

## The Encroaching Wave: Exploring Legal and Regulatory Considerations for Cryptocurrency and Blockchain Deals

Moderator



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## **BNY Mellon Says Client Demand for Crypto Led to Custody Offering**

*Executives from the world's largest custodian bank and oldest bank in America said - Coindesk (10/17/22)*

## **Mastercard Debuts Service Offering Crypto-Trading Tied to Bank Accounts**

**Bloomberg (10/17/22)**

## **\$4.5T asset manager Fidelity offers ETH custody and trading to clients**

**Cointelegraph (10/20/22)**

## **All Eyes Are on the BlackRock-Coinbase Partnership**

**Bloomberg (9/1/22)**

## **Nearly 75% of retailers plan to accept cryptocurrency payments within the next 2 years**

**Deloitte (July 2022)**

## **Coca-Cola to Auction Its First-Ever NFT Collectibles**

**Bloomberg (7/07/21)**

## **The Florida Panthers announces multi-year partnership with PointsKash, the First NFT Rewards Points Redemption App**

**PR Newswire (10/14/22)**

## **Unifying Cryptocurrency ESG Efforts Key to Boost Global Adoption**

**World Economic Forum (1/14/22)**

## Tech Market - Total Activity & Deal Count

Year	Number of Deals	
	Total	% Growth
YTD 2022	2,230	--
Q3 2022	554	-23%
Q2 2022	716	-17%
Q1 2022	858	--
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2021	3,699	43%
2020	2,589	11%
2019	2,337	-6%
2018	2,476	--

## Crypto Market - Total Activity & Deal Count

Year	Number of Deals	
	Total	% Growth
YTD 2022	163	--
Q3 2022	56	27%
Q2 2022	44	-15%
Q1 2022	52	--
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2021	180	205%
2020	59	2%
2019	58	-3%
2018	60	--

### Tech Market - Total Consideration Paid

Year	Consideration (\$M)	
	Total	% Growth
YTD 2022	213,850	--
Q3 2022	54,510	-20%
Q2 2022	68,400	-7%
Q1 2022	73,720	--
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2021	320,960	50%
2020	213,690	6%
2019	202,000	-40%
2018	337,000	--

### Crypto Market - Total Consideration Paid

Year	Consideration (\$M)	
	Total	% Growth
YTD 2022	1,921	--
Q3 2022	204	40%
Q2 2022	146	-91%
Q1 2022	1,571	--
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2021	6,435	561%
2020	974	177%
2019	352	-73%
2018	1,305	--

## Top Traditional Acquirers - Last 24 Months



## Crypto Sub-Sector Activity Levels & Trends (% of Total transactions)

	FY 2020	FY 2021	Q1 2022	Q2 2022	Q3 2022	YTD 2022
Investing & Trading Infrastructure	<b>20%</b>	10%	23%	14%	20%	18%
Brokers & Exchanges	<b>22%</b>	<b>27%</b>	19%	20%	14%	16%
DApp: Games	0%	0%	6%	14%	9%	11%
Consulting & Services	5%	4%	4%	11%	18%	10%
Payments	10%	10%	17%	7%	11%	10%
Developer Tools & Infrastructure	5%	2%	4%	9%	11%	7%
DApp: Enterprise Use Case	7%	6%	8%	14%	0%	6%
Data & Data Analytics	<b>17%</b>	<b>11%</b>	4%	2%	7%	5%
Mining & Staking	3%	<b>24%</b>	0%	7%	5%	4%
DApp: Investing/Trading	3%	3%	8%	0%	2%	3%
Blockchain & Protocol	7%	2%	6%	0%	0%	2%
Team Acquisition	0%	1%	0%	2%	4%	2%

### Crypto Sub-Sector Activity Levels & Trends (% of Total transactions)

	2020	2021	Q1 2022	Q2 2022	Q3 2022	YTD 2022
Bridge	30%	28%	48%	50%	16%	33%
Intra Cypto	70%	67%	48%	48%	76%	56%
Reverse Merger / SPAC	--	6%	4%	2%	8%	4%

# Acquirer use cases TL;DR:

Traditional companies are **leveraging crypto technologies** to:

- (i) improve their existing processes
- (ii) expand how their customers engage and pay them.



# Traditional companies acquiring a crypto product set:



acquiring



acquiring



acquiring



acquiring



LONG GAME



acquiring



# Traditional companies acquiring crypto technology to improve workflow efficiencies:



acquiring



acquiring



acquiring



acquiring



# Traditional companies acquiring crypto payments functionality to facilitate cross-border and intra-border transactions more efficiently:

**nuvei**

acquiring

 simplex

SHIFT 

acquiring

 The Giving Block

 **airbnb**

acquiring

Changecoin

# Traditional companies acquiring crypto data & data analytics capabilities:



acquiring



acquiring

kimonolabs



acquiring



acquiring



## Representations and Warranties in Virtually Every Crypto Related Transaction

The Company has implemented and maintains in effect policies and procedures reasonably designed to ensure compliance by the Company with applicable Sanctions and Anti-Money Laundering Laws. Since the Company Inception Date, (i) the Company has been in compliance with applicable Sanctions and Anti-Money Laundering Laws; and (ii) the Company and, to the Knowledge of the Company, no agent of the Company is a Sanctioned Person, or has engaged in, or is it now engaged in, directly or indirectly, any dealings or transactions with, involving or for the benefit of any Sanctioned Person, or has otherwise violated Sanctions or Anti-Money Laundering Laws. The Company has not received, since the Company Inception Date, any written or, to the Knowledge of the Company, oral notice from any Governmental Authority, and there have been no internal reviews or investigations by the Company, regarding any actual, alleged or suspected violation of, or failure on the part of the Company to comply with, any Sanctions or Anti-Money Laundering Laws. None of (i) the Mergers, (ii) the execution, delivery and performance of this Agreement or any ancillary agreement, or (iii) the consummation of any transaction contemplated hereby or thereby, or the fulfillment of the terms hereof or thereof, will result in a violation by Company or any party hereto of any Sanctions or Anti-Money Laundering Laws.

## Representations and Warranties in Virtually Every Crypto Related Transaction (cont'd)

None of the proceeds in connection with this Agreement will be used, lent, contributed, or otherwise made available, directly or indirectly, (i) to fund or finance any activities or business of or with any Person that is a Sanctioned Person or in any Sanctioned Country, or in violation of Anti-Money Laundering Laws, or (ii) in any other manner, in each case as would result in a violation of Sanctions or Anti-Money Laundering Laws by any Person in connection with this Agreement.

## OFAC's Significant Indirect Role In Crypto M&A Transactions

Failure to comply with OFAC rules may kill a deal because the acquiring company will not want to take on the risk of OFAC related penalties.

OFAC is the office within the U.S. Department of the Treasury that is responsible for administering and enforcing economic sanctions against targeted foreign countries, geographic regions, entities, and individuals to further U.S. foreign policy and national security goals. Economic sanctions are used by the U.S. government to prevent targets such as terrorists, international narcotics traffickers, weapons of mass destruction proliferators, and perpetrators of serious human rights abuse from accessing the U.S. financial system for purposes contrary to U.S. foreign policy and national security interests, and to change the behavior of such targets.

OFAC has the power to bring civil actions, impose penalties and fines, and refer cases to the United States Department of Justice for criminal prosecution for failure to follow OFAC regulations.

## OFAC's Significant Indirect Role In Crypto M&A Transactions (cont'd)

“OFAC may impose civil penalties for sanctions violations generally based on a strict liability legal standard. This means that, in many cases, a U.S. person may be held civilly liable for sanctions violations even without having knowledge or reason to know it was engaging in such a violation.”

The Financial Crimes Enforcement Network, working with OFAC, recently entered into a \$29 million settlement with a cryptocurrency exchanger for its failure to follow OFAC regulations and its failure to employ an effective anti-money laundering program. *In the Matter of Bittrex, Inc.*, Number 2022-03.



## Every Deal In Which You Will Be Involved Should Include OFAC Due Diligence

“All U.S. persons are required to comply with OFAC regulations. This includes all U.S. citizens and lawful permanent residents, wherever located; all individuals and entities within the United States; and all entities organized under the laws of the United States or any jurisdiction within the United States, including any foreign branches of those entities.”

## Things To Do If You Are Being Acquired and Things to Look For If You Are the Purchaser

“The virtual currency industry, including technology companies, exchangers, administrators, miners, wallet providers, and users, plays an increasingly critical role in preventing sanctioned persons from exploiting virtual currencies to evade sanctions and undermine U.S. foreign policy and national security interests.”

“Members of the virtual currency industry are responsible for ensuring that they do not engage, directly or indirectly, in transactions prohibited by OFAC sanctions, such as dealings with blocked persons or property, or engaging in prohibited trade- or investment-related transactions.”

# Things To Do If You Are Being Acquired and Things to Look For If You Are the Purchaser (cont'd)

Obtain information sufficient to allow you to know to/from whom you are sending/receiving virtual currency before you send/receive it.

- What is the name of the individual?
- Who are the beneficial owners?
- Do you have government issued identification related to the individuals and/or beneficial owners?
- Where do they reside?
- Phone numbers and other contact information like email addresses?
- Are you checking IP addresses to determine where they are located?
- Does your method of checking IP addresses account for VPN?
- Did you cross-check the address information?
- What other companies do they own?
- In what region of the world is the person located?

## Things To Do If You Are Being Acquired and Things to Look For If You Are the Purchaser (cont'd)

Use the information that you received to determine whether an individual is on OFAC's Specially Designated Nationals list, or in a targeted country (Iran, Cuba, North Korea), geographic region (Crimea region of Ukraine) or regime.

Block, hold and report to OFAC (within 10 days) all assets/transactions if you receive the assets from, or before you send them to, people who are on the SDN list or are in a targeted country, geographic region or regime.

## Things To Do If You Are Being Acquired and Things to Look For If You Are the Purchaser (cont'd)

Senior Management commitment to an OFAC compliance program: “Support from senior management is critical to ensure sanctions compliance efforts receive adequate resources and are fully integrated into the company’s daily operations.”

Conduct risk assessments: “While there is no ‘one-size-fits-all’ risk assessment, the exercise should generally include a complete review of the company to assess its touchpoints to foreign jurisdictions or persons.”

Policies and procedures designed to address the risks identified in the company’s risk assessment: “These may include controls to identify, interdict, escalate, report (as appropriate), and maintain records for transactions or activities prohibited by OFAC-administered sanctions.”

Identify red flags when conducting due diligence on customers and business partners: “Red flags are indications that illicit activity or compliance breakdowns may be occurring that prompt a company to investigate and take appropriate action.”

Identify and remediate weaknesses.

# Regulatory and Other Considerations

- Banking & Crypto
  - FDIC
  - OCC
- Securities & Exchange Commission
- CBDCs/Stablecoins
- State Initiatives & Regulation
- Money Transmission
- Mining Regulation
- “Unhosted Wallets”
- DAO Governance / NFTs



# Banking & Crypto

- Custody Services
- New Technologies / INVNs / Stablecoins
- Limited Purpose National Trust Bank Charter
- SoFi Restrictions
- OCC Guidance



# Securities Exchange Commission

- Continued Lack of Clarity
- Platforms
- Stablecoins
- Tokens
- Crypto Accounting
- ETF Approvals





## State Regulations & Initiatives

- Industry/lobbyists focused more on states than federal
- ~150 pieces of legislation in the pipeline
- Money Transmission Licensing / BitLicense
- Enabling Legislation (Wyoming / Arizona)



# Questions?



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