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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

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November 28, 2022

Tyler Winklevoss
Chief Executive Officer
Gemini Trust Co.
600 3rd Avenue, Second Floor
New York, NY 10016

Dear Mr. Winklevoss:

I write to inquire about what procedures and policies Gemini has put in place to protect its customers' assets in the event that your company files for bankruptcy or otherwise experiences financial distress.

As you know, the recent collapse of crypto exchange FTX has left approximately one million customers facing significant—if not total—losses of their assets. News reports and statements by FTX leadership indicate the initial failure stemmed from outrageous mismanagement, including few governance controls, poor corporate accounting and misappropriation of customer assets. Multiple federal agencies have announced investigations into FTX, which is now in bankruptcy proceedings.

U.S. law aims to protect investors from losses stemming from similar situations. When a registered securities broker-dealer faces bankruptcy or significant financial trouble, their customers may be protected by the Securities Investor Protection Corporation (SIPC), which was established by Congress in the 1970s to bolster investor protection in securities markets. SIPC can compensate customers for their losses up to \$500,000 through funds pooled collectively by the brokerage industry. Additionally, when an exchange is registered to the Commodity Futures Trading Commission (CFTC), its customers are protected against fraud, nondisclosure, misappropriation of funds and other failures of supervision through the CFTC's Repairs Program.

U.S. law also aims to protect consumers from failures of banks and other depository institutions. Consumer deposits in bank checking and savings accounts are usually insured through the Federal Deposit Insurance Corporation (FDIC) up to \$250,000 in the event that the bank fails. Finally, deposits at all federally chartered and some state-chartered credit unions are secured up to \$250,000 by the National Credit Union Share Insurance Fund (NCUSIF). Like FDIC insurance, NCUSIF is backed by the full faith and credit of the United States.

Unfortunately, consumers who entrusted their crypto assets to FTX have no such protections. As Congress considers much-needed regulations for the crypto industry, I will focus on the clear

need for consumer protections along the lines of the assurances that have long existed for customers of banks, credit unions and securities brokers. If these protections had been in place before the failure of FTX, far fewer retail investors would be facing precipitous financial harm today. To that end, please provide me with answers to the following questions by December 12, 2022:

1. How many subsidiary companies fall under Gemini's umbrella, and how many entities are otherwise affiliates of Gemini?
 - a. How does Gemini segregate assets bought or sold on Gemini from its subsidiaries or affiliates?
2. Does Gemini segregate customer assets from corporate or institutional assets (including any assets of Gemini's subsidiaries or affiliates)?
 - a. If so, what safeguards are in place to ensure these assets are not commingled?
3. Does Gemini use customer funds for any purpose that is not disclosed to the customer?
4. Please provide a list of any real estate acquisitions made by Gemini or any of its executives or directors financed by customer funds.
5. Does Gemini have any policies, procedures, practices or safeguards in place to guard against suspected market manipulation or otherwise suspicious trading, including wash trading? If so, please describe.
6. Does Gemini, its directors, officers or employees, or any subsidiaries or affiliates use customer data to inform institutional or personal trading, including futures or options trading?
 - a. If so, to what extent does Gemini inform customers that Gemini engages in trading that may disadvantage customers' trades in favor of Gemini's own positions?
7. What is Gemini's ratio of debt-to-assets and debt-to-equity (including capital)?
 - a. Do you consider Gemini to be highly leveraged?
8. Please provide a copy of Gemini's most recent balance sheet with a full listing of the company's assets and liabilities. Please clarify whether this document has been audited and whether Gemini intends to make this document public.
9. How does Gemini hold and safeguard its reserves (with regard to both equity and capital) and will Gemini publish proof-of-reserves?
 - a. If so, will the proof-of-reserves be externally audited by a firm that follows the Financial Accounting Standards Board's recommended methods for auditing crypto assets to the greatest extent possible? Please provide any such audits.
 - b. What amount of Gemini's reserves, if any, is made up of Gemini-issued tokens, or tokens issued by any of Gemini's affiliates or subsidiaries?

10. Has Gemini had external auditors conduct annual audits of financial statements? If so, please provide the names of the entities that conducted the audits, and whether those entities ever alerted Gemini of any financial irregularities over the course of its audits.
 - a. Please describe any steps taken by Gemini to address any potential financial irregularities, tax compliance issues or money laundering concerns identified by internal or external auditors, as well as whether Gemini alerted any relevant regulators of these findings.
11. Does Gemini carry any form of insurance that would benefit Gemini's customers in the event of its bankruptcy, theft or hack, or any other risks to customer funds? If so, please describe, including any limits to insurance coverage.
12. Would Gemini participate in an industry-funded insurance fund, similar to the compensation fund established by SIPC?
13. What steps has Gemini taken to work with other companies in the crypto industry to develop protections for investors and customers?

Thank you for your prompt and thorough response to these questions. If you have any questions about this letter, please contact Madison Moskowitz in my office at (202) 224- 5244 or Madison_Moskowitz@Wyden.Senate.Gov.

Sincerely,



Ron Wyden
United States Senator