

**Presentment Date: March 27, 2024 at 12:00 p.m. (prevailing Eastern Time)**  
**Objection Deadline: March 27, 2024 at 11:00 a.m. (prevailing Eastern Time)**

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*Counsel to the Plan Administrator*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

*In re:*

VOYAGER DIGITAL HOLDINGS, INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 22-10943 (MEW)

(Jointly Administered)

**NOTICE OF PRESENTMENT OF MOTION FOR ENTRY OF AN ORDER  
AUTHORIZING RULE 2004 EXAMINATION OF CIRCLE**

**PLEASE TAKE NOTICE** that the Plan Administrator (the “Plan Administrator”) of Voyager Digital Holdings, Inc. et al. (collectively, the “Wind-Down Debtor” or “Voyager”), pursuant to the *Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor*

<sup>1</sup> The Wind-Down Debtor in these chapter 11 cases consists of Voyager Digital Holdings, Inc. (7687), Voyager Digital Ltd. (7224), and Voyager Digital, LLC (8013). The Wind-Down Debtor’s service address is 27777 Franklin, Suite 2500, Southfield, MI 48034.

*Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1166-1] (the “Plan”) has filed the *Motion for Entry of an Order Authorizing 2004 Examination of Circle* (the “Motion”).

**PLEASE TAKE FURTHER NOTICE** that counsel for the Plan Administrator will present the proposed order, attached to the Motion as **Exhibit A** (the “Proposed Order”) to the Honorable Michael E. Wiles, United States Bankruptcy Judge, for signature on **March 27, 2024 at 12:00 p.m. (prevailing Eastern Time)**.

**PLEASE TAKE FURTHER NOTICE** that responses or objections (the “Objections”), if any, to the Proposed Order or the relief requested in the Motion shall: (a) be in writing; (b) conform to the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the Southern District of New York, and all General Orders applicable to chapter 11 cases in the United States Bankruptcy Court for the Southern District of New York; (c) be filed electronically with the Court on the docket of *In re Voyager Digital Holdings, Inc.*, No. 22-10943 (MEW) by registered users of the Court’s electronic filing system and in accordance with all General Orders applicable to chapter 11 cases in the United States Bankruptcy Court for the Southern District of New York (which are available on the Court’s website at <http://www.nysb.uscourts.gov>); and (d) be served on counsel to the Plan Administrator, McDermott Will & Emery LLP, One Vanderbilt Avenue, New York, NY 10017-3852 (Attn: Darren Azman, Joseph B. Evans and John Calandra), email: [dazman@mwe.com](mailto:dazman@mwe.com), [jbevans@mwe.com](mailto:jbevans@mwe.com), and [jcalandra@mwe.com](mailto:jcalandra@mwe.com) by **March 27, 2024 at 11:00 a.m. (prevailing Eastern Time)** (the “Objection Deadline”).

**PLEASE TAKE FURTHER NOTICE** that if no objections or other responses are timely filed and served by the Objection Deadline with respect to the Proposed Order, counsel for the Plan Administrator shall, on the Presentment Date, submit the Proposed Order to the Court, which order the Court may enter without further notice or opportunity to be heard.

**PLEASE TAKE FURTHER NOTICE** that if an Objection is timely filed, the Court will notify the moving and objecting parties of the date and time of the hearing and of the moving party's obligation to notify all other parties entitled to receive notice. The moving and objecting parties are required to attend the hearing, and failure to attend may result in relief being granted or denied upon default.

Dated: March 15, 2024  
New York, New York

**MCDERMOTT WILL & EMERY LLP**

/s/ Darren Azman

Darren Azman

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*Counsel to the Plan Administrator*

**Presentment Date: March 27, 2024 at 12:00 p.m. (prevailing Eastern Time)**  
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*Counsel to the Plan Administrator*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

*In re:*

VOYAGER DIGITAL HOLDINGS, INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 22-10943 (MEW)

(Jointly Administered)

**MOTION FOR ENTRY OF AN ORDER AUTHORIZING RULE 2004  
EXAMINATION OF CIRCLE**

Paul R. Hage, in his capacity as the Plan Administrator (the “Plan Administrator”) of Voyager Digital Holdings, Inc., *et al.* (collectively, the “Wind-Down Debtor” or “Voyager”) pursuant to the *Third Amended Joint Plan of Voyager Digital Holdings, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 1166-1] (the “Plan”), hereby

<sup>1</sup> The Wind-Down Debtor in these chapter 11 cases consists of Voyager Digital Holdings, Inc. (7687), Voyager Digital Ltd. (7224), and Voyager Digital, LLC (8013). The Wind-Down Debtor’s service address is 27777 Franklin, Suite 2500, Southfield, MI 48034.

moves for entry of an order in the form attached hereto as **Exhibit A** (the “Proposed Order”) authorizing and directing a subpoena for the production of documents by, and the examination of, Circle<sup>2</sup> pursuant to section 105 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2004 and 9016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rule 2004-1 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”).

The Proposed Order authorizes the Plan Administrator to serve a narrow and tailored subpoena substantially in the form attached hereto as **Exhibit B** (the “Subpoena”) for the production of documents by, and the examination of, Circle. In support of this Motion, the Plan Administrator represents as follows:

#### **PRELIMINARY STATEMENT AND BACKGROUND**

1. The Plan Administrator is a fiduciary appointed under the Plan who is expressly charged with investigating potential claims that could inure to the benefit of creditors of the estate. In furtherance of that duty, the Plan authorizes the Plan Administrator to seek “the examination of any Person pursuant to Federal Rule of Bankruptcy Procedure 2004 [.]”<sup>3</sup> In addition to estate claims, pursuant to the Plan approved by this Court, the Plan Administrator has been assigned approximately 32,000 creditor claims (“creditor assigned claims”).<sup>4</sup> Any recoveries by the Plan Administrator on those creditor assigned claims go to the estate for distribution to all creditors.<sup>5</sup>

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<sup>2</sup> Circle shall mean Circle Internet Financial Limited, Circle Internet Financial LLC, Circle Internet Financial, Inc., and all other entities affiliated with what is commonly known as Circle (<https://www.circle.com>).

<sup>3</sup> Docket No. 1166. Pursuant to the Plan, the Plan Administrator is the sole representative of the Wind-Down Debtor and has authority to administer, pursue, prosecute, litigate, settle, dismiss or otherwise take action with respect to the Wind-Down Debtor’s claims—including assigned claims from Voyager creditors.

<sup>4</sup> Docket No. 1166-1, 1405.

<sup>5</sup> *Id.*

2. Circle is a Cryptocurrency<sup>6</sup> platform that created USDC, a digital currency backed by the US dollar. Circle had substantial business dealings with Voyager, including Voyager's 2020 acquisition of Circle Invest, the retail digital asset business from Circle Internet Financial, Inc. As part of this acquisition, Voyager acquired over 40,000 retail accounts, a majority of which were migrated onto the Voyager platform. After the acquisition, Circle continued hosting Circle Invest customers located in New York, Alaska, and North Carolina because Voyager was not licensed in those states. Moreover, as part of the deal, Voyager partnered with Circle on strategic business initiatives, including working together to deliver payments through Circle's platform and stablecoin services to Voyager users.

3. Circle possesses information that relates to the "liabilities and financial condition of the debtor" and would "affect the administration of the debtor's estate." *See* Fed. R. Bankr. P. 2004(b). The Plan Administrator seeks to determine whether the estate (directly or through its creditor assigned claims) has any viable claims against Circle including, for example, breach of contract and/or Circle's knowledge of any fraudulent or misleading statements and/or conduct that Voyager's insiders allegedly made, and the extent to which Circle aided and abetted them. *See, e.g., In re Ecam Publ'ns, Inc.*, 131 B.R. 556, 561 (Bankr. S.D.N.Y. 1991) (holding that a chapter 11 trustee could use Bankruptcy Rule 2004 to investigate nondebtor claims that had been assigned to the Trustee post-petition because "the assignment of a nondebtor's claim against another nondebtor may constitute property of the estate if such assigned claim became part of the

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<sup>6</sup> Cryptocurrency refers to all digital assets that are traded on a blockchain, and shall be interpreted broadly to include all types of digital assets, including virtual currency, tokens, ERC-20 compliant tokens, security tokens, utility tokens, stablecoins, and any other digital assets. This includes, but is not limited to, Bitcoin, Bitcoin Cash, Ethereum, USD Coin (USDC), VGX, Tether (USDT), Dai, IDOL, XRP, Cardano, Polkadot, Binance Coin, Litecoin, Chainlink, Stellar, Dogecoin, Aave, Uniswap, Wrapped Bitcoin, Bitcoin SV, EOS, Monero, Maker, Cosmos, TRON, NEM, Synthetix, Tezos, THETA, Compound, VeChain, Neo SushiSwap, Huobi Token, UMA, Elrond, IOTA, Solana, and any other digital asset, including all derivative instruments based on any of the foregoing assets.

bankruptcy estate as a result of a post-petition transaction by the trustee and in accordance with the trustee's duties to administer the debtor's estate.").

4. Given Voyager's substantial relationship and dealings with Circle, the Subpoena seeks information well within the ambit of Bankruptcy Rule 2004. *In re Recoton Corp.*, 307 B.R. 751, 755 (Bankr. S.D.N.Y. 2004) ("Any third party who has a relationship with a debtor may be subject to a Rule 2004 examination.").

5. Because of the important role played by Circle in Voyager's business, the Plan Administrator seeks to investigate whether Circle knowingly aided and abetted any of the wrongdoing being alleged by federal and state regulators against Voyager's former insiders. Since Voyager filed for bankruptcy, numerous federal and state regulators have leveled allegations that insiders defrauded Voyager customers by making certain misleading statements and engaging in false or deceptive practices. Among other things, they have alleged that Voyager's insiders made misleading statements regarding: the availability of FDIC insurance to cover any losses of customer deposits (including their cryptocurrency) resulting from a Voyager failure; the overall safety of investing with Voyager; and Voyager's compliance with applicable legal requirements, such as state money transmission licensing requirements and applicable securities registration requirements for Voyager's "Earn Program."<sup>7</sup>

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<sup>7</sup> See, e.g., *Federal Trade Commission v. Voyager, et al.*, 23-cv-08960, Complaint, ECF No. 1, ¶¶ 24, 31, 41 (S.D.N.Y. Oct. 12, 2023) (alleging, in part, that: (i) "Voyager falsely represented that consumer deposits would be 'FDIC insured . . . [and the] statement that funds in the debit card account would be FDIC insured as 'potentially misleading'"; and (ii) "to date, consumers have not been able to recover any loss of their assets through Voyager's supposed FDIC insurance"); *Commodity Futures Trading Commission v. Stephen Ehrlich*, 23-cv-08962, Complaint, ECF No. 1, ¶¶ 4, 5, 43, (S.D.N.Y. Oct. 12, 2023) (alleging, in part, that: (i) "Ehrlich and Voyager engaged in a pattern of making misleading and false statements to induce customers to store and not withdraw their digital asset commodities from the Voyager Platform"; and (ii) "[t]hroughout the operation of the Rewards [*i.e.* Earn] Program, Ehrlich and Voyager promised customers that assets would be treated safely and responsibly," and "[i]n contrast to Voyager's splashy and repeated public assurances regarding safety, trustworthiness, and responsible treatment of customer assets when marketing the Voyager Platform on its website and in press releases, Voyager provided customers boilerplate risk disclosures"); *Karnas et al. v. Mark Cuban et al.*, 22-cv-22538, Second Amended Class Action Complaint, ECF No. 186-1, ¶ 184 (S. D. Fl. Jun. 9, 2023) (alleging that "seven state Attorney Generals . . . found that Voyager was violating

6. The Bankruptcy Rule 2004 discovery the Plan Administrator seeks from Circle is necessary and appropriate to investigate the creditor assigned claims as well as any potential estate claims, and is narrowly tailored to seek documents relating to: (i) the specific subjects of the regulators' allegations of Voyager's wrongdoing in an effort to determine what Circle knew and what role it played in connection with the challenged activities; and (ii) potential breach of its contract with Voyager.

7. The Subpoena will not unduly burden Circle, and properly relates to "acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge." Fed. R. Bankr. P. 2004(a) (b). The Plan Administrator has prepared tailored discovery requests, and is not seeking to conduct a fishing expedition—even though Bankruptcy Rule 2004 allows such expeditions.<sup>8</sup> To the extent Circle has any concerns regarding the burden and breadth of the Subpoena, the Plan Administrator's counsel is willing to negotiate appropriate search terms and custodians, as has been successfully accomplished with several parties who have agreed to engage with the Plan Administrator in voluntary discovery.

8. Moreover, in seeking Bankruptcy Rule 2004 discovery to investigate potential claims against Circle, the Plan Administrator is simply doing what he is obligated to do: investigate the existence of claims that could lead to greater recoveries for Voyager's creditors, virtually all of whom were individuals who traded on the Voyager platform. Indeed, in seeking creditors' approval of the Plan, the Official Committee of Unsecured Creditors (the "UCC") filed and

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their state laws, including finding that Voyager used [Earned Program Accounts] to raise millions of dollars . . . and that the [Earned Program Accounts] are an unregistered security").

<sup>8</sup> "It is well settled that the scope of examination allowed under Bankruptcy Rule 2004 is broader than discovery allowed under the Federal Rules of Civil Procedure and may be in the name of a 'fishing expedition.'" *In re Hughes*, 281 B.R. 224, 231 (Bankr. S.D.N.Y. 2002).



circulated a letter that asked creditors to assign their third-party claims to the Wind-Down Debtor, assuring them at the time that, “[u]pon the effective date of the Plan, the Wind-Down Entity will conduct an investigation into these third parties.”<sup>9</sup> That is precisely what the Plan Administrator is seeking to do.

### **JURISDICTION AND VENUE**

9. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b).

10. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

11. The statutory predicates for the relief requested herein are Section 105 of the Bankruptcy Code and Bankruptcy Rules 2004 and 9016.

### **RELIEF REQUESTED**

12. By this Motion, the Plan Administrator respectfully requests entry of an order, substantially in the form of the Proposed Order, authorizing the Plan Administrator to serve the Subpoena for Bankruptcy Rule 2004 on Circle.

### **BASIS FOR REQUESTED RELIEF**

#### **I. Powers and Duties of the Plan Administrator**

13. Pursuant to section 1123(b) of the Bankruptcy Code, a plan may provide for “the settlement or adjustment of any claim or interest belonging to the debtor or to the estate” or the retention and enforcement by “a representative of the estate appointed for such purpose, of any such claim or interest.” Moreover, pursuant to Bankruptcy Rule 2004, “[o]n motion of any party in interest, the court may order the examination of any entity.” Fed. R. Bankr. P. 2004(a) (b).

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<sup>9</sup> ECF No. 566, at p. 5.

14. Under the Plan, the Plan Administrator is a “party in interest” entitled to conduct Bankruptcy Rule 2004 examinations for the following reasons.

15. *First*, the Plan appointed the Plan Administrator as the sole representative of the Wind-Down Debtor and vested in him the authority to administer, pursue, prosecute, litigate, settle, dismiss or otherwise take action with respect to the Wind-Down Debtor’s claims and causes of action.

16. *Second*, the Plan expressly contemplated that the Plan Administrator would investigate, and where appropriate, pursue claims and causes of action for the benefit of creditors.<sup>10</sup> In furtherance of this goal, the Plan authorized the Plan Administrator to seek “the examination of any [individual, partnership, and corporation] pursuant to Federal Rule of Bankruptcy Procedure 2004.”<sup>11</sup> Conducting Bankruptcy Rule 2004 examinations will allow the Plan Administrator to seek the information necessary to discharge his fiduciary obligation.

## **II. Applicable Law**

17. The purpose of a Bankruptcy Rule 2004 examination is to “assist a party in interest in determining the nature and extent of the bankruptcy estate, revealing assets, examining transactions and assessing whether wrongdoing has occurred.” *In re Recoton Corp.*, 307 B.R. 751, 755 (Bankr. S.D.N.Y. 2004) (allowing Bankruptcy Rule 2004 examination because “on its face the Motion appears to be a legitimate attempt to investigate potential claims that might benefit the bankruptcy estates.”). Bankruptcy Rule 2004 permits discovery “to determine the extent of the estate’s assets and recover those assets for the benefit of creditors.” *In re Madison Williams & Co., LLC*, No. 11-15896, 2014 WL 56070, at \*3 (Bankr. S.D.N.Y. Jan. 7, 2014); *see also In re Duratech Indus., Inc.*, 241 B.R. 291, 296 (Bankr. E.D.N.Y. 1999) (explaining that Bankruptcy Rule

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<sup>10</sup> Docket No. 1166.

<sup>11</sup> *Id.*

2004 facilitates “the central purpose of a bankruptcy case, namely, to maximize the distribution of assets or plan payments to unsecured creditors.”).

18. The scope of discovery allowed under Bankruptcy Rule 2004 is “very broad and great latitude of inquiry is ordinarily permitted.” *In re Madison Williams*, 2014 WL 56070, at \*3 (quoting *In re Matter of Wilcher*, 56 B.R. 428, 433 (Bankr. N.D. Ill. 1985)). “It is well settled that the scope of examination allowed under Bankruptcy Rule 2004 is broader than discovery allowed under the Federal Rules of Civil Procedure and may be in the name of a ‘fishing expedition.’” *In re Hughes*, 281 B.R. 224, 231 (Bankr. S.D.N.Y. 2002) (denying motion to quash Bankruptcy Rule 2004 subpoenas because the subpoenas enabled the Joint Liquidators to exercise the powers entrusted by the court, which is to investigate the debtor’s “financial affairs, and contribute to an economical and expeditious administration of this estate.”).

19. Bankruptcy Rule 2004 examinations are appropriate with respect to *both* estate claims as well as creditor assigned claims. *See, e.g., In re Ecam Publ’ns, Inc.*, 131 B.R. 556, 561 (Bankr. S.D.N.Y. 1991) (holding that a chapter 11 trustee could use Bankruptcy Rule 2004 to investigate nondebtor claims that had been assigned to the trustee post-petition because “the assignment of a nondebtor’s claim against another nondebtor may constitute property of the estate if such assigned claim became part of the bankruptcy estate as a result of a post-petition transaction by the trustee and in accordance with the trustee’s duties to administer the debtor’s estate.”); *Semi-Tech Litig., LLC v. Bankers Tr. Co.*, 272 F. Supp. 2d 319, 323-24 (S.D.N.Y. 2003) (holding that the liquidating trust has standing to bring third-party claims assigned to it under a confirmed chapter 11 plan), *aff’d & adopted*, 450 F.3d 121, 123 (2d Cir. 2006). Here, the creditor assigned claims

became property of the estate and any recovery on them will be distributed, per the Plan, to all creditors of the estate.<sup>12</sup>

20. The party seeking Bankruptcy Rule 2004 discovery has the burden to show good cause for the examination it seeks, and the decision to grant the requested relief lies within the sound discretion of the Bankruptcy Court. *See In re Bernard L. Madoff Inv. Sec. LLC*, No. 09-11893 (SMB), 2014 WL 5486279, at \*2 (Bankr. S.D.N.Y. Oct. 30, 2014). Good cause is established when a Bankruptcy Rule 2004 examination is used for the purpose of “discovering assets, examining transactions, and determining whether wrongdoing has occurred on behalf of the Debtors’ estate.” *In re Gawker Media LLC*, No. 16-11700 (SMB), 2017 WL 2804870 at \*5 (Bankr. S.D.N.Y. June 28, 2017) (citation omitted) (allowing Plan Administrator to conduct Bankruptcy Rule 2004 examination when the proceeds of litigation claims would be paid to the creditors under the Plan). As long as the examination is not designed to “abuse or harass” a third party, the court will allow it. *In re Recoton Corp.*, 307 B.R. at 755.

### **III. Good Cause Exists to Allow the Plan Administrator’s Bankruptcy Rule 2004 Examination**

21. The Plan Administrator has good cause to seek Bankruptcy Rule 2004 discovery from Circle. Here, as in *In re Gawker Media LLC*, the Plan Administrator seeks to “conduct pre-litigation discovery in order to determine whether potential causes of action exist” against Circle on behalf of the estate and creditor assigned claims “and, if they do, whether to prosecute them.” No. 16-11700 (SMB), 2017 WL 2804870, at \* 5 (Bankr. S.D.N.Y. June 28, 2017) (finding good cause on that basis). That is good cause. *See In re Recoton Corp.*, 307 B.R. 751, 755 (Bankr. S.D.N.Y. 2004) (citations omitted) (allowing Bankruptcy Rule 2004 examination to “assess[] whether wrongdoing has occurred” and “to investigate potential claims that might benefit the

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<sup>12</sup> ECF No. 1166 at p. 42.

bankruptcy estates.”); *In re Transmar Commodity Grp. Ltd.*, No. 16-13625(JLG), 2018 WL 4006324, at \* 5 (Bankr. S.D.N.Y. Aug. 17, 2018) (“[U]se of Rule 2004 discovery at this time to identify or evaluate possible claims against AMERRA fits squarely within the scope of Rule 2004.”).

22. Courts routinely allow Bankruptcy Rule 2004 examinations of third parties who have had prior business dealings with the debtor. *See In re Recoton Corp.*, 307 B.R. at 755 (“Any third party who has a relationship with a debtor may be subject to a Bankruptcy Rule 2004 examination.”). Here, Voyager partnered with Circle on strategic initiatives and assisted Voyager in providing services to customers in states where it was not licensed. It is, accordingly, entirely reasonable for the Plan Administrator to investigate potential claims against Circle that might benefit the bankruptcy estate.

#### **MOTION PRACTICE**

23. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this Motion. Accordingly, the Debtors submit that this Motion satisfies Local Rule 9013-1(a).

#### **NOTICE**

24. The Plan Administrator will give notice of this Motion to Circle and/or its respective counsel. In light of the requested relief’s nature, the Plan Administrator submits that no other or further notice need be given.

#### **NO PRIOR REQUEST**

25. No prior request for the relief requested herein has been made by the Plan Administrator to this Court or any other court.

### **RESERVATION OF RIGHTS**

26. The Plan Administrator reserves all rights, claims, defenses, and remedies, including, without limitation, the right to amend, modify, or supplement this Motion, to seek additional discovery from any party, add additional parties, or to raise additional grounds for granting this Motion during any hearing on the Motion, if one should be held.

**WHEREFORE**, the Plan Administrator respectfully requests that this Court enter an order, pursuant to Bankruptcy Rule 2004, substantially in the form of the Proposed Order authorizing the issuance of the Subpoena for testimony and the production of documents from Circle, and granting to the Plan Administrator such other and further relief as this Court may deem just and proper.

Dated: March 15, 2024  
New York, New York

**MCDERMOTT WILL & EMERY LLP**

/s/ Darren Azman

Darren Azman

John J. Calandra

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*Counsel to the Plan Administrator*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he caused a true and correct copy of the foregoing document to be served on March 15, 2024, upon (i) all parties in these chapter 11 cases that are registered or otherwise entitled to receive electronic notices via electronic notification pursuant to the CM/ECF system for the United States Bankruptcy Court for the Southern District of New York, and (ii) the following party via e-mail:

Circle  
Heath Tarbert, Chief Legal Officer & Head of Corporate Affairs  
heath.tarbert@circle.com

*Rule 2004 Party*

/s/ Darren Azman  
Darren Azman

**Exhibit A**

**Proposed Order**



**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

*In re:*

VOYAGER DIGITAL HOLDINGS, INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 22-10943 (MEW)

(Jointly Administered)

**ORDER AUTHORIZING RULE 2004 EXAMINATION OF  
CIRCLE**

The Plan Administrator filed the *Motion for Entry of an Order Authorizing 2004 Examination of Circle* (the “Motion”)<sup>2</sup> for an order, pursuant to Rules 2004 and 9016 of the Federal Rules of Bankruptcy Procedure, seeking authorization for the Plan Administrator to issue the Subpoena, without prejudice to the right of Circle to object, (a) directing the production for inspection and copying records of documents relating to Voyager, and (b) directing the appearance and submission to an oral examination to be taken under oath; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and sufficient notice having been provided; and the Court having found and determined that the relief sought in the Motion is appropriate and in the best interest of the Wind-Down Debtor and its estate, and the legal and factual bases set forth in the Motion having established just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The relief requested in the Motion is GRANTED to the extent set forth herein.

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<sup>1</sup> The Wind-Down Debtor in these chapter 11 cases consists of Voyager Digital Holdings, Inc. (7687), Voyager Digital Ltd. (7224), and Voyager Digital, LLC (8013). The Wind-Down Debtor’s service address is 27777 Franklin, Suite 2500, Southfield, MI 48034.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning given to them in the Motion.

2. The Plan Administrator may issue the Subpoena in the form attached as **Exhibit B** to the Motion: (a) directing Circle to produce documents, and (b) directing Circle to appear for an examination under oath, without prejudice to the right of Circle to object in accordance with the applicable rules.

3. To the extent necessary, the Plan Administrator's rights are reserved to request additional examinations or documents under Bankruptcy Rule 2004 based on any information that may be revealed as a result of the discovery obtained pursuant to this Order.

4. This Order shall be served upon Circle.

5. This Court retains jurisdiction to resolve all matters arising under or related to this Order, and to interpret, implement, and enforce the provisions of this Order.

Dated: New York, New York

\_\_\_\_\_, 2024

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UNITED STATES BANKRUPTCY JUDGE

**Exhibit B**

**Subpoena**

## **SCHEDULE A**

### **Definitions**

This discovery request incorporates the definitions and rules of construction set forth in Local Rules 26.3(c) and (d) of the United States District Court for the Southern District of New York.

In addition, as used in this discovery request (and regardless of whether a particular term is or is not capitalized or underlined when used):

1. “Circle” “You” and “Your” shall mean shall mean Circle Internet Financial Limited, Circle Internet Financial LLC, Circle Internet Financial, Inc., and all other entities affiliated with what is commonly known as Circle, Including, as applicable, its predecessors, successors, partners, joint ventures, subsidiaries, affiliates, divisions, directors, officers, principals, trustees, employees, agents, representatives, attorneys, auditors, accountants, consultants or any other Person(s) now or heretofore under the control of the foregoing or acting or purporting to act on its behalf.

2. “Voyager” shall mean Voyager Digital Ltd., Voyager Digital, LLC, Voyager Digital Holdings, Inc., Voyager Digital Canada, Ltd., and all other entities affiliated with what is commonly known as Voyager (<https://www.investvoyager.com>), Including, as applicable, its predecessors, successors, partners, joint ventures, subsidiaries, affiliates, divisions, directors, officers, principals, trustees, employees, agents, representatives, attorneys, auditors, accountants, consultants or any other Person(s) now or heretofore under the control of the foregoing or acting or purporting to act on its behalf.

3. “Communication” means the transmittal of information (in the form of facts, ideas, inquiries or otherwise). For the avoidance of doubt, when a specific discovery request seeks all “written and electronic communications” concerning a topic, that includes all letters, emails, text

messages, notes, and memoranda, as well as all tweets, postings, messages and chats occurring on or through Twitter, X, Bloomberg, Telegram, WhatsApp, GroupMe, WeChat, Signal, Dust, Slack, Proton or any analogous platform or service.

4. “Cryptocurrency” shall mean all digital assets that are traded on a blockchain, and shall be interpreted broadly to include all types of digital assets, Including virtual currency, tokens, ERC-20 compliant tokens, security tokens, utility tokens, stablecoins, and any other digital assets. This includes, but is not limited to, Bitcoin, Bitcoin Cash, Ethereum, USD Coin (USDC), VGX, Tether (USDt), Dai, IDOL, XRP, Cardano, Polkadot, Binance Coin, Litecoin, Chainlink, Stellar, Dogecoin, Aave, Uniswap, Wrapped Bitcoin, Bitcoin SV, EOS, Monero, Maker, Cosmos, TRON, NEM, Synthetix, Tezos, THETA, Compound, VeChain, Neo SushiSwap, Huobi Token, UMA, Elrond, IOTA, Solana, and any other digital asset, Including all derivative instruments based on any of the foregoing assets.

5. “Agreement” shall mean any agreement between Circle and Voyager, Including any drafts, amendments, restatements, or renewals of the same.

6. “Voyager Earn Program” shall mean the investment product “Earn” launched by Voyager in or around late 2019.<sup>1</sup>

7. “Voyager Interest Program” shall mean the investment product launched by Voyager in or around late 2019.<sup>2</sup>

8. “Voyager Loyalty Program” shall mean the tier-based reward program launched by Voyager in or around late 2020.<sup>3</sup>

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<sup>1</sup> Voyager, *Voyager Earn Program*, <https://www.investvoyager.com/earn/> (last updated June 1, 2023).

<sup>2</sup> Voyager, *Earn Interest on Bitcoin*, <https://www.investvoyager.com/blog/3-interest-on-bitcoin/> (last updated Oct. 23, 2018, 11:47 EDT).

<sup>3</sup> Voyager, *The Voyager Loyalty Program*, <https://www.investvoyager.com/vlp/> (last visited Aug. 17, 2023).

9. “Voyager Reward(s) Program” “Reward Program” or “Rewards Program” shall mean all reward programs or investment products launched by Voyager, Including, the Voyager Earn Program, the Voyager Interest Program, and the Voyager Loyalty Program.

**Instructions**

1. This discovery request incorporates the definitions and rules of construction set forth in Local Rule 26.3 for the United States District Court for the Southern District of New York, as well as the case-specific definitions set forth in the “Definitions” section above. *See* Local Rule 2004-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Southern District of New York; *see also* Local Rule 26.3 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York

2. In responding to this discovery request, You must produce all responsive documents in Your possession, custody, or control, wherever located, including without limitation those in the custody of Your representatives, agents, employees, affiliates, or anyone acting on Your behalf. In addition, unless otherwise indicated in a specific document request, this discovery request seeks documents created on or after July 1, 2018, and You do not need to produce any documents created before July 1, 2018.

3. Hard copy documents produced in electronic format shall be OCR (Optical Character Recognition) capable and shall be produced with Relativity compatible load files. Electronically stored documents shall be produced in their native format, shall be OCR (Optical Character Recognition) capable and shall be produced with Relativity compatible load files. In addition, the following special instructions apply to the production of electronically stored spreadsheets, including any Microsoft Excel spreadsheets: Spreadsheets shall not be converted to TIFF files and shall be produced in native format. A placeholder TIFF image shall be created, Bates

numbered, and the produced Excel file shall be renamed to match the Bates number on its corresponding placeholder page. The exception shall be for redacted spreadsheets which shall be produced in TIFF format. Images for the redacted spreadsheets shall display the content in the same manner as if it were printed. The extractable metadata and text shall be provided for native files, and OCR will be provided for the un-redacted portions of the documents.

4. If You have no documents responsive to a particular request, state so in writing. If You object to any part of any specific document request, state the nature of and grounds for the objection and produce all documents that are responsive to the portions of the request to which You do not object. If You cannot comply with any specific document request in full, comply to the fullest extent possible and provide an explanation as to why full compliance is not possible. If You assert that any documents covered by a specific request are subject to withholding on the basis of a privilege, provide a privilege log setting forth (a) the nature of the privilege being claimed, (b) the type of document being withheld, (c) the general subject matter of the document, (d) the date of the document, and (e) information sufficient to assess the basis for the privilege assertion. If a document contains both privileged and non-privileged material, disclose the non-privileged material to the fullest extent possible without thereby disclosing the privileged material and indicate clearly the portions of the document that You are withholding on the basis of the asserted privilege. If any responsive document has been destroyed or discarded, identify the document by providing the following information: (a) any sender/author and any addressee; (b) any indicated or blind copies; (c) the document's date, subject matter, number of pages, and attachments or appendices; (d) all persons to whom the document was distributed, shown, or explained; (e) its date of destruction or discard, manner of destruction or discard, and reason for destruction or discard; (f) the persons who authorized and carried out such destruction or discard; and (g) whether

any copies of the document presently exist and, if so, the name of the custodian of each copy.

5. This discovery request is a continuing request. You must supplement any production of documents that You make with any additional documents You receive, discover or create after Your initial production.

**DOCUMENTS TO BE PRODUCED**

1. All Documents and Communications Concerning:
  - a. Voyager's statements about FDIC insurance, Voyager Rewards Program, Voyager Earn Program, Voyager Interest Program, Voyager Loyalty Program, VGX, the safety and security of Voyager's platform, its lending activities, its due diligence of existing or potential borrowers, its compliance with statutory or regulatory requirements, and/or its money transmitter licenses, Including Documents discussing whether such statements were true, complete, accurate, and/or misleading;
  - b. representations or public statements You made Concerning Voyager, Including in marketing materials, social media posts, advertisements, commercials, or other public statements; and
  - c. Voyager's compliance, attempted compliance or non-compliance, with statutory or regulatory requirements, Including securities laws, money transmitter licensing requirements, know-your-customer/anti-money-laundering laws, and consumer protection requirements, and the legality of the Voyager Rewards Program, Voyager Earn Program, Voyager Interest Program, and Voyager Loyalty Program.



2. All Documents, Communications, and Records Concerning Voyager customers or Circle Invest customers, Including customers located in New York, Alaska, and North Carolina.

3. Documents sufficient to show the physical location and state of residence of all Circle customers that joined Voyager.

4. All Documents produced by You in any litigations or investigations Concerning Voyager.

5. Copies of all subpoenas, demand letters, complaints, customer complaints, or other similar correspondence Concerning Voyager.

6. All Documents and Communications Concerning Voyager's bankruptcy and/or anticipation of its bankruptcy.

**SCHEDULE B**

This list of examination topics incorporates by reference the definitions set forth above on Schedule A.

**TOPICS OF EXAMINATION**

1. Voyager's public statements.
2. The Agreement, Including negotiation and execution of the Agreement.
3. Circle's retail customers.
4. All issues set forth in the Requests.
5. All steps You took to locate and produce Documents and Communications in response to the Requests.