

**ALERTS**

## Cryptocurrency Update: Crypto in Celsius “Earn” Accounts Are Property of Bankruptcy Estate, Not Customer Assets

**January 12, 2023**

Judge Martin Glenn of the United States Bankruptcy Court for the Southern District of New York issued a ruling last week in the *Celsius Network* bankruptcy case addressing whether customer deposits on a cryptocurrency exchange or platform are property of the debtor or property of the customer. The answer, not surprisingly, depends on the Terms of Use governing the account in question. In this case, the Court found that the terms clearly and unambiguously provided that ownership of cryptocurrency assets deposited into “Earn Accounts” resides with Celsius. *In re Celsius Network, et al.*, No. 22-10964 (MG), 2023 WL 34106 (Bankr. S.D.N.Y. Jan. 4, 2023).

### Background

Celsius offered its customers an array of products, including Earn Accounts, which offered a high rate of interest on crypto assets deposited in them. In November 2022, Celsius filed a motion seeking a determination that assets in the Earn Accounts were property of the estate, rather than customer assets. Several state regulators, multiple Earn Account customers and the US Trustee objected. In support of its motion, Celsius argued that when customers agreed to the Earn Account Terms of Use, the parties formed a binding contract under which the depositors transferred ownership of the deposited assets to Celsius. The objectors

primarily argued that the Terms of Use were ambiguous and that it was premature for the Court to determine who owned the assets.

## **The Court's Ruling**

The Court granted the motion, holding that the Terms of Use for the Earn Accounts constitute binding and unambiguous contracts between Celsius and the Earn Account customers and that, pursuant to the Terms of Use, the assets in the Earn Accounts are property of the estate. Under New York law, which governs the Terms of Use, for a contract to be formed there must be (1) an offer and acceptance (also called mutual assent), (2) consideration and (3) an intent to be bound. The Court found that all three elements were satisfied.

The Terms of Use are so-called “clickwrap” agreements, meaning that a user manifests assent by clicking a button accepting the terms (or implying that they have accepted the terms), but the user is not necessarily required to view the terms. The Court empathized with “the frustrations Account Holders may feel if they did not read or understand the specific terms of the Terms of Use”, but held that New York law clearly provides that an accepted “clickwrap” agreement constitutes mutual asset.

The Court further found that the language of the Terms of Use providing that customers “grant Celsius...all right and title to such Digital Assets, including ownership rights” in cryptocurrency deposited into Earn Accounts, was unambiguous and resulted in Celsius having ownership of the Earn Account assets.

The Court acknowledged that Earn Account customers may have claims against Celsius for breach of contract, fraud, fraudulent conveyance, that the Terms of Use were unconscionable, or other theories of liability related to misleading customers and any subsequent misuse of Earn Account assets. But the customers will have to pursue those claims separately from the issue of whether the cryptocurrency assets in the Earn Accounts are property of the estate.

The Court's ruling is expressly limited to the Earn Accounts and does not determine the ownership of assets related to other types of Celsius accounts or programs, such as the Celsius Custody Program, Withhold Accounts or Borrow Program – the ownership of which was not before the Court.

# Takeaways and Implications

This ruling does not settle the question of ownership of all deposits in cryptocurrency accounts generally. The Court clearly ruled on the facts at hand in regard to the Earn Accounts – based on the plain language of their governing Terms of Use. This question is likely to play out again with respect to other cryptocurrency accounts. In fact, two sets of customers have recently filed adversary complaints in the FTX bankruptcy cases seeking declaratory judgments that certain assets of FTX are customer property and not property of the estate. The plaintiffs argue that the governing FTX Terms of Service unambiguously provide that title to all digital assets remains with the customers and did not transfer to FTX. The Celsius ruling may serve as a guide-post for how bankruptcy courts will resolve these and other challenges to whether customer deposits are property of the estate of bankrupt crypto companies.

Customers will need to review closely the Terms of Use on any products they have used. Courts will apply clear contractual analysis to those terms – irrespective of whether they may prove misleading or deceptive. Such plain language will likely prove decisive in the analysis of the treatment of potential customer claims – and could lead to divergent treatments of seemingly similar customer claims subject to different Terms of Use.

*Authored by Douglas S. Mintz, Abbey Walsh, Peter J. Amend and Robert D. Brown.*

If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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