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Victoria Prussen Spears

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Lawrence D. Fruchtmann

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Editorial Office
230 Park Ave., 7th Floor, New York, NY 10169 (800) 543-6862
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Cryptocurrency Platforms Three Arrows Capital and Voyager Digital Resort to Bankruptcy for Relief

*By Frederick (Rick) Hyman and Richard J. Lee**

The authors of this article discuss the recent bankruptcy filings by cryptocurrency platforms.

There has been a flurry of activity in the digital asset markets—but not the type of activity that investors in the space likely hoped for.

THREE ARROWS CAPITAL, LTD., AND VOYAGER DIGITAL HOLDINGS, INC.

Three Arrows Capital, Ltd. (“3AC”) commenced a liquidation proceeding in the British Virgin Islands (“BVI”), followed by a Chapter 15 case in the Southern District of New York. Chapter 15 generally provides for recognition by a U.S. court of an insolvency proceeding in a non-U.S. jurisdiction. The company, a proprietary trading fund, is now under the control of joint liquidators tasked with stabilizing the estate, preserving and winding up its assets, investigating claims and pursuing causes of action under the laws of BVI. Should the BVI proceeding be recognized as a “foreign main proceeding,” the case will provide the liquidators some stability through the enforcement of the automatic stay over the firm’s U.S. assets, preserving the status quo.

On the heels of 3AC’s filing, Voyager Digital Holdings, Inc., and certain affiliates (“Voyager”) commenced Chapter 11 cases in the Southern District of New York. Voyager operates a brokerage that allowed customers to trade digital assets, earning “rewards” on their investments, and also offered custodial services. It estimated both its assets and liabilities as between \$1–10 billion. Similar to Celsius Networks, Voyager operated with little regulation and made loans and investments in other platforms in order to generate yield. One of its largest loans was to 3AC—a loan of 15,250 BTC and \$350 million USDC (the “3AC Loan”). Facing a “run on the bank,” Voyager restricted further withdrawals by its customers as Celsius Networks had done weeks earlier.

* Frederick (Rick) Hyman (fhyman@crowell.com), a partner at Crowell & Moring LLP and a member of its corporate practice and financial services groups, represents domestic and foreign lenders in connection with in-court and out-of-court workouts and restructurings. Richard J. Lee (rlee@crowell.com) is a partner at the firm focusing on derivatives, finance, and distressed debt and claims trading.

Unlike 3AC's filing, however, Voyager did so with a plan in hand, filing its proposed plan of reorganization shortly after filing its case. Generally, the plan provides that customers will receive:

- Digital assets purchased by, or on behalf of customers and held by the company on the petition date (although it is unclear which or how many coins will be available for distribution);
- Stock in the reorganized Voyager;
- Existing tokens that had been issued by Voyager; and
- Recovery, if any, on account of the 3AC Loan (with the appointment of a litigation agent to pursue recovery).

The plan allows some flexibility to exchange stock for coins.

According to the plan, 100 percent of the new stock of a reorganized Voyager, subject to dilution for management, will be distributed to the customers. The company says that it will continue to market the business to third-party investors during the bankruptcy case with the hope of increasing value to its creditors.

ISSUES OF FIRST IMPRESSION

Voyager's bankruptcy case will raise issues of first impression. For example, the plan does not appear to distinguish between the claims of those customers with digital assets earning "rewards" on the trading platform from those with assets purportedly maintained in custodial accounts. There may be arguments that assets held in custodial accounts are not properly property of the estate. The plan also treats the claims of account holders separately from those of general unsecured creditors who are entitled to a share of the "Claims Allocation Pool," a term left undefined in the filed plan. The plan also treats customers differently than it does a claim on account of an unsecured loan from Alameda Ventures Ltd. (which is proposed to receive no recovery).

As can be expected, the first plan of reorganization in a Chapter 11 of a cryptocurrency platform incorporates standard existing legal frameworks to address creditor recovery and rehabilitation of the estate, such as conversion to equity and use of litigation trusts. It will be interesting to see how these frameworks perform in the digital assets space. Other issues may arise if there continues to be volatility in the value of digital assets (if, for example, BTC is at \$20,000 when the plan is solicited but later increases dramatically in value before voting or confirmation).

CONCLUSION

Given the unsettled markets, other cryptocurrency funds, platforms and exchanges may follow the paths of 3AC and Voyager in the near future. It will also be informative to track the comparative path of *Voyager v. Celsius Networks*, which filed for bankruptcy on July 13, 2022. Novel issues will arise and important lessons will be learned from these and other cases.