

# MEMORANDUM

Agenda Item No. 8(G)(5)

**TO:** Honorable Chairman Oliver G. Gilbert, III  
and Members, Board of County Commissioners

**DATE:** May 2, 2023

**FROM:** Geri Bonzon-Keenan  
County Attorney

**SUBJECT:** Resolution authorizing sale of Miami-Dade County's unsecured bankruptcy claim arising from the bankruptcy of West Realm Shires, Inc. dba FTX-US (*In Re FTX Trading, LTD., 22-11068-JTD*) for not less than 30 percent of the value of such claim; directing the County Mayor to issue a sale order to Cantor Fitzgerald, L.P. to facilitate sale of County's bankruptcy claim; waiving Resolution No. R-130-06 requiring that necessary agreements be executed by all non-County parties prior to presentation to the Board of County Commissioners for approval; authorizing the County Mayor to execute all necessary agreements to effectuate sale of County's bankruptcy claim, following review by the County Attorney's Office for form and legal sufficiency, and to exercise all provisions, including the cancellation provisions, contained therein; establishing County policy that the proceeds from the sale of such bankruptcy claim shall be used to cover shortfalls in the Peace and Prosperity Plan

The accompanying resolution was prepared by the Office of Management and Budget and placed on the agenda at the request of Prime Sponsor Commissioner Keon Hardemon.



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Geri Bonzon-Keenan  
County Attorney

GBK/jp


MDC001

# Memorandum



**Date:** May 2, 2023

**To:** Honorable Chairman Oliver G. Gilbert, III  
and Members, Board of County Commissioners

**From:** Daniella Levine Cava  
Mayor 

**Subject:** Recommendation to sell Miami-Dade County's bankruptcy claim related to West Realm Shire Services Inc. dba FTX.US (FTX) and its affiliates and to reserve (allocate) the sale proceeds for use in the Peace and Prosperity Plan to the degree that the United States Bankruptcy Court for the District of Delaware (Bankruptcy Court) does not ultimately disallow such claim.

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## **Executive Summary**

This item is for the authorization of the sale of County's unsecured bankruptcy claim which arose from the bankruptcy of West Realm Shire Services Inc. dba FTX.US (FTX) and its affiliates. FTX's default and the subsequent termination of the Naming Rights Agreement gave rise to the County's \$17.0 million unsecured bankruptcy claim. Specifically, section 35.1 of the Naming Rights Agreement required FTX to comply with all state and federal laws, rules and regulations governing FTX services. FTX breached that provision, among others, which caused a default that triggered the County's right to terminate the agreement. In turn, FTX's default caused FTX to owe the County "all unpaid Fees for the three Contract Years following the date of the termination," "in addition to any other damages for which it may be held liable under the Naming Rights Agreement." § 9.2.3.

## **Recommendation**

It is recommended that the Board of County Commissioners (the Board) authorize the sale of the County's unsecured bankruptcy claim arising from the bankruptcy of FTX and its affiliates for not less than 30% of the value of such claim. Because the County's unsecured claim is believed to be at least \$17 million, this sale would generate proceeds of at least \$5.1 million if the bankruptcy court ultimately allows the full value of the County's claim. Given time constraints, we ask that the Board approve the limited competitive process described below and authorize the County Mayor or County Mayor's designee to issue a sell order to Cantor Fitzgerald for the County's bankruptcy claim—an intangible asset—and to enter and execute an agreement to sell the County's claim to the buyer identified by Cantor Fitzgerald at not less than the value set forth above.

It is also in the best interests of the County to waive the requirements of Resolution No. R-130-06 that (a) the sell order with Cantor Fitzgerald, (b) the sales agreement with the ultimate buyer and (c) all necessary agreements to assign the County's claim to the buyer be executed in final form and attached to this item. First, Cantor Fitzgerald requires the County to issue a sell order at a certain minimum price before it can advise its prospective buyer(s) that the County's bankruptcy claim is available for sale. Second, the prospective buyer must agree to meet or exceed the County's minimum price before a written agreement with the County can be executed. Third, the final sale is contingent upon buyer's due diligence review of the County's claim and execution of an assignment agreement, which both must be satisfactory to the buyer in its sole discretion.

If the County secures a buyer at not less than the price provided, the County will receive a payment of at least \$5.1 million after execution of the sales agreement. It is also recommended that the Board reserve (allocate) these funds to cover possible shortfalls, in some years, in the funding of the Peace and Prosperity Plan (Plan) as all the net proceeds of the FTX Naming Rights Agreement were dedicated to the Plan. On

April 4, 2023, the County secured a new naming rights partner, Kaseya US LLC, and entered into a 17-year, \$117 million marketing partnership to rename the arena as the Kaseya Center. A copy of the naming rights agreement with Kaseya is attached to Resolution No. R-243-23. Under the terms of the new naming rights agreement with Kaseya, the annual cash flows (payments) to the County are different than the payments that would have been provided under the prior FTX Naming Rights Agreement and, as a result, there are estimated shortfalls in the first three years of the new naming rights agreement (FY 2023-24, 2024-45, and 2025-26) totaling approximately \$1.399 million. In all other fiscal years, the County expects to receive a higher payment from Kaseya US LLC than what would have been provided under the prior FTX Naming Rights Agreement.

However, if the Bankruptcy Court ultimately disallows all or any portion of the County's \$17 million claim, the buyer would have the right to a refund in an amount proportionate to the claim's disallowed dollar amount. For example, if the Bankruptcy Court disallows ½ of the claim, then the County would need to refund 50% of the payment it received on account of the disallowed 50%, i.e., \$2.55 million. The County's claim is based on a liquidated damages clause, and therefore, is not subject to a mitigation defense. The possibility of disallowance is low.

Timewise, the ultimate ruling of the Bankruptcy Court on allowance or disallowance of the claim is unknown. However, given the complexity of the FTX bankruptcy, the final settlement of the bankruptcy case may be years from now. In the interim, while it is held in reserve, the claim's sale proceeds (no less than \$5.1 million) would be earning interest and will be available to cover possible shortfalls in the Peace and Prosperity Plan. Also, in the interim, the Office of Budget and Management (OMB) will have time to build into the County's budget, a contingency reserve in the event of an adverse Bankruptcy Court ruling which would trigger a refund payment.

### **Scope**

The Arena is in District 3, but its impact is countywide. The proceeds of the sale of bankruptcy claim against FTX is recommended to be reserved for the Peace and Prosperity Plan, which also has a countywide impact.

### **Fiscal Impact**

Under the terms of the sales agreement, the County would receive a not less than \$5.1 million payment following the execution of the sales agreement.

At a future time, the Bankruptcy Court handling FTX's liquidation may rule that all or a portion of the \$17.0 million claim is disallowed. In that instance, the County will need to refund a proportional share of the payment it received. However, in the interim, if the Board approves the sales proceeds to be reserved for the Plan, the funds will be invested and earn interest, be available to cover possible shortfalls in annual funding of the Plan and, allow OMB time to build a contingency reserve in the County's budget should an adverse Bankruptcy Court ruling come about. If the Bankruptcy Court doesn't disallow any or the claim, the contingency reserve in the budget will be released.

If the Bankruptcy Court does not disallow any portion of our claim, the County will be entitled to retain the sales proceeds regardless of the actual percentage that unsecured creditors of FTX ultimately recover on their claims under an approved bankruptcy plan. For example, if the Bankruptcy Court recognizes that the County's claim was valued at \$17 million but FTX's bankruptcy proceeds were only able to repay unsecured creditors at 10% of their claims, then the County would not be required to refund any payment that it received from the sale of its claim.

At this point in time, there is no way to know how much money will be available to pay FTX's secured and unsecured creditors. As an unsecured creditor, the County would be subordinate to the claims of the secured creditors. By way of entering into this sales agreement, the County is assuring that it will receive at least a 30% recovery on its unsecured claim. If the unsecured creditors end up receiving less than 30 cents on the dollar, the County will be entitled to retain its 30%. Likewise, if the unsecured creditors receive more than 30 cents on the dollar, the County will only be entitled to the 30%. The buyer is assuming the risk of the actual payments, if any, made to the unsecured creditors.

#### **Delegated Authority**

The authority of the County Mayor or County Mayor's Designee to execute and implement the sell order, the sales agreement, and any necessary assignment agreements is consistent with those authorities granted under the Code of Miami-Dade County.

#### **Background**

On March 26, 2021, the Board approved a Naming Rights Agreement with West Realm Shire Services Inc. dba FTX.US (FTX) regarding the Arena at 601 Biscayne Boulevard, which serves as the home of the Miami Heat, a National Basketball Association (NBA) team. FTX made its first two years of naming rights payments to the County, which totaled \$19.5 million.

On November 11, 2022, and November 14, 2022, FTX Trading Ltd., and one hundred and one (101) of its affiliated companies (collectively Debtors, of which West Realm Services Inc. dba FTX-US is one) filed petitions in the United States Bankruptcy Court for the District of Delaware seeking relief under Chapter 11 of the Bankruptcy Code (*In re FTX Trading, Ltd.*, 22-11068-JTD).

On November 22, 2022, the County filed a motion in the Bankruptcy Court seeking to terminate Naming Right Agreement due to FTX's material breach. To mitigate its damages, the County wanted to sever its relationship with FTX as quickly as possible so that it could begin the process of obtaining a new naming rights partner for the Arena.

On January 11, 2023, the Bankruptcy Court entered an order terminating the Naming Rights Agreement, as of December 30, 2022, which allowed the County to begin talking to firms and individuals who were interested in either buying or brokering the sale of the Arena's naming rights.

FTX's default and the subsequent termination of the Naming Rights Agreement gave rise to the County's \$17.0 million unsecured bankruptcy claim. Specifically, section 35.1 of the Naming Rights Agreement required FTX to comply with all state and federal laws, rules and regulations governing FTX services. FTX breached that provision, among others, which caused a default that triggered the County's right to terminate the agreement. In turn, FTX's default caused FTX to owe the County "all unpaid Fees for the three Contract Years following the date of the termination," "in addition to any other damages for which it may be held liable under the Naming Rights Agreement." § 9.2.3.. Given the termination date of December 30, 2022, approved by the Bankruptcy Court, the payments due for the next three Contact Years 2023, 2024, and 2025 of \$5.5 million, \$5.5 million, and \$6.0 million, respectively, total \$17.0 million.

The County began talking to firms interested in buying the County's unsecured bankruptcy claim. The recommendation to issue a sell order to Cantor Fitzgerald, an investment banking firm headquartered in New York City, for the County's \$17.0 million unsecured bankruptcy claim is a result of a limited informal solicitation of bids. The decision to go this route is based on uncertainty. While the County has interested buyers today for this bankruptcy claim, we cannot guarantee that this market will improve over time nor predict if it will worsen. However, differences in annual cash flows into the Peace and Prosperity Plan over the next three years and securing funds now will help mitigate that situation.

The County was approached by two firms to buy its claims and then sought out other firms to determine their interest to bid on purchasing the County's claims for itself or on behalf of prospective buyers. The County contacted:

- 1) ASM Capital
- 2) Cantor Fitzgerald LLP
- 3) Olympus Peak Asset Management
- 4) Archon Bay Capital LLC
- 5) JP Morgan
- 6) Sierra Liquidity Fund Inc
- 7) Hain Capital

Cantor Fitzgerald indicated that it had prospective buyer(s) who would be willing to pay an amount not less than 30% of claim's face value. (By way of comparison, the second highest offer received by the County was at 20% of face value after negotiation.) Accordingly, if the County wished to deal with Cantor Fitzgerald and its prospective buyer(s), the County would need to issue a sell order to Cantor Fitzgerald at the 30% minimum value. Then, Cantor Fitzgerald would advise its prospective buyer(s) that the County claim was available for sale at the price provided and a sales agreement would be entered into between the County and the buyer at said price. Notably, any broker fees that would be owed to Cantor Fitzgerald for its facilitation of this sale are paid entirely by the buyer through a broker fee letter between Cantor Fitzgerald and the buyer. The County is not enlisting Cantor Fitzgerald to serve as its broker, owes no money to Cantor Fitzgerald for its work, and the broker fee paid by buyer is wholly separate from any payments provided to the County.

**Conclusion**

It is probable that the Bankruptcy Court will take time to determine the recovery to unsecured creditors, who reportedly have claims totaling billions of dollars. These creditors include employees, vendors, investors, lenders, and customers of the cryptocurrency exchanges managed by FTX and its affiliates. Miami-Dade's \$17.0 million claim arises from a contractual default provision under the FTX Naming Rights Agreement with the County. The total claim is a valid claim for damages, both fiscal and reputational, due to FTX's default and should be allowed by the Bankruptcy Court. Selling the claim now will protect the County from possible shortfalls in funding the Peace and Prosperity Plan and will, at minimum, allow the County to benefit by earning interest on the upfront payment of at least \$5.1 million from the bankruptcy claim buyer.



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Edward Marquez  
Chief Financial Officer



**MEMORANDUM**  
(Revised)

**TO:** Honorable Chairman Oliver G. Gilbert, III  
and Members, Board of County Commissioners

**DATE:** May 2, 2023

**FROM:**   
Gen Bonzon-Keenan  
County Attorney

**SUBJECT:** Agenda Item No. 8(G)(5)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present \_\_\_\_, 2/3 membership \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) \_\_\_\_ ) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 8(G)(5)  
5-2-23

RESOLUTION NO. \_\_\_\_\_

RESOLUTION AUTHORIZING SALE OF MIAMI-DADE COUNTY'S UNSECURED BANKRUPTCY CLAIM ARISING FROM THE BANKRUPTCY OF WEST REALM SHIRES, INC. DBA FTX-US (IN RE FTX TRADING, LTD., 22-11068-JTD) FOR NOT LESS THAN 30 PERCENT OF THE VALUE OF SUCH CLAIM; DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO ISSUE A SALE ORDER TO CANTOR FITZGERALD, L.P. TO FACILITATE SALE OF COUNTY'S BANKRUPTCY CLAIM; WAIVING RESOLUTION NO. R-130-06 REQUIRING THAT NECESSARY AGREEMENTS BE EXECUTED BY ALL NON-COUNTY PARTIES PRIOR TO PRESENTATION TO THE BOARD OF COUNTY COMMISSIONERS FOR APPROVAL; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE ALL NECESSARY AGREEMENTS TO EFFECTUATE SALE OF COUNTY'S BANKRUPTCY CLAIM, FOLLOWING REVIEW BY THE COUNTY ATTORNEY'S OFFICE FOR FORM AND LEGAL SUFFICIENCY, AND TO EXERCISE ALL PROVISIONS, INCLUDING THE CANCELLATION PROVISIONS, CONTAINED THEREIN; ESTABLISHING COUNTY POLICY THAT THE PROCEEDS FROM THE SALE OF SUCH BANKRUPTCY CLAIM SHALL BE USED TO COVER SHORTFALLS IN THE PEACE AND PROSPERITY PLAN

**WHEREAS**, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that:

**Section 1.** The foregoing recitals are approved and incorporated into this resolution.

**Section 2.** This Board authorizes the sale of Miami-Dade County's unsecured bankruptcy claim arising from the bankruptcy of West Realm Shires, Inc. dba FTX-US in the case *In Re FTX Trading, LTD* (Case No. 22-11068-JTD), currently pending in the United States Bankruptcy Court, District of Delaware (hereinafter "County's bankruptcy claim"), for not less than 30 percent of the value of such claim.

**Section 3.** This Board further directs the County Mayor or County Mayor's designee to issue a sale order to Cantor Fitzgerald, L.P. in the amount provided in section 2 to facilitate the sale of the County's bankruptcy claim.

**Section 4.** This Board hereby waives the requirements of Resolution No. R-130-06, requiring all non-County parties to execute agreements prior to presentation to this Board for approval, and directs the County Mayor or County Mayor's designee to execute all necessary agreements to effectuate the sale of the County's bankruptcy claim, following review and approval of such agreements for form and legal sufficiency by the County Attorney's Office. The County Mayor or County Mayor's designee is further directed to exercise all provisions of such agreements, in including any cancellation provisions contained therein.

**Section 5.** This Board establishes as County policy that the proceeds from the sale of the County's bankruptcy claim shall be used to cover shortfalls in the Peace and Prosperity Plan during certain fiscal years that are caused by differences in the annual cash flows from the County's prior naming rights agreement with FTX-US and its current naming rights agreement with Kaseya US LLC in the manner described in the attached memorandum.



The foregoing resolution was offered by Commissioner ,  
who moved its adoption. The motion was seconded by Commissioner  
and upon being put to a vote, the vote was as follows:

Oliver G. Gilbert, III, Chairman	
Anthony Rodríguez, Vice Chairman	
Marleine Bastien	Juan Carlos Bermudez
Kevin Marino Cabrera	Sen. René García
Roberto J. Gonzalez	Keon Hardemon
Danielle Cohen Higgins	Eileen Higgins
Kionne L. McGhee	Raquel A. Regalado
Micky Steinberg	

The Chairperson thereupon declared this resolution duly passed and adopted this 2<sup>nd</sup> day of May, 2023. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

LUIS G. MONTALDO, CLERK AD INTERIM

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.

MBV

Michael B. Valdes