets and makes those assets unavailable to the platform's other creditors. Whether Article 8 applies depends on whether the platform expressly opts into it. On June 1, 2022, Coinbase's User Agreement was revised to state that accounts are subject to Article 8.

For more information on applying Article 8 to cryptocurrency deposits, see Practice Note, Security Interests: Bitcoin and Other Cryptocurrency Assets: Cryptocurrency and UCC Classification.

New Article 12 of UCC Applicable to Controllable Electronic Records

UCC Article 12 governs the transfer of property rights in certain digital assets, called controllable electronic records (CERs), which include certain assets that are intangible and have been created by technology that exists now or may be developed in the future. CERs are defined to include only those records stored in an electronic medium that can be subjected to control (UCC § 12-102(a)(1)). Examples of CERs existing now include certain types of **virtual currency** and **non-fungible tokens** (NFTs).

UCC Article 12 is designed to reduce the commercial risk around transactions in bitcoin and other digital assets. The principal function of UCC Article 12 is to specify the rights of a purchaser of a CER (where the purchase includes obtaining a security interest) (NY UCC § 1-201(b)(29)). If Article 12 applies to a crypto customer account, cryptocurrency deposits into that account are held by the platform in a form of constructive trust in the holdings of cryptocurrency, which, in the event of a platform bankruptcy, would provide the customer with priority in the custodial pool of crypto assets and make those assets unavailable to the platform's other creditors.

The American Law Institute and the **Uniform Law Commission** have approved UCC Article 12 along with updates to Article 9 to ensure perfection of security interests in virtual currency. This law is now being considered for adoption by state legislatures. For details on state-by-state adoption of UCC Article 12, see Practice Note, Proposed 2022 Amendments to the UCC: State-by-State Adoption.

Chapter 11 Plan Considerations

Treatment of Crypto Platform Customer Claims Under a Chapter 11 Plan

Treatment of crypto platform customer claims under a Chapter 11 **plan of reorganization** depends on how customer digital assets are held or owned by the platform in relation to its customers. A customer holding cryptocurrency at a bankrupt crypto platform may face one of four potential outcomes:

- **General unsecured claims.** If a customer's crypto assets are found to be property of the debtor platform's bankruptcy estate (see Funds Held by Bankrupt Crypto Platform May Be Property of the Bankruptcy Estate), the customer will have a general unsecured claim against the platform's bankruptcy estate. The customer would be entitled to a **pro rata** distribution from the estate remaining after the payment of higher priority claims. General unsecured claimants must receive a recovery in an amount at least what they would receive in a hypothetical Chapter 7 bankruptcy liquidation (§ 1129(a)(7)(A), Bankruptcy Code and see Practice Note, Chapter 11 Plan Process Overview: "Best Interests of Creditors" Test). For related information, see Practice Note, Crypto Assets in Bankruptcy: Characterization and Valuation of Cryptocurrency in Chapter 11.

- **Secured claims.** If a customer holds a valid and perfected security interest in the crypto assets held in its account (see Application of the UCC to Crypto Assets), the customer is treated as a **secured creditor** of the bankrupt platform's estate, entitled to a plan distribution in an amount no less than the value of its collateral. This distribution may be made by the estate in the form of:
  - a return of the collateral;
  - a distribution of at least the value of the collateral; or
  - a **lien** on the proceeds of the collateral.

- **Assets held in trust.** If crypto holdings are held in trust for the benefit of a customer (see Crypto Assets Held in Custody or in Trust), the holdings cannot be distributed to the estate's creditors under a plan and are typically turned over to the customers, as in the *Voyager* case (see Express Trusts).

- **Regulatory claims.** If a bankrupt cryptocurrency platform is subject to a regulatory enforcement claim, the regulatory enforcement claim may be subordinated (see Practice Note, Crypto Assets in Bankruptcy: Characterization and Valuation of Cryptocurrency in Chapter 11: Subordination of Regulatory Enforcement Claims).

For more information on plan classification and treatment considerations, see Practice Note, Chapter 11 Plan Process: Overview: Classification and Treatment of Claims and Interests.

Good Faith and Regulatory Compliance

A Chapter 11 plan of reorganization must be proposed in good faith and not by any means forbidden by law (§ 1129(a)(3), Bankruptcy Code and see Practice Note, Objecting to Plan Confirmation: Overview: Objections Based on Lack of Good Faith). Most bankruptcy courts have held that this does not require that the contents of the plan comply in all respects with the provisions of all nonbankruptcy laws and regulations. Instead, courts have held that section 1129(a)(3) of the Bankruptcy Code requires that only the plan's proposal, as opposed to the contents of the plan, be in good faith and comply with all nonbankruptcy laws (see *Garvin v. Cook Invs. NW, SPNWY, LLC*, 922 F.3d 1031, 1035 (9th Cir. 2019); *In re Irving Tanning Co.*, 496 B.R. 644, 659-60 (B.A.P. 1st Cir. 2013); *In re Glob. Fertility & Genetics, New York, LLC*, 663 B.R. 584, 605 (Bankr.

S.D.N.Y. 2024); *In re 431 W. Ponce De Leon, LLC*, 515 B.R. 660, 673 (Bankr. N.D. Ga. 2014); *In re Gen. Dev. Corp.*, 135 B.R. 1002, 1007 (Bankr. S.D. Fla. 1991)).

Regulatory compliance could be a hurdle for crypto platforms seeking to satisfy section 1129(a)(3) and emerge from Chapter 11 if a court were to determine that the debtor sought Chapter 11 protection to avoid regulatory compliance. This was found to not be the case in the *Voyager* bankruptcy proceeding where the bankruptcy court overruled the SEC's objections to plan confirmation, which were premised on potential regulatory compliance issues should the SEC take the position that cryptocurrency is a security. The SDNY Bankruptcy Court held that the objections were vague and not based on any actual position taken by the SEC or any other regulatory entity (see *In re Voyager Dig. Holdings, Inc.*, 649 B.R. 111, 122-23 (Bankr. S.D.N.Y. 2023)). The *In re Bittrex, Inc.* case, filed on May 8, 2023 in the Delaware Bankruptcy Court, also provided for the return of crypto to customers under a wind down of its US platform in response to SEC regulatory action (see Practice Note, Bankruptcy: Cryptocurrency Case Tracker: Desolation Holdings, LLC (Bittrex, Inc. is an affiliate).

Plan Feasibility

A Chapter 11 plan cannot be confirmed unless it is **feasible** (see Practice Note, Chapter 11 Plan Process: Overview: Feasibility). Section 1129(a)(11) of the Bankruptcy Code, also known as the feasibility test, requires that plan confirmation is not likely to be followed by the debtor's liquidation or the need for further **reorganization** (see Practice Note, Feasibility Test: Confirmation of a Plan Under Section 1129(a)(11)). A plan is not feasible when, if implemented, it leads to another reorganization or bankruptcy filing by the debtor or successor entity. A lack of plan feasibility in a crypto platform Chapter 11 case might be found on the basis that, for example:

- The assumptions on which the **cash flow** projections are based are unreliable due to market volatility.
- Economic and industry conditions could impact whether the present economic climate and new regulatory schemes will sustain a successful reorganization.
- Concerns exist about the track record and previous accomplishments of management selected to run the reorganized debtor.

In the *Voyager* case, the SEC objected to plan feasibility based on whether:

- A certain Voyager token is a security.
- The purchaser of Voyager's assets, Binance.US, should register as a securities dealer.

In overruling the SEC's objection, the Bankruptcy Court found that the conditional objection would not prevent plan feasibility because the plan provided for a "toggle" option that would allow the debtors to make plan distributions or otherwise modify the plan if for some reason the Binance.US deal did not proceed. The SDNY Bankruptcy Court granted a motion by the US and the US Trustee to stay the confirmation order pending appeal (see *In re Voyager Dig. Holdings, Inc*, 649 B.R. at 122-23, *stay granted*, 2023 WL 2731737 (S.D.N.Y. Apr. 1, 2023)). Binance withdrew from the sale and Voyager toggled to a liquidation transaction and filed for Chapter 7 liquidation procedings, which the SDNY Bankruptcy Court approved (see Order Approving Liquidation Procedures and Granting Related Relief, Case No. 10943, Dkt. No. 1398 (Bankr. S.D.N.Y. May 18, 2023)).

For more information on objections relating to plan feasibility, see Practice Note, Objecting to Plan Confirmation: Overview: Objections Based on Lack of Feasibility.

Additional Information on Crypto Bankruptcy-Related Matters

Additional information can be found in the following resources:

- Practice Note, Crypto Assets in Bankruptcy: Characterization and Valuation of Cryptocurrency in Chapter 11.
- Practice Note, Crypto Exchange Bankruptcies: Prepetition Crypto Withdrawals and Decentralized Finance (DeFi) Loan Repayments as Potential Avoidable Preferences.
- Bankruptcy: Cryptocurrency Case Tracker.
- Crypto Industry Bankruptcy Toolkit.
- Practice Note, Security Interests: Bitcoin and Other Cryptocurrency Assets.

**This Note is based on works originally contributed by Darren Azman and Gregg Steinman, McDermott Will & Emery LLP*

GENIUS Act Stablecoin Bill Signed into Law: A Breakdown

by Practical Law Finance

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The Guiding and Establishing National Innovation for US Stablecoins (GENIUS) Act was signed into law by President Trump on July 18, 2025, creating a federal regulatory framework for payment stablecoins. The GENIUS Act represents the first major crypto legislative framework enacted into law in the US. Practical Law Finance provides a breakdown of the legislation.

On July 18, 2025, President Trump signed into law the Guiding and Establishing National Innovation for US Stablecoins (GENIUS) Act, creating a federal regulatory framework for "payment" **stablecoins**. The GENIUS Act represents the first major crypto legislative framework enacted into law in the US. The GENIUS Act is expected to become effective on the earlier of:

- 18 months after the date of enactment.
- 120 days after the primary federal payment stablecoin regulators issue final regulations implementing the Act.

Who May Qualify as a PPSI and Relevant Exemptions

Under the GENIUS Act, permitted payment stablecoin issuers (PPSIs) include persons "formed" in the US that are:

- A federal qualified payment stablecoin issuer, which includes:
  - a nonbank entity, other than a state-qualified payment stablecoin issuer, approved by the Comptroller of the Currency (OCC) to issue payment stablecoins;
  - an uninsured national bank that is chartered by the OCC and approved by the OCC to issue payment stablecoins; or
  - a federal branch of a foreign bank that is approved by the OCC to issue payment stablecoins.

- A subsidiary of an FDIC-insured depository institution (IDI) that has been approved to issue payment stablecoins.
- A state-qualified payment stablecoin issuer, which is approved to issue payment stablecoins by a state payment stablecoin regulator. PPSIs may only operate under state supervision if they issue less than $10 billion in stablecoins. The state regulator must have in place a PPSI payment stablecoin regulatory framework that has been approved by the Secretary of the Treasury as substantially similar to the federal framework.
- Non-US entities meeting certain limited criteria may be exempted from the prohibition on non-US PPSIs if they:
- Are subject to a regulatory regime comparable to the US, as determined by the Secretary of the Treasury, which determination will be made no later than 210 days after receipt of a determination request.
- Registered with the Office of the OCC.
- Hold their reserves at a US financial institution.

The Act limits who may issue a payment stablecoin in the US to PPSIs and makes it unlawful for anyone other than a PPSI to issue a payment stablecoin. The GENIUS Act allows the applicable federal regulator (for example, prudential bank regulators in the case of an IDI subsidiary) to create, receive, and review applications from prospective payment stablecoin issuers. Once approved, the federal payment stablecoin regulator will oversee permitted issuer activities, which include periodic examinations of each PPSI.

PPSI Requirements

The GENIUS Act requires each PPSI to:

- Maintain reserves backing its payment stablecoins on at least a 1-to-1 basis consisting of:
  - US coins and currency;
  - funds held as demand deposits at IDIs;
  - Treasury bills, notes, or bonds with remaining maturity of 93 days or less;
  - funds received under repurchase agreements in which the PPSI is seller of securities that are backed by Treasury bills with a maturity of 93 days or less (see Practice Note, Repos: Overview);
  - reverse purchase agreements in which the PPSI is purchaser of securities that are collateralized by Treasury notes, bills, or bonds on an overnight basis;
  - securities issued by an investment company registered under the Investment Company Act of 1940, or other registered government money market fund that are invested solely in underlying assets described above; or

    - any of the above in tokenized form.

- Publicly disclose its redemption policy.
- Establish procedures for timely redemption of outstanding payment stablecoins.
- Publish the monthly composition, certified by its chief executive officer and chief financial officer subject to criminal penalties for knowingly false certification, of its reserves on its website, including:
    - the total number of outstanding payment stablecoins issued; and
    - the amount and composition of the reserves maintained.

The GENIUS Act prohibits the reserves maintained by PPSIs from being pledged, **rehypothecated**, or reused, except for the purpose of liquidity to meet reasonable expectations regarding requests to redeem payment stablecoins.

Along with the requirement to maintain a reserve, the GENIUS Act limits stablecoin activity by PPSIs to:

- Issuing payment stablecoins.
- Redeeming payment stablecoins.
- Managing related reserves.
- Providing custodial or safekeeping services for payment stablecoins, required reserves, and private keys used to access stored payment stablecoins.
- Undertaking other functions that directly support the work of issuing and redeeming payment stablecoins.

Other noteworthy aspects of the law include:

- **Auditing.** Annual audited financial statements are required for PPSIs with more than $50 billion in market capitalization.
- **Marketing.** The Act establishes strict marketing standards for payment stablecoins:
    - prohibiting any representation that payment stablecoins are backed by the full faith and credit of the US, guaranteed by the US government, or covered by FDIC insurance, making it unlawful to mislead consumers about government backing or the insurance status of payment stablecoins;
    - prohibiting payment stablecoins from being marketed in a way that a reasonable person would perceive the stablecoin to be legal tender, issued by the US, or guaranteed or approved by the US government; and

  - prohibiting the marketing of a digital asset as a payment stablecoin unless the digital asset is compliant with the provisions of the GENIUS Act.

- **Risk management.** Destabilizing runs may be mitigated through a regulatory framework that includes:
  - diversification requirements for reserve assets;
  - interest rate risk-management standards;
  - capital, liquidity, and risk management requirements; and
  - a prohibition on riskier reserve assets like corporate debt or equities.

- **State regulation.** State regulators are required to implement payment stablecoin frameworks that are substantially similar to the federal framework. Larger state-regulated issuers must either be overseen by a primary federal payment stablecoin regulator in addition to their state regulator, seek a waiver to be exempt from federal oversight, or halt new issuance once they surpass the $10 billion threshold.

- **Bankruptcy priority for coinholders.** In the event of a PPSI's insolvency or bankruptcy, the claims of holders of permitted payment stablecoins are prioritized over all other creditors on an expedited basis. Under Sections 10(c)(3) and 11(a) of the GENIUS Act, if a PPSI becomes subject to an insolvency proceeding, the redemption right claim of the stablecoin holder will have priority over all other claims against the PPSI, whether or not the stablecoin holder's claim may be satisfied from the liquid reserves maintained by the PPSI. Further, Section 11(e)(3) of the GENIUS Act provides that stablecoin reserves are not property of the PPSI's bankruptcy estate, which means that the reserves cannot be surcharged under section 506(c) of the Bankruptcy Code for any expenses of the PPSI estate representative in preserving the reserves. For further information on the bankruptcy and insolvency provisions of the GENIUS Act, see Expert Q&A on the Insolvency Provisions of the GENIUS Act.

BSA/AML and Sanctions Obligations of PPSIs

Under the GENIUS Act, PPSIs are recognized as financial institutions for purposes of the BSA. By classifying PPSIs as financial institutions under the Bank Secrecy Act (BSA), the GENIUS Act requires them to:

- Maintain an effective anti-money laundering (AML) and sanctions compliance program, including risk assessments, sanctions list verification, and appointment of a compliance officer.
- Retain appropriate records of payment stablecoin transactions.
- Monitor and report suspicious activity.
- Implement policies to block, freeze, and reject transactions that violate federal or state laws.

- Establish a customer identification program, verifying account holders and high-value transactions, as well as conducting enhanced due diligence where necessary.

The GENIUS Act further:

- Mandates that PPSIs, including any foreign issuers listed on the secondary market, maintain the technical ability to freeze and burn wallets to ensure compliance with lawful orders. PPSIs must demonstrate technical capacity and coordinate with law enforcement as a condition of participating in US secondary markets. If foreign issuers fail to comply with lawful orders, the US Treasury Department would be required to designate them as non-compliant.

- Requires the Secretary of the Treasury, where possible, to coordinate with a PPSI before blocking transactions involving foreign entities to ensure compliance.

Under Section 9 of the GENIUS Act, beginning 30 days after enactment, the Secretary of the Treasury is required to open a 60-day public comment period to identify "innovative or novel" methods, techniques, or strategies that regulated financial institutions use, or have the potential to use, to detect illicit activity, such as money laundering, involving digital assets, including comments with respect to artificial intelligence and use of blockchain technology and monitoring. After this public comment period, the Secretary of the Treasury is directed to conduct further research on these. FinCEN is then required to issue guidance for public comment no later than three years after enactment of the GENIUS Act, based on the results of this research, including standards for PPSIs to identify and report illicit activity involving PPSIs.

Other Parameters for PPSIs

The GENIUS Act addresses conflict-of-interest and other concerns by:

- **Limiting interest-bearing payment stablecoins.** The GENIUS Act prohibits the offering of yields or interest on stablecoins and is designed to maintain their function primarily as a medium of exchange rather than as investment vehicles.

- **Imposing restrictions on technology companies.** The GENIUS Act prohibits large technology firms from issuing payment stablecoins. This measure is designed to prevent potential monopolistic practices and help ensure that financial services remain separate from major technology platforms.

- **Requiring enhanced oversight of foreign payment stablecoin issuers.** The GENIUS Act introduces stricter regulatory oversight for foreign entities issuing payment stablecoins. This includes compliance with US regulations to prevent illicit financial activities and ensure a level playing field for domestic and international issuers.

Further Regulatory Action Required for Implementation of the GENIUS Act

The following further action is required by certain federal and state regulators to implement the GENIUS Act:

- Not later than one year after the date of enactment, each primary federal payment stablecoin regulator, the Secretary of the Treasury, and each state payment stablecoin regulator must issue regulations to carry out the GENIUS Act through notice and comment rulemaking.

- Federal payment stablecoin regulators, the Secretary of the Treasury, and state payment stablecoin regulators should coordinate, as appropriate, on the issuance of any regulations to implement the GENIUS Act.

- Not later than 180 days after the effective date of the GENIUS Act, each federal banking agency must submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that confirms and describes the regulations promulgated to carry out the GENIUS Act.

Background on GENIUS Act and Potential Impact

The GENIUS Act was initially introduced on February 4, 2025 by US Senators Bill Hagerty (R-TN), Cynthia Lummis (R-WY), and Kirsten Gillibrand (D-NY), joined by Sen. Scott. Senators Lummis and Gillibrand had previously proposed a version of the GENIUS Act, the Lummis-Gillibrand Payment Stablecoin Act, which also generated bipartisan support in April 2024 (see Lummis-Gillibrand Payment Stablecoin Act and Legal Update, Senators Introduce Bipartisan Legislation to Create US Stablecoin Regulatory Framework). The Senate passed the GENIUS Act, with amendments proposed by Senator Hagerty on June 17, 2025 by a 68-30 vote. The House passed the amended Senate version on July 17, 2025 by a vote of 308-122, sending the bill to President Trump, who signed it into law on July 18, 2025.

Federal legislators have introduced a number of stablecoin bills in Congress. However, stablecoin legislation lagged, along with other crypto legislative efforts, due to deprioritization of crypto under the Biden administration. As a result, the Lummis-Gillibrand Payment Stablecoin Act and other stablecoin legislation failed to advance. However, the Lummis-Gillibrand Payment Stablecoin Act was refreshed and rebranded as the GENIUS Act, generating renewed support among federal legislators.

Proponents of crypto legislation long asserted that stablecoins provided "low hanging fruit" for legislators and would be among the first crypto items tackled by Congress under the second Trump Administration. Momentum accelerated in both houses during 2025 to fast track stablecoin legislation.

Because the GENIUS Act creates a market for privately issued stablecoins, it has been criticized for potentially creating systemic risk in the nonbank sector or a digital shadow banking sector that is not subject to prudential regulation. Conflict-of-interest concerns have also been raised by some regarding involvement of members of government in private stablecoin issuance. Other parties advocated for a comprehensive crypto bill and opposed "standalone" stablecoin legislation.

Additionally, potential large-scale impact on the demand for US Treasuries is anticipated, as these assets will now be needed for PPSI reserve accounts. This has the potential to dramatically impact the global US Treasury markets and counter macro factors that have weakened the status of the US dollar as the world's top reserve currency.

Delaware Bankruptcy Court Rules Commingled Cryptocurrency Belongs to Debtors' Estates in Prime Core Case

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In a significant ruling for cryptocurrency bankruptcy cases, a Delaware bankruptcy judge has determined that commingled cryptocurrency and fiat currency held by bankrupt crypto custodian Prime Core Technologies Inc. constitute property of the bankruptcy estate and can be distributed to creditors as dollars rather than in-kind digital assets.

The opinion, issued on July 18, 2025, by U.S. Bankruptcy Judge J. Kate Stickles in the case of Prime Core Technologies Inc. and its affiliated debtors (Case No. 23-11161), addresses fundamental questions about cryptocurrency ownership, traceability, and the impact of commingling in bankruptcy proceedings.

"Money paid from a bank account containing commingled funds under a debtor's control is presumptively property of the debtor," Judge Stickles wrote in her opinion. "Therefore, the Currency is property of the Debtors' Estates."

Prime Core Technologies, which operated as Prime Trust, was once a significant cryptocurrency custodian before filing for Chapter 11 protection in August 2023. At its peak, the company processed over 300,000 transactions daily and held more than $3.8 billion in cryptocurrency and fiat currency for customers.

The ruling came in response to a motion filed by the Plan Administrator seeking court approval to treat both cryptocurrency and fiat currency held by the debtors as property of the bankruptcy estates, allowing for their distribution to creditors according to the bankruptcy plan confirmed in December 2023.

Several customers, including cryptocurrency company Coinbits, Inc., objected to the motion, arguing that their assets were held in trust and should be traceable through blockchain technology, which creates a permanent record of cryptocurrency transactions.

However, the court found persuasive the evidence presented by the Plan Administrator's forensic expert, James P. Brennan, who testified that Prime's practices of commingling assets, both in omnibus cryptocurrency wallets and bank accounts, made it impossible to trace specific assets back to individual customers.

"Prime held and commingled the crypto from its various customers in Omnibus Wallets, where it was further commingled with crypto that Prime used for its own corporate operations and purposes," Brennan testified. He further explained that Prime's repeated practice of "sweeping" customer deposits into omnibus wallets and "condensing multiple UTXOs [Unspent Transaction Outputs] into new single UTXOs invalidates anyone's ability to trace customers' specific crypto."

The court was also troubled by evidence that Prime's internal ledgers were corrupted and fraudulently manipulated, further complicating any effort to trace ownership.

"We interviewed many people at Prime Trust. And one of the issues that we've uncovered was that the internal ledgers were corrupt, and so we wouldn't be able to rely on those internal ledgers because of the corruption, because of the fraud, because of what went on in Prime Trust," testified Brennan.

Coinbits' expert witness, David Birnbaum, countered that blockchain technology should make cryptocurrency tracing straightforward. "It's actually all public. You can go to a website...and you can see every single Bitcoin transaction on there," Birnbaum testified.

However, Judge Stickles found that the theoretical ability to trace transactions on the blockchain did not overcome the practical reality of how Prime operated, including the extensive commingling and the volume of transactions involved.

The ruling also addressed the Plan Administrator's decision to "dollarize" cryptocurrency holdings—converting them to U.S. dollars for distribution rather than distributing the cryptocurrency in-kind to creditors. The Plan Administrator argued that in-kind distributions would require extensive know-your-customer verification, incur multiple transaction fees, and delay distributions by approximately 18 months.

The case highlights the tension between the theoretical immutability and traceability of blockchain records and the practical challenges of establishing ownership when custodians commingle assets and maintain inadequate records.

The court's decision comes after a troubled history for Prime, which included a significant event called the "Wallet Event" in which the company lost access to cryptocurrency stored in what was known as the "98f Wallet." This eventually led to a receivership in Nevada state court before the bankruptcy filing.

The ruling may have significant implications for cryptocurrency investors who rely on third-party custodians, suggesting that in bankruptcy proceedings, commingled cryptocurrency may be treated similarly to commingled cash—as property of the debtor's estate rather than as specifically traceable assets belonging to individual customers.

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PRIME CORE TECHNOLOGIES INC.; Prime Trust

End of Article

Faculty

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