



United States Attorney  
Southern District of New York

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March 27, 2024

**BY ECF**

Honorable Lewis A. Kaplan  
United States District Judge  
Daniel Patrick Moynihan Courthouse  
500 Pearl Street  
New York, NY 10007-1312

Re: *United States v. Samuel Bankman-Fried*, S5 22 Cr. 673 (LAK)

Dear Judge Kaplan:

The Government writes to provide the Court with additional Second Circuit authority regarding the appropriate measure of loss for the defendant's securities fraud on FTX's investors in light of the defendant's second reply brief filed on March 20, 2024, which argued that *United States v. Rutkoske*, 506 F.3d 170, 179 (2d Cir. 2007), only applies to cases involving the price decline of a publicly traded security. (*See* Dkt. 414).

The Government draws the Court's attention, in advance of sentencing, to the following authority, which makes clear that, "when an investor puts money into a fraudster's hands, and ultimately receives nothing of value in return, his loss is measured by the amount of principal invested[.]" *United States v. Hsu*, 669 F.3d 112, 121 (2d Cir. 2012); *see also United States v. Stitsky*, 536 F. App'x 98, 110-12 (2d Cir. 2013) (applying reasoning of *Hsu* to securities fraud conviction); *United States v. Byors*, 586 F.3d 222, 226 (2d Cir. 2009); *United States v. Barbera*, No. 21 Cr. 154 (JGK), 2023 WL 6095026, at \*2 (S.D.N.Y. Sept. 18, 2023). Here, where none of the investors \$1.7 billion was returned, the loss figure is the same regardless whether it is measured as the decline in the value of the investment or by the value of the invested principal.

Respectfully submitted,

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cc: Defense Counsel (by ECF)