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EDITORS' PICK

FTX's Ray, Battling To Avoid Outside Probe, Faces Court Bout With Trustee

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WASHINGTON, DC - DECEMBER 13: John J. Ray III, CEO of FTX Group, testifies during the House Financial Services Committee hearing titled Investigating the Collapse of FTX Part I, on December 13, 2022 at the U.S. Capitol in Washington, DC. Ray took over the FTX after the resignation of Sam Bankman-Fried. (Photo by Nathan Howard/Getty Images) GETTY IMAGES

CEO John J. Ray is facing a key battle on Monday in his uphill campaign to avoid a third-party investigation into the FTX empire he is trying to steer through bankruptcy.

Andrew R. Vara, the U.S. Trustee overseeing the case for the Justice Department, wants a neutral examiner to figure out what went wrong at the once mighty cryptocurrency conglomerate forged by Sam Bankman-Fried. Ray claims management's own probe, supplemented by governmental inquiries, is sufficient, but his case is hampered by ties to the Sullivan & Cromwell law firm, which now represents FTX and also had dealings with the company before it filed for protection from its creditors in November.

"Given its extensive legal work for these fraudulent FTX entities, any investigation led by Sullivan & Cromwell would be considered inherently suspect by many," says James Murphy, a securities and cryptocurrency lawyer in Richmond, Virginia. "Under these circumstances, Sullivan & Cromwell would not qualify as independent." Vara is scheduled to put Ray on the stand in a direct face-off after an exchange of court filings.

The [position](#) of FTX management is that it is conducting its own investigation in conjunction with unsecured creditors and there are separate government probes into improprieties committed before the bankruptcy. It also takes issue with Vara's contention that an examiner is mandatory and says that an additional

investigation would be costly.

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The debtors and creditors' committee "believe the professionals who are already in the case are all perfectly capable of doing the investigation that is required," says Daniel Lowenthal, chair of Patterson Belknap's business reorganization and creditors' rights practice. He adds that bringing on others to do the examination would, in the view of the debtors and the committee, duplicate their work and add cost to the case.

Vara has countered that FTX and the unsecured creditors would not necessarily work in the best interests of other parties, such as equity owners. In a Feb. 1 [filing](#), he noted conflicts between current and former FTX management and among different elements of the company: "The best interests of all parties in interest would be served by ordering the appointment of a neutral, disinterested examiner with clear authority to review the Debtors' financial and business operations, untangle the mess, and file a public report that will provide transparency to all parties in interest."

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Judge John Dorsey could decide to both appoint an examiner and let FTX and the unsecured creditors run their own investigation, says David A. Samole, partner at Kozyak Tropin & Throckmorton, a Miami law firm that specializes in complex commercial litigation.

"It could make some sense to have the debtors and committee focused on certain transactions and investigation to create value for the estates," he says. An examiner would be focused on matters "potentially covering different periods of time or other

components of the cases, or as part of a general reporting oversight role for the Court.”

Vara also took issue with FTX’s request to subpoena Bankman-Fried, the former CEO, his family and key pre-bankruptcy leaders of the exchange and its sister hedge fund Alameda Research, arguing that it would duplicate the work of the independent examiner he is seeking. FTX argued that while certain insiders were cooperating with the bankruptcy proceedings, others—like Alameda’s Caroline Ellison and Gary Wang, who both pleaded guilty to federal charges—were not.

Vara agreed that dual investigation by an independent examiner and one done by the new FTX management would duplicate costs in his latest filing. But he emphasized that it should be the independent examiner to take charge, not the restructuring management.

“To avoid duplication of effort, and to prevent unnecessary expenditures in the administration of these estates, the U.S. Trustee respectfully requests that the Court orders the appointment of an examiner,” Vara added. Bankman-Fried has said he was [pressured](#) into resigning by Sullivan & Cromwell, which had him sign over control of more than 130 FTX entities to Ray and put the bulk of the conglomerate into [bankruptcy protection](#) on Nov. 11. Ray then hired Sullivan & Cromwell to represent FTX in bankruptcy.

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“In the event the FTX judge refuses to appoint an independent examiner, that ruling would almost certainly be overturned on appeal to the district court,” adds Murphy.

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Texas and Wisconsin are among the 18 states to file motions and letters supporting the U.S. Trustee’s motion to appoint an independent examiner, and a bipartisan group of four senators sent a letter to Judge Dorsey in support of the independent examiner.

“Without an Independent Examiner's Report, the FTX victims may never get a truly unbiased accounting of all those who enabled one of the largest frauds in US history,” Murphy wrote in a [Twitter](#) post.



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