

# M&A ACADEMY

## M&A IN THE EVER-CHANGING FINTECH LANDSCAPE

**Speakers:**

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# Agenda

- Fintech Market Overview
- Overview of the Fintech Landscape
- Fintech Deal Activity
- What We Are Watching: Trending Areas in Fintech
- Questions?

# Fintech Market Overview

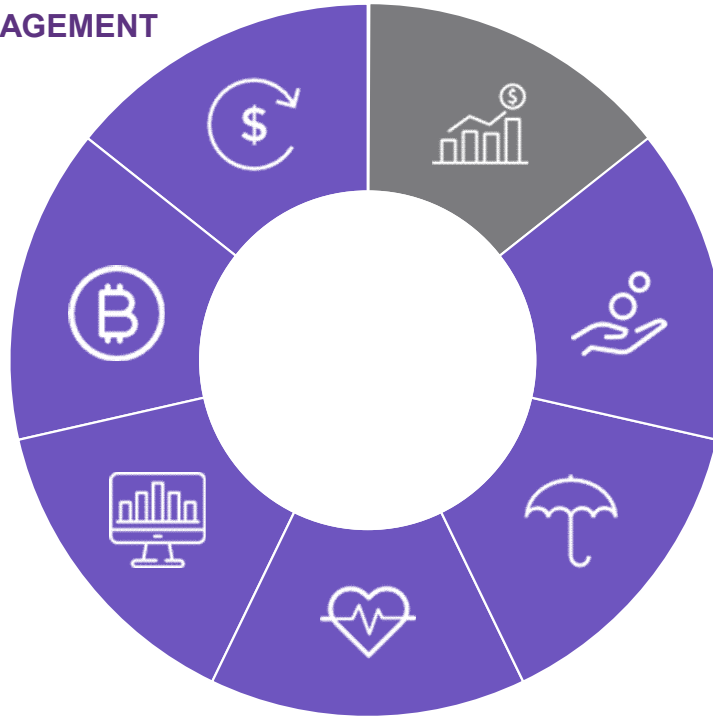
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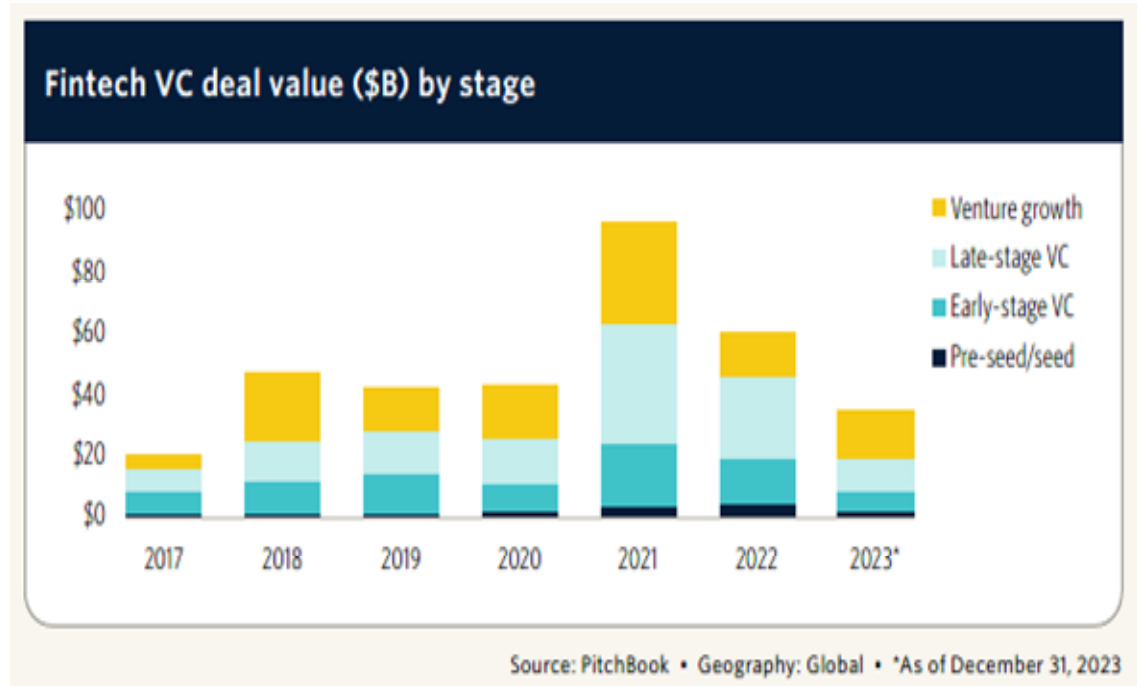
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# Overview of the Fintech Landscape

- Fintech is broadly defined
- For our purposes, we are focused on early- and mid-stage companies engaged in a financial services business that uses technology to deploy new financial products or services, or to deliver products and services in a new way
  - Limited staffing and budget for compliance infrastructure (compared to regulated banking organizations)
  - Innovative and able to move quickly

# Fintech Deal Activity

- VC capitalists invested \$10 billion globally into retail fintechs in 2023, down 57.5% from \$23.6 billion in 2022.
- Capital was raised across a total of 699 deals in 2023.
- Both VC deal value and deal count dropped dramatically in 2023, suggesting investors are hesitant to deploy funds given higher interest rates, inflation, normalizing delinquency rates, and heightened geopolitical tensions

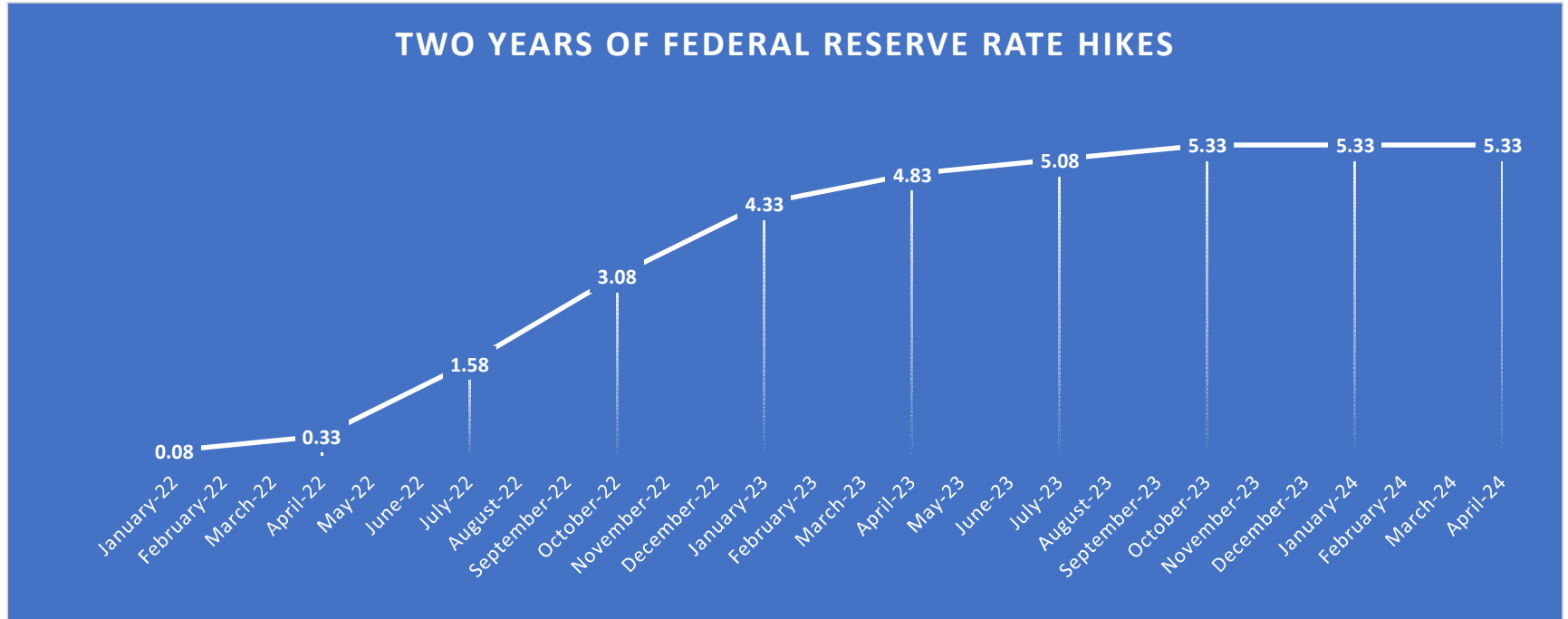


Source: PitchBook, Global, as of December 31, 2023

# What Are We Watching - Trending Areas in Fintech

- Rise in Interest Rates
- Buy Now, Pay Later
- Fintech Hubs
- Consortium Deals
- Unique Issues to Consider in Fintech M&A
  - Focus on Enforcement
  - Due Diligence
  - Acquisition vs. Strategic Investment
- Increased Focus on Enforcement by US Regulators
- UK / EU Regulatory Updates
- Middle East Regulatory Updates

# Rise in Interest Rates



Source: The Federal Reserve Bank of New York Effective Federal Funds Rate

# Buy Now, Pay Later

- Purchase value divided into multiple payments with first payment due upfront
- Short term (4-8 weeks)
- Allows merchant to be paid full value immediately
- International demand
- Big Tech promoting adaptation





# Fintech Hubs



- Silicon Valley
- London
- New York
- Singapore
- Hong Kong
- Abu Dhabi
- Bengaluru/ Delhi/ Mumbai
- Frankfurt
- Dublin

# Consortium Deals – Relationship Between “Banks” and “Fintechs”

Relationships between the traditional banking sector and the fintech sector have evolved significantly over last several years.

## Adversarial

- Fintechs seeking to displace traditional banks
- Banks view fintechs primarily as threat for market share

## Shift

- Traditional banks recognize benefits of incorporating fintech into traditional business; inability to match innovation
- Fintechs recognize the benefits of bank partnership (branding, customers, delivery channels, funding, infrastructure)

## Cooperative

- Increasingly seeing traditional banks seeking to harness new technologies; banks and fintech startups finding ways to work with one another
- Partnerships and joint ventures
- Minority investments
- Other cooperative relationships

# Consortium Deals – An Alternate Financing Method (cont.)

- **What:**

- Company funded by a group of banks or other financial service firms
- Possibly germinated by one or more firms, based on identification of particular need

- **Where:**

- Solutions which solve pain point for the investing firms. Investing firms and peers/competitors are likely to be early and primary customers for the solution
- Automation of functions currently performed manually, compliance with new regulatory requirements, marketplace solutions

- **How:**

- Corporation or LLC
- Corporations may/may not follow NVCA model
- LLC often preferred because of greater economic and governance flexibility

# Consortium Deals – An Alternate Financing Method (cont.)

- **Why:**
  - Funding based on strategic as well as financial rationale
  - Less valuation or market sensitivity
  - Ready access to customer, early customer revenue, referrals
- **Considerations:**
  - Alignment of commercial/growth interests of core customers (e.g., banks) and non-customer stockholders in investor syndicate
  - Exit strategy (stockholder alignment)
  - Incentives for Management recruiting/retention
  - Subsequent investment rounds – syndicate, valuation, governance
  - Antitrust compliance
  - Regulatory compliance (egg, BHCA, systemically important FMI)

# Focus on Enforcement

- Combination of increased attention by federal and state enforcement
- Federal
  - Department of Justice (DOJ)
  - Consumer Financial Protection Bureau (CFPB)
  - Federal Trade Commission (FTC)
  - Securities Exchange Commission (SEC)
- State
  - Attorneys General
  - Banking regulator

# DOJ Self-Reporting Policy

- Premium on early and full disclosure
- Risk in not reporting to acquirer
- Enforcement risk cannot be effectively indemnified

# Due Diligence

- Can't be perfunctory
- Ask questions now
- Stress importance of disclosure
- Careful Review of Covid Funds such as PPP

# Due Diligence, Continued

- Is the target entity registered with any US or state regulatory agency? If not, should it be registered?
  - Are regulatory permissions needed to make the acquisition?
  - Has the target entity been subject to regulatory examinations and, if so, what were the results? What issues could lie around the corner?
- What business activities is the target entity considering for the future? Has the entity considered the regulatory implications?
- Who is responsible for regulatory compliance and what expertise will exist after the acquisition?



# Acquisition versus Strategic Investment

- Diligence can be key to obtaining certain representations.
  - E.g., expansion of client base will only be done with approval of investor or in compliance with US laws and regulations.
- The financial services industry is increasingly reliant on third-party vendors.
  - Who are the other investors in the vendor or its technology?
  - What risks do these vendors pose to the industry and to their investors?
  - Are these vendors on the radar of any regulator?

# SEC vs The Crypto Industry

- Bitcoin Spot ETF approval
  - But...the SEC remains unlikely to approve additional digital assets soon
- Regulation by enforcement
- Potential for a circuit split?
  - If so, the Supreme Court would decide whether digital assets are securities



# Continued CFTC Enforcement

- CFTC recently settled enforcement actions on three decentralized finance (DeFi) protocols
  - In all three settlements, the CFTC found that the US-based DeFi platforms violated Section 4(a) of the CEA, which generally makes it unlawful to offer to enter into, or conduct business in, the United States for the purpose of soliciting or accepting orders for a futures contract, unless the futures contract is made on or subject to the rules of a designated contract market (i.e., a futures exchange).
- The guidance is clear: either register with CFTC or risk enforcement actions

# Implications for Investors in US Crypto Platforms



# United Kingdom Regulatory Updates

- UK regulators given new secondary objective to facilitate international competitiveness and growth of UK economy
- UK government response to consultation on future financial services regulatory regime for cryptoassets:
  - Phase 1 – Regime for fiat-backed stablecoins
  - Phase 2 – Regime for other cryptoassets
- Financial promotion regime extended to cryptoassets
- UK government response to AI regulation whitepaper

# European Union Regulatory Updates

- European Commission continues to implement digital finance package, including:
  - regulation on markets in cryptoasset (MiCA)
  - regulation on a pilot regime for market infrastructures based on DLT
  - regulation on a digital operational resilience framework for financial services (DORA)
- Artificial Intelligence
  - European Commission launches AI innovation package
  - AI Act progressing to adoption

# Middle East Regulatory Updates

- Digital assets are (once) again gaining momentum, both globally and regionally
- UAE's progressive approach to regulating digital assets reflects its broader ambitions to become a global innovation and technology hub
- Regimes at both the federal and emirate level in Dubai, as well as the two financial freezones – ADGM and DIFC
- The general approach of the regulators in the UAE has been to adapt the existing financial services regulatory frameworks to financial activities involving digital assets

# Middle East Regulatory Updates (cont.)

## Dubai Onshore (VARA)

- VARA's approach to regulation is activity based, rather than asset specific
- Focusing on fund tokenisation

## DIFC

- Recently added Toncoin and Ripple to its list of Recognized Crypto Tokens, joining Bitcoin, Ether and Litecoin
- Consultation paper issued January 4, 2024, proposing revisions to Crypto Token regulations



# Middle East Regulatory Updates (cont.)

## ADGM

- Introduced the world's first DLT Foundations Regime, creating a legal structure for blockchain foundations and decentralized autonomous organizations
- FSRA has been innovating in the regulation of digital asset exchanges through its regulation of MTFs and has issued a number of licenses in this regard over the past 12 months

## Ras Al Khaimah

- Announced its intention last year to launch RAK DAO, the world's first free zone dedicated to digital and virtual asset companies wishing to operate with respect to: blockchain, gaming, NFTs, Dapps, Artificial Intelligence, Web3-related activities, and Web3 supporting activities
- RAK DAO laws and regulations are still being prepared and the expected date for the publication has not yet been announced

# Questions?

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Sheryl Orr counsels clients in the structuring and negotiation of US and cross-border mergers, acquisitions, dispositions, carve-out transactions, joint ventures, complex internal reorganizations, and other strategic business transactions. Sheryl's experience representing both strategic and financial buyers and sellers in the financial services and life sciences industries enables her to help her clients successfully achieve their business goals while navigating and solving structuring issues, any regulatory approval landscape and potential customer, employee and third party consents. She is a co-leader of the firm's technology industry team, the co-leader of the firm's corporate and business transactions practice in New York, and the former co-leader of the firm's global mergers and acquisitions practice.

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Nicholas M. Gess serves clients by providing strategic advice which bridges the gap between law and policy, state and federal government investigative, enforcement, and regulatory actions and their impact on business. He advises clients on how to achieve results with governmental agencies and manage the risks of government action, particularly in the multistate, multi-agency and fraught-with-complexity parallel proceedings environment where state enforcement authorities conduct parallel investigations alongside federal authorities, including the CFPB, DOJ, FTC, SEC and others such as Congress. He serves as a co-leader of the firm's Lender Issues Working Group.

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Leveraging her experience as a lawyer at the US Commodity Futures Trading Commission (CFTC), Sarah V. Riddell advises US and international exchanges, derivatives clearing organizations, swap execution facilities, and financial institutions on a broad range of regulatory matters, including CFTC registration and compliance. Sarah assists private fund managers, exchange-traded fund issuers, futures commission merchants, and swap dealers with CFTC and National Futures Association (NFA) registration, compliance, and examination matters. Sarah is the co-leader of the firm's Digital Assets Working Group.

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Steven Lightstone advises on financial services, securities, and derivatives regulatory issues. His clients include asset managers across a wide range of asset classes and their funds, banks, broker-dealers, fintech firms, payment institutions, institutional investors, insurers, lenders, and market associations. In the 2024 edition of The Legal 500 UK, Steven was described by clients as “knowledgeable [and] client friendly”—someone who “asks the right questions.”

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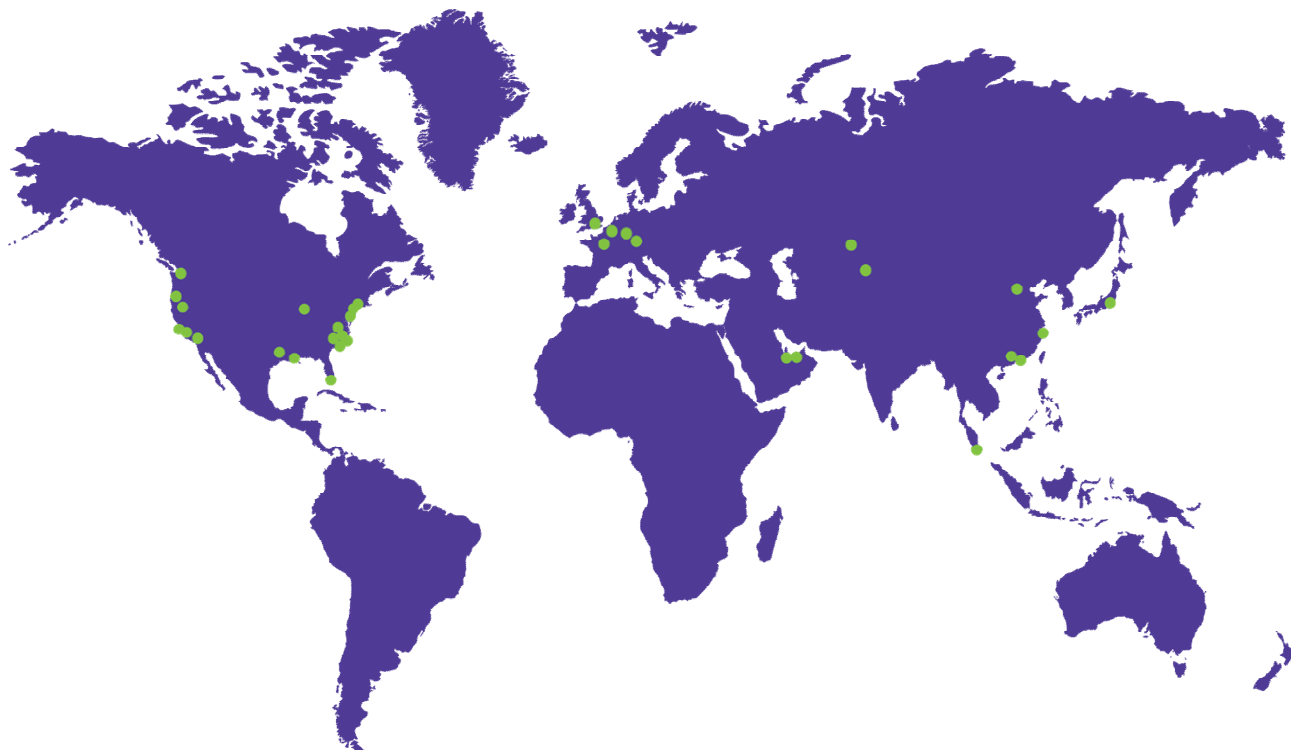
Andrea Dougall's practice primarily focuses on representing investors on their global fund investments. Her clients include a number of significant sovereign wealth funds, pension funds, and other global institutional investors, whom she advises on investments in open- and closed-ended funds, separate managed account arrangements, co-investments, joint venture arrangements, and other bespoke investment structures and platforms across asset classes. Andrea is admitted to practice in England & Wales.

## Our Global Reach

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