

Securities Regulation Daily Wrap Up, BLOCKCHAIN—S.D.N.Y.: Feds update charges against key FTX figures involved in related hedge fund, (Jan 3, 2023)

By [Mark S. Nelson, J.D.](#)

FTX's co-founder and former CEO, Samuel Bankman-Fried, began 2023 by pleading not guilty to the eight-count criminal indictment brought against him for his role in FTX's collapse.

Federal prosecutors along with the SEC and CFTC brought new charges against key figures in the collapse of crypto trading platform FTX Trading Ltd. and a related hedge fund. The latest charges focus on Caroline Ellison, the former CEO of hedge fund Alameda Research LLC and Alameda and FTX Co-Founder Zixiao "Gary" Wang. FTX founder Samuel Bankman-Fried was [charged](#) both criminally and civilly a few weeks earlier and has since been extradited from the Bahamas to the U.S. but has been released pending trial. On January 3, 2023, Bankman-Fried pleaded not guilty to all eight criminal counts brought against him; Bankman-Fried's trial is set to begin on October 2, 2023. Upon receiving Bankman-Fried's plea, the court also [modified](#) Bankman-Fried's bail to bar Bankman-Fried from "from accessing or transferring any FTX or Alameda assets or cryptocurrency, including assets or cryptocurrency purchased with funds from FTX or Alameda" ([SEC v. Ellison](#), December 21, 2022; [CFTC v. Bankman-Fried](#), December 21, 2022).



Focus on hedge fund executives. The latest charges against FTX executives emphasize Wang and Ellison, who both had significant roles at Alameda, Wang as Alameda's co-founder and 10 percent owner (Bankman-Fried owned 90 percent of Alameda), and Ellison as Alameda's co-CEO and eventually its sole CEO.

The SEC's and CFTC's complaints largely track the same series of events in which Bankman-Fried, Wang, and Ellison allegedly employed FTX and Alameda in a scheme to defraud FTX's equity investors. Despite Bankman-Fried's claims to the contrary, Bankman-Fried and Wang allegedly diverted customer funds to Alameda and Ellison then improperly used those funds for Alameda's trading. Bankman-Fried, Wang, and Ellison also allegedly exempted Alameda from risk mitigation measures, afforded Alameda preferential treatment on the FTX platform (including facilitating FTX's nearly limitless line of credit), and manipulated the price of FTX's FTT token in order to inflate the value of FTX's collateral for loans obtained from third parties (unlike its initial complaint against Bankman-Fried, the SEC's complaint against Ellison and Wang alleges that FTT, which traded on FTX but not FTX US, was an investment contract and, thus, a security).

The CFTC's complaint noted the absence of typical corporate controls at FTX and Alameda by citing a statement from FTX's new CEO, who is overseeing the company as it goes through the bankruptcy process: "Never in my career have I seen such a complete failure of corporate controls and such a complete absence of trustworthy financial information as occurred here. From compromised systems integrity and faulty regulatory oversight abroad, to the concentration of control in the hands of a very small group of inexperienced, unsophisticated and potentially compromised individuals, this situation is unprecedented."

Civil charges settled. Ellison and Wang have agreed to [settle](#) the charges brought by the SEC against them. Those charges emphasize violations of the antifraud provisions contained in Securities Act Sections 17(a)(1) and 17(a)(3) and Exchange Act Section 10(b) and Rules 10b-5(a) and 10b-5(c).

The settlement, which still must be approved by a federal judge, would impose significant injunctive relief, including officer and director bars and bans on participating in securities offerings, including offerings of crypto asset securities (other than for the individuals' own accounts). The SEC must seek, and the court may award, disgorgement,

prejudgment interest, and civil money penalties.

The CFTC also amended its complaint against Bankman-Fried, FTX, and Alameda to include Ellison and Wang. Ellison and Wang are both charged with violating Commodity Exchange Act (CEA) Section 6(c)(1) and CFTC Regulation 180.1(a)(1) and (a)(3). Ellison is also charged with violating CEA Section 6(c)(1) and CFTC Regulation 180.1(a)(2). The totality of the CFTC's charges against Ellison and Wang mirror the fraud charges brought by the SEC.

According to the CFTC's complaint against Ellison and Wang, the agency seeks permanent injunctive relief, trading and registration bans, disgorgement, restitution, civil money penalties, and the rescission of customer contracts. Neither Ellison nor Wang disputed their liability, and both have agreed to the entry of [consent orders of judgment](#).

CFTC Commissioner Summer K. Mersinger issued a [statement](#) on the matter in which she emphasized the enormity of the losses allegedly engineered by FTX and the several individuals charged thus far. "I also remind the public to take great care if they trade their hard-earned money in cash or 'spot' transactions on commodity digital asset trading platforms," said Mersinger. "The CFTC does not regulate Bitcoin or any other cash or 'spot' digital asset transactions, and market participants on these platforms do not have the same protections as those who trade on derivatives markets regulated by the CFTC."

Criminal pleas. In the same time frame that Ellison and Wang settled the civil charges brought by the SEC and the CFTC, both Ellison and Wang entered guilty pleas in the related criminal cases brought against them by the U.S. Attorney's Office for the Southern District of New York. U.S. Attorney Damian Williams indicated that more criminal charges in the FTX matter are possible: "[a]s I said last week, this investigation is very much ongoing, and it's moving very quickly. I also said that last week's announcement would not be our last, and let me be clear once again, neither is today's."

According to a [press release](#) announcing the guilty pleas, Ellison was charged with and pleaded guilty to: (1) two counts of conspiracy to commit wire fraud; (2) two counts of wire fraud; (3) one count of conspiracy to commit commodities fraud; (4) one count of conspiracy to commit securities fraud; and (5) one count of conspiracy to commit money laundering.

Similarly, Wang was charged with and pleaded guilty to: (1) one count of conspiracy to commit wire fraud; (2) one count of wire fraud; (3) one count of conspiracy to commit commodities fraud; and (4) one count of conspiracy to commit securities fraud.

The cases are [No. 1:22-cv-10794](#) (SEC), [1:22-cv-10503](#) (CFTC).

Attorneys: Jorge G. Tenreiro for the SEC. Nina Ruvinsky for the CFTC.

Companies: FTX Trading Ltd. d/b/a FTX.com; Alameda Research LLC

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