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Although the FTX/Sam Bankman-Fried trial comes with the glossy veneer of cryptocurrencies, hedge funds, and market-making, the actual alleged crimes are pretty straightforward. If you are a bank or a brokerage, you have some ability to utilize customer deposits as more than a custodian¹. If you are just an exchange, you cannot. And if you are an exchange, your biggest liquidity provider being a hedge fund that you have a stake in is a severe conflict of interest. Without strict compliance, accounting, and separation of information (known as a Chinese Wall²), bad actors can do what they want. This is what leads us to the alleged conduct — that Sam Bankman-Fried directed the use of customer deposits to cover trading losses at the Alameda hedge fund that he also owned, buy real estate and other luxury items, and illegally fund political campaigns, all with money he should never have been able to touch in the first place.³

Note that Coinbase, an example of a competitor for trading volume, does not utilize customer deposits for anything, as they're essentially a custodian.⁴ If you want to buy Bitcoin with dollars, they will take a fee to do so, and if you sell those Bitcoins for dollars, they will take another fee and leave those dollars attached to your account.

White collar prosecutions are a bit of a skewed dice roll compared to your standard trial. After all, white collar defendants are hardly sympathetic figures — it is not hard to see why a jury might not sympathize with a hedge funder arguing against insider trading

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¹ *Rule #5: The Brokerage is Safer than the Bank.*, PRESSBOOKS, <https://pressbooks.pub/nonelectivefinance/chapter/rule-4-the-brokerage-is-safer-than-the-bank/>.

² Will Kenton, *Chinese Wall: Definition and Examples in Business and Finance*, INVESTOPEDIA (Feb. 03, 2021), <https://www.investopedia.com/terms/c/chinesewall.asp>.

³ Complaint at 1-3, Sec. and Exch. Comm'n v. Samuel Bankman-Fried (S.D.N.Y. 2022) (No. 1:22-cv-10501).

⁴ *How is Client Cash Stored at Coinbase?*, COINBASE, <https://help.coinbase.com/en/coinbase/other-topics/other/client-cash>.

charges, a dynamic that former U.S. Attorney Preet Bharara used to land 80+ guilty pleas and convictions.⁵ On the other hand, it is very easy to lose the jury in the dryness and length of the proceedings, as evidenced by Elon Musk’s “funding secured” trial, where the jury acquitted Musk of using Twitter posts to manipulate TSLA shares in just two hours after a three-week trial due to the “disorganization”⁶ of the prosecution. Reading between the lines, the jury clearly got bored and wondered why they were there in the first place.

However, Bankman-Fried has to deal with the fact that three of the closest members of his inner circle have testified for the prosecution and have confirmed the veracity of evidence that showed backdoors being written into the FTX exchange code to allow the aforementioned Alameda hedge fund to run a negative balance of up to \$65 billion on the exchange while taking customer deposits and stating that this was done under Bankman-Fried’s instructions.⁷ Particularly amusing is that, in the cryptocurrency space, there is a popular (3,3) meme (in the context of holding a coin) where the idea arose that, in a prisoner’s dilemma, if the participants cooperated, the standard result of adverse outcomes when coordination expectedly broke between the prisoners wouldn’t occur.⁸ As high-fliers in that industry, surely every FTX insider would have known this in-joke. And yet, when actual prison time reared its head, everyone else immediately cut a deal to avoid as much prison time as possible, perhaps showing that the prospect of jail is a more powerful motivator of actions than the allure of profit in holding a coin.

From my own purview, the charitable explanation is that a bunch of 20-somethings got in way over their heads, lost a bunch of money trading, and saw a massive revenue machine that they could use to cover the holes while they tried to recover. And as someone who knows the space pretty well and has followed the trial live, I am generally understanding of this viewpoint towards the co-conspirators who pled out. But Bankman-Fried’s alleged conduct goes far, far beyond the realm of charity. To have zero accounting protocols in place is one thing — to have eight balance sheets prepared to send out to deceive specific lenders is criminal, fraudulent conduct.⁹ It is particularly amusing

⁵ Sheelah Kolhatkar, *Preet Bharara’s Complicated Legacy on White-Collar Crime*, THE NEW YORKER (Mar. 13, 2017), <https://www.newyorker.com/business/currency/preet-bhararas-complicated-legacy-on-white-collar-crime>.

⁶ Joel Rosenblatt, *Musk Juror Calls Investor Case Against Tesla CEO ‘Disorganized’*, BLOOMBERG (Feb. 3, 2023), <https://www.bloomberg.com/news/articles/2023-02-04/musk-juror-calls-investor-case-against-tesla-ceo-disorganized>.

⁷ David Gura, *They Were Sam Bankman-Fried’s Friends. Now They Could Send Him to Prison for Life*, NPR (Oct. 21, 2023), <https://www.npr.org/2023/10/21/1207143248/sam-bankman-fried-trial-ftx-crypto-fraud-alameda>.

⁸ *What is (3,3) Meme*, TOKENINSIGHT (Mar. 17, 2023), <https://tokeninsight.com/en/tokenwiki/all/what-is-3-3-meme>.

⁹ Felix Salmon & Erin Davis, *The Eight Balance Sheets of Sam Bankman-Fried’s Hedge Fund*, AXIOS (Oct. 17, 2023), <https://www.axios.com/2023/10/17/ftx-sbf-almedia-balance-sheets-trial-updates>.

that a leaked fraudulent balance sheet that was *better* than their actual financials is what led to the run that ended FTX.¹⁰

Certainly, things look bleak for Bankman-Fried, but a jury trial is a jury trial, and you only need to convince one juror that things might not be as the prosecution and witnesses claim. After all, this is a guy who supposedly wowed partners from the high-profile VC firm, Sequoia Capital, by talking about how you could buy a banana on FTX, all while playing League of Legends¹¹. If there is one thing that is obvious about Sam Bankman-Fried's character, it is that he loves variance. The variance of a plea deal is zero — you get what the government gives you. But there is always *some* variance in a trial, and perhaps he would not have it any other way.

¹⁰ FT Alphaville, *FTX Balance Sheet, Revealed*, FINANCIAL TIMES (Nov. 12, 2022), <https://www.ft.com/content/0c2a55b6-d34c-4685-8a8d-3c9628f1f185>.

¹¹ Britney Nguyen, *Sam Bankman-Fried Was Once Caught Playing the Video Game 'League of Legends' During a Pitch Meeting for FTX*, BUSINESS INSIDER INDIA (Nov. 11, 2022), <https://www.businessinsider.in/investment/news/sam-bankman-fried-was-once-caught-playing-the-video-game-league-of-legends-during-a-pitch-meeting-for-ftx/articleshow/95436178.cms>.