

The background of the slide is a dark blue gradient with a series of bright, multi-colored streaks (red, orange, yellow, and blue) that sweep across the frame from the top right towards the bottom left, creating a sense of motion and energy.

**Morgan Lewis**

# **M&A ACADEMY**

**M&A in the Ever-Changing Fintech  
Landscape**

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April 6, 2021

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# Agenda

- Overview of the Fintech Landscape
- M&A Generally
- Unique Issues to Consider in Fintech M&A
  - I. Regulatory Overlay
  - II. Cybersecurity, Data Privacy and Related Issues
  - III. International Trends
  - IV. Increased Antitrust and Competition Scrutiny
  - V. Intellectual Property
- Questions

# 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
  - Often unregulated (or less regulated)
  - Limited staffing and budget for compliance infrastructure (compared to regulated banking organizations)
  - Innovative and able to move quickly



# What Are We Watching - Trending Areas in Fintech

- Global venture capital backed deal activity
- Incumbent banks foray into fintech
- Automation of the bank's back office to improve efficiency, productivity and lower costs
- "Banks of the future" business models and expansion of challenger banks and digital lenders
- Insurtech venture capital backed deal activity
- Application of blockchain beyond crypto
- Cryptocurrency and ICOs

# Overview - "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

# Fintech Market Overview

## SECURITIES / INVESTMENT MANAGEMENT (IM)

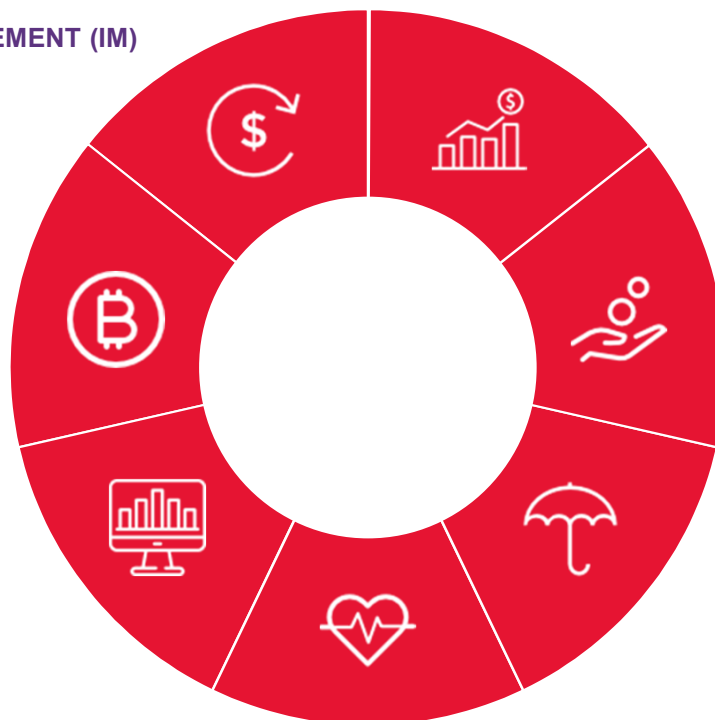
- Back-Middle Office Technology
- Infrastructure & Trading Technology
- Asset Management Technology
- Wealth Management
- Liquidity Pools
- Data / Analytics / Research
- Robo Advisors
- Online Brokers / Trading / Custodians

## BANKING

- Enterprise Banking Tech
- Peer-to-Peer Lending
- Consumer-Oriented Financial Services
- Real Estate Tech
- Bank Payment Solutions
- Alternative Lending
  - Consumer, SME, Real Estate

## BLOCKCHAIN / CRYPTOCURRENCY

- Wallets
- ITOs (Initial Token Offerings)
- Sidechains
- Securities ledgers
- ETFs
- Miners
- Exchanges



## PAYMENTS

- Merchant Services
- Carrier Billing and NFC Infrastructure (Telcos)
- Transactions Security
- Card-Based Payment Products
- Online / Mobile Payments
- E-Rewards / Loyalty
- International Money Transfer
- Financial Institutions
- Networks / Associations

## INSURTECH

- Core Software (e.g. Claims Management)
- Data and Analytics
- Sales and Distribution

## FINANCIAL MANAGEMENT SOLUTIONS

- Enterprise Resource Planning
- Financial Planning
- Accounting Support

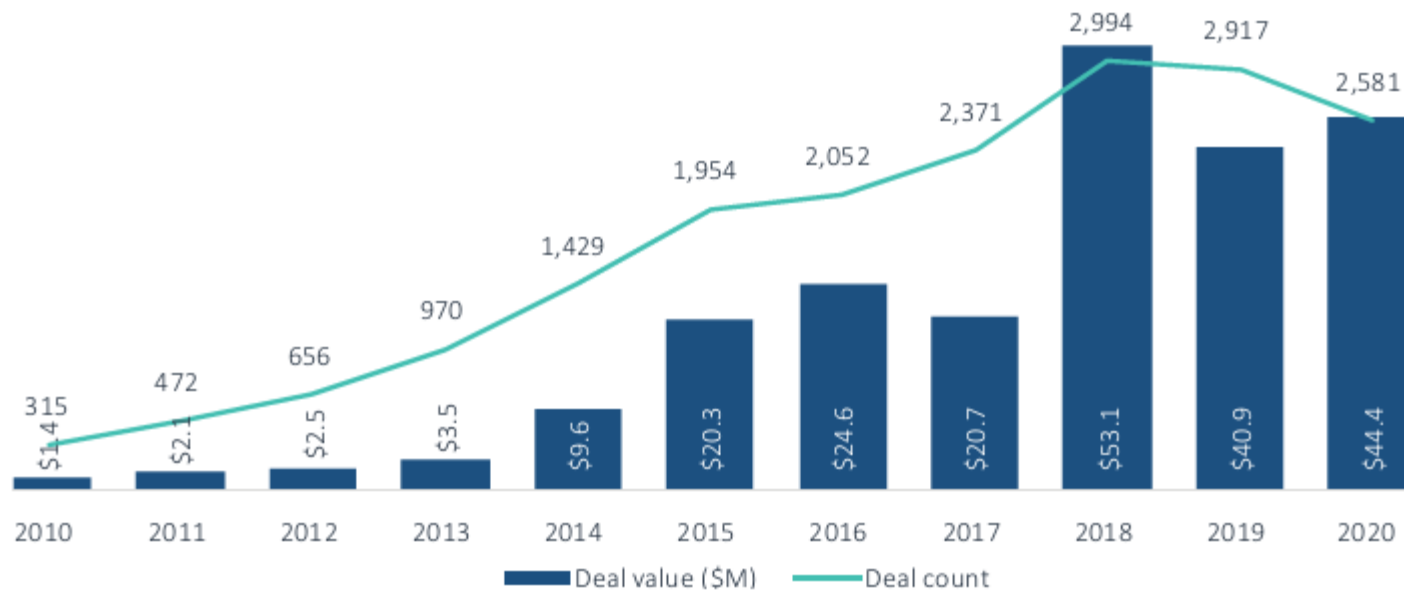
## HEALTHCARE

- Patient Care Administration (e.g. RCM)
- Benefits Procurement and Management
- Health Insurance Sales & Distribution

### Sources

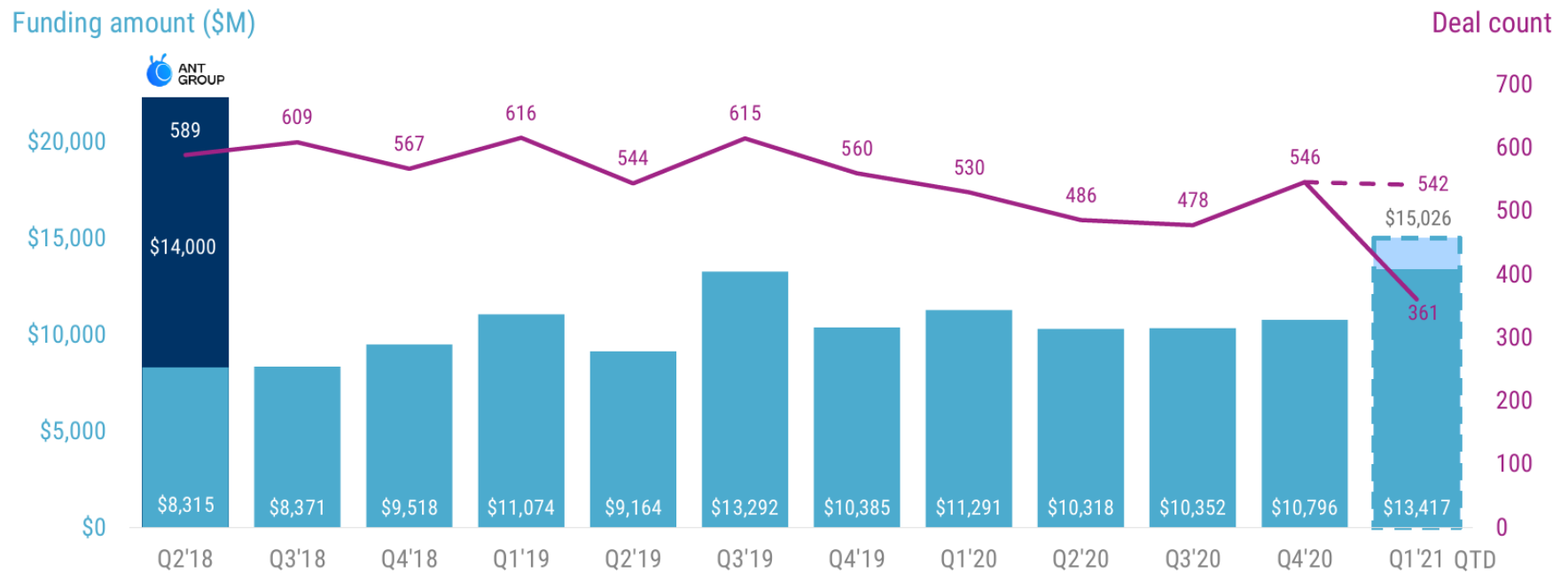
Financial Technology Partners; CB Insights; Morgan Lewis

# M&A Environment: Global Fintech VC Activity



Source: 2020 PitchBook Emerging Tech Report: Fintech

# M&A Environment: Global Fintech Funding and Deals



Source: CB Insights State of Fintech Q1 2021 Preview

## M&A Academy Generally

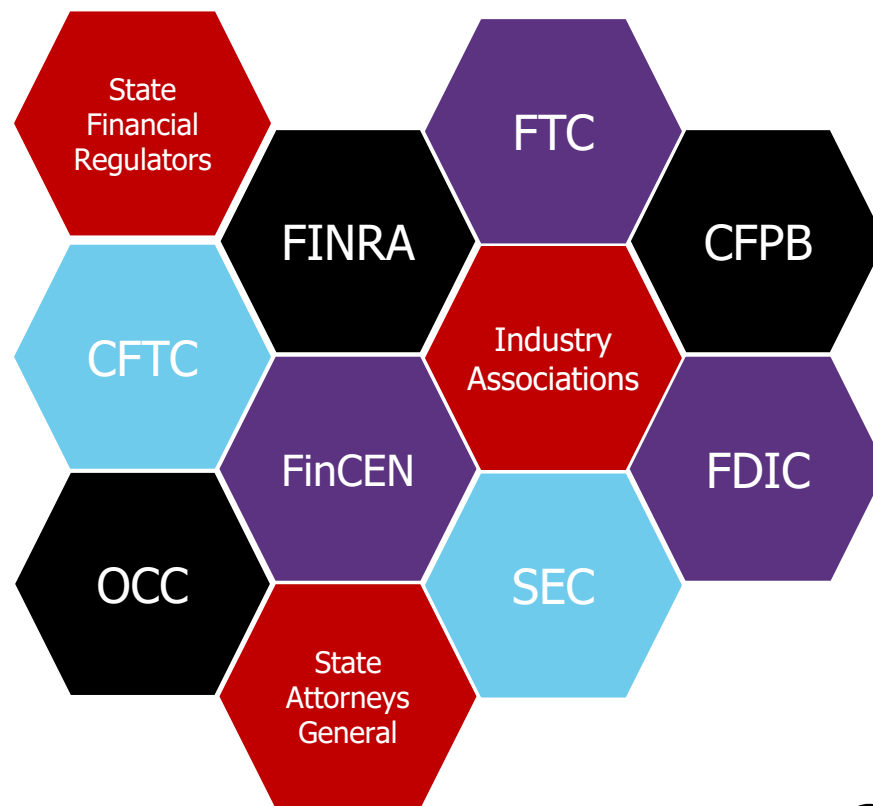
- This is the 15<sup>th</sup> M&A Academy session of the 21-part series, and the 1<sup>st</sup> of Track 4: Leveraging your Competitive Edge – Maximizing Industry Opportunities
- A complete list of prior M&A Academy sessions can be found on [www.morganlewis.com](http://www.morganlewis.com) under **Our Thinking → Events → Morgan Lewis M&A Academy**
- Relevant prior sessions have included:
  - Getting to the Heart of It: The Anatomy of an M&A Transaction
  - Be Prepared—Why Representations & Warranties, Due Diligence and Disclosure Schedules Matter
  - Privacy and Data Security Issues in M&A Transactions

## M&A Academy: Upcoming Sessions

- There are 7 additional sessions in Track 4 for the M&A Academy series, for which you can register by going to [www.morganlewis.com](http://www.morganlewis.com) → **Our Thinking** → **Events** → **Morgan Lewis M&A Academy**
- On April 13, join Janice Davis and Bane Pachuca for the next session in the M&A Academy series for their discussion on M&A Considerations in Healthcare
- Additional upcoming sessions relevant to this presentation include:
  - April 27: Retail & Ecommerce Considerations in M&A Transactions
  - May 4: Technology in M&A Transactions: What Parties Care About When Buying and Selling Technology
  - May 25: M&A and Investment into AI Companies

# Regulatory Overlay

- Fintech businesses will be subject to regulation at both a federal and state level.
- There is a wide range of regulatory bodies that may govern the activities of fintech businesses operating in the US. Some have extremely broad jurisdictions, while others focus on specific activities.
- Many countries have established 'regulatory sandboxes' - test environments in which fintech companies can carry out experiments under regulatory supervision.





# Representative U.S. Regulatory Overlay

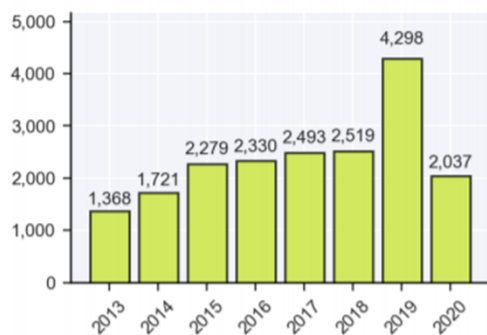
Gramm-Leach Bliley Act
Fair Credit Reporting Act
US Anti-Money Laundering regulations
JOBS Act
Electronic Fund Transfer Act & CFPB Reg E
Securities Act and Exchange Act
CAN-SPAM

- The specific regulations with which fintechs must comply will depend on the activities they are pursuing.
- With numerous regulators, fintech firms noted that identifying the applicable laws and how their activities will be regulated can be difficult.
- Regulators and others note that fintech activities create data security and privacy concerns and could potentially impact overall financial stability as fintech grows.

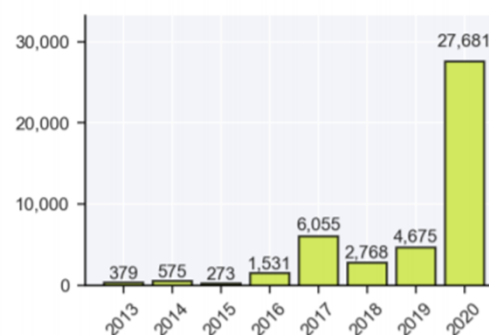
# Cybersecurity, Data Privacy and Related Issues

- Data breaches have been steadily on the rise over the years, however data breach reports were down 52% in the first half of 2020
- Nevertheless, the number of records exposed increased to 27 billion

## Mid Year 2020 At A Glance



Number of breaches reported by Q2 each year

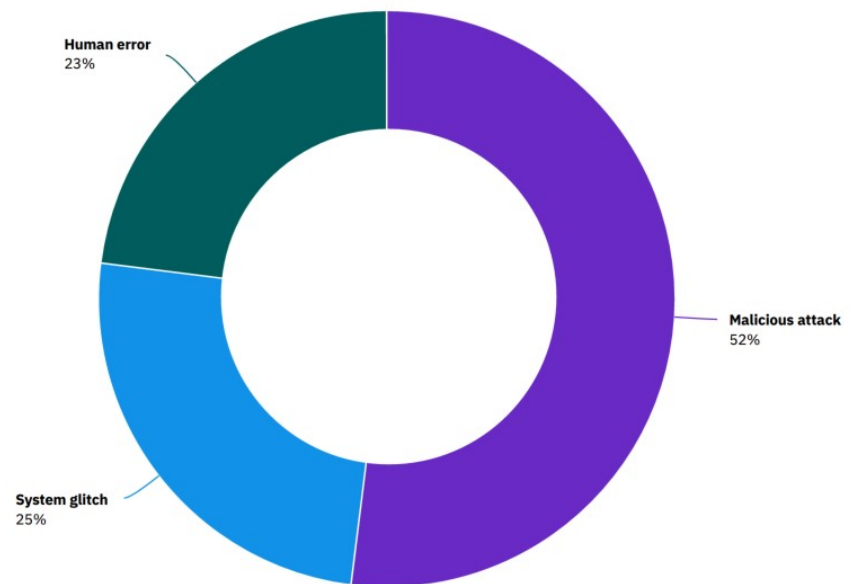


Number of records lost (in millions) reported by Q2 each year

# Cybersecurity, Data Privacy and Related Issues

- 52% of breaches were caused by malicious attacks at an average cost of \$4.27 million.
- Malicious attacks have remained the costliest root cause over the past 5 years and have increased nearly 12% since the often-referenced 2016 IBM study.
- Cybersecurity reviews have become “standard” in buy-side M&A.

Data breach root cause breakdown in three categories



# International Trends: Asia

- Asia
  - China
    - Global leader in payment services (WeChat Pay, Alipay)
    - Payment services are licensed and can convert Yuan to/from foreign currencies
    - Foreign investors welcome? Paypal/GoPay, Payoneer now in PRC
    - Blockchain, Crypto and Central Bank Digital Currencies are developing (digital yuan wallets now available); but other digital currencies are prohibited
    - Robo advisory licensing now possible
    - China Cybersecurity Law (CSL) affects fintechs and 2020 draft *Measures on Cybersecurity Review* may add some certainty to compliance questions
    - Despite China Regulatory Sandbox program, regulators proceed cautiously

# International Trends: Asia

- Asia
  - Hong Kong
    - Challenging regulatory environment, political uncertainty
    - BUT there is activity – HK has 8 digital banks (AntBank, WeLab)
    - Hong Kong Monetary Authority looks to energize Regtech to grease wheels of innovation
    - Proposed plan to regulate all cryptocurrency exchanges, requiring VASP's to be licensed to trade in HK or with HK citizens (replacing current opt-in regime for exchanges)
    - Development of Central Bank Digital Currencies are a high priority
    - Enhancements to Anti-Money Laundering regs to be developed

# International Trends: Asia

- Asia
  - Japan
    - Over longer term, consolidation of payment servicers and digital currency services registrants is expected
    - Traditional financial intermediaries (banks and trust banks) continue to dominate government policies and are very unlikely to be dislodged
    - “Digital Yen” initiatives at Central Bank level are going nowhere
    - Fintech applications have proliferated across all segments (recordkeeping, reporting, etc.) but consolidation and acquisition by traditional intermediaries is expected

# International Trends: Asia

- Asia
  - Singapore
    - Still a liberal and progressive fintech environment
    - Four Digital Banking licenses issued (Ant, Grab-Singtel) by Monetary Authority of Singapore (MAS)
    - DBS bank launched digital currency exchange for Bitcoin, Ether, XRP and Bitcoin cash
    - Enhancing e-payments infrastructure and eligible non-bank financial institutions (NFIs) will have direct access to the banking system's retail payments infrastructure
    - MAS launched a S\$12 million Singapore Blockchain Innovation Programme (SBIP)
    - Fintech investment in Singapore US\$346 million in 2020, 6.2% of all that was raised in Asia
    - Big Deals: purchase of robo-advisory Bento by Grab, merger of insurtech Singlife with Aviva Singapore.

# International Trends: North America

- North America
  - USA
    - Regulation is the national watchword – what will a Biden admin bring to the Fintech bank charter equation
    - Consumer demand and pandemic driving trend in digital payments and frictionless transactions
    - Big tech is flush with cash and may look to acquisitions in fintech and banking services
    - Does Plaid/Visa failure portend vigorous era of enforcement?
    - Big Deals: Credit Karma/Intuit, Honey/PayPal, SoFi/Galileo, Personal Capital/Empower
    - Big IPOs: Lemonade, nCino, Upstart
    - 2021 to be SPAC-tacular?



# International Trends: North America

- North America
  - Bahamas
    - First Central Bank-issued Central Bank Digital Currency: Bahamian Sand Dollar available
    - Recent passage of the Digital Assets and Registered Exchanges Act (DARE)
      - Allows registration of digital token exchanges
      - Provision of services related to digital token exchanges
      - Regulation of digital assets-based payment service businesses
      - Registration of financial services related to the creation, issuance or sale of digital tokens and other digital assets

# International Trends: North America

- North America
  - Bermuda
    - Regulatory framework encourages safe and transparent test space: Regulatory Sandbox and Innovation Hub attract DLT and AI entities
    - Digital assets (and transactions involving digital assets) are not subject to income tax, capital gains tax, withholding tax or other taxes
    - Island is a leader in Insuretech investment activity: Gemini launched Nakamoto - world's first captive insurance company (licensed by Bermuda Monetary Authority)
    - Currency Standard Initiative allows payments in 1:1 US dollar-backed digital currencies licensed by the BMA. USDC stablecoin can be used to pay taxes and buy essential goods

# International Trends: North America

- North America
  - Cayman Islands
    - Fintechs generally are regulated under broad financial services legislation
    - Players in the Caymans include crypto and investment funds investing in blockchain projects, issuers of cryptocurrencies and digital assets, companies involved fintech R&D
    - Caymans facilitate STOs, IEOs and ICOs
    - Caymans committed to stay staunchly pro-business as regards fintechs –
      - plans to open regulatory sandbox
      - has 250 tech entities operating in Special Enterprise Zone

# UK Regulatory Developments

## Kafilia Review

- HM Treasury published in February Kalifa Review report, which recommends:
- digital finance package that creates new regulatory framework for emerging technology
- providing additional support to firms focussing on innovative technology, particularly in their growth phase
- securing Fintech's position as integral part of UK trade policy and continuing to establish Fintech Bridges

## HM Treasury consultation: Regulatory Approach to Cryptoassets and Stablecoins

- HM Treasury's consultation on regulatory approach to cryptoassets and stablecoins ended last month
- It proposes to leave unregulated tokens (e.g. cryptocurrencies) used for speculative investment outside regulatory perimeter, but plans to bring stablecoins within regulatory perimeter

## HM Treasury consultation: Extending Financial Promotion Regime to Cryptoassets

- HM Treasury consulted in H2 2020 on bringing certain unregulated cryptoassets within UK financial promotion regime
- Its responses are expected in coming months

## Artificial Intelligence

- FCA said in its 2020/21 business plan that it would seek to deepen its engagement with industry and society on AI
- It is expected to publish in coming months a research report concerning uses of AI in financial markets.

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# EU Regulatory Developments

## EU Digital Finance Package

- European Commission adopted digital finance package in September, including proposals for:
  - a regulation on markets in cryptoassets
  - a regulation on a pilot regime for market infrastructures based on DLT
  - a regulation on a digital operational resilience framework for financial services
  - a directive clarifying and amending existing EU financial services legislation

## Insurtech

- EIOPA confirmed in its 2021 work programme that its insurtech work and cyber work remain a strategically important area of growing prominence
- EIOPA published in January a discussion paper on “open insurance”

## Artificial Intelligence

- EU publications on the regulation of AI in 2020
- European Commission will publish proposal for regulating AI on 21 April

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# International Trends: Europe

- Europe
  - Switzerland
    - Home to two of top three fintech hubs after Singapore
    - Swisscom counts 376 Fintechs in Switzerland as of Dec. 2020
    - Swissinfo reports lists 900 blockchain companies in Switzerland as of Sept. 2020 (including Diem/Libra)
    - Incumbent Banks continue to move toward Fintech and digital banking (UBS launched US\$200 m Fintech venture fund)
    - Issued first Fintech banking license to Yapeal (Saphirstein license pending)
    - Expansive two-stage Blockchain Act to come into effect in 2021 to clarify rules and encourage growth of blockchain and crypto players
      - electronic registration of rights
      - regs on crypto-based assets in a bankruptcy
      - new authorization category for DLT trading facilities or exchange platforms

# International Trends: Russia

- Russia
  - Very active space, challengers finding their feet, oldsters trying to keep up
  - Yandex, Mail.ru Group, Ozon and Wildberries developing in-house fintech services
  - Yandex ended JV with Sberbank and Tinkoff deal fell through now launches Yandex.Pay
  - Big Ozon IPO in US in 2020 gained 34% on opening day
  - New crypto law spurs Sberbank/JP Morgan to launch digital Sbercoin in 2021
  - Regulatory Sandbox Law now in effect allows to amend or exclude current legal rules for particular projects tested in a regulatory sandbox

# Increased Antitrust and Competition Scrutiny

- The FTC has been coordinating with state attorneys general to advance its own aggressive doctrinal theories in well-publicized “Big Tech” cases. These recent litigations have proceeded with bipartisan (if not unanimous) support from current commissioners.
- Numerous voices have been calling for a “reimagining” of antitrust laws to broaden their scope to address effects beyond what some consider a narrow focus on just price and output.
- Among other things, these proposals support revising the antitrust laws in relation to mergers and enforcing Section 2 of the Sherman Act in relation to unilateral conduct by dominant firms.
- The selection of two major critics of the Big Tech companies for key roles in the administration seems to signal that Biden is serious about taking a tough look at giants such as Amazon, Apple, Facebook and Google, of which two are already facing federal antitrust lawsuits.



## Increased Antitrust and Competition Scrutiny

- In 2020, both VISA and Mastercard entered into deals within the fintech infrastructure, indicating that financial institutions understand that the future of payments and banking will need to be technology-focused.
- However, in November 2020, the US Department of Justice moved to block the Visa Inc. and Plaid Inc. deal, filing a civil antitrust lawsuit and alleging that Visa's reason for acquiring Plaid is to take a future competitor out of the market.
- The lawsuit was filed in the US District Court for the Northern District of California, where Plaid is incorporated.
- The case was scheduled for trial in the U.S. District Court for the Northern District of California on June 28, 2021. In January 2021, Visa Inc. and Plaid Inc. abandoned their planned \$5.3 billion merger.

# Intellectual Property

- The real value of a Fintech business is generally found in its IP. Fintech companies will likely hold several types of IP that they can and should seek to protect.
- Multijurisdictional issues
- Significant potential lags in IP due diligence

**QUESTIONS?**



## Our Global Reach

Africa

Asia Pacific

Europe

Latin America

Middle East

North America

## Our Locations

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Almaty

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Dubai

Frankfurt

Hartford

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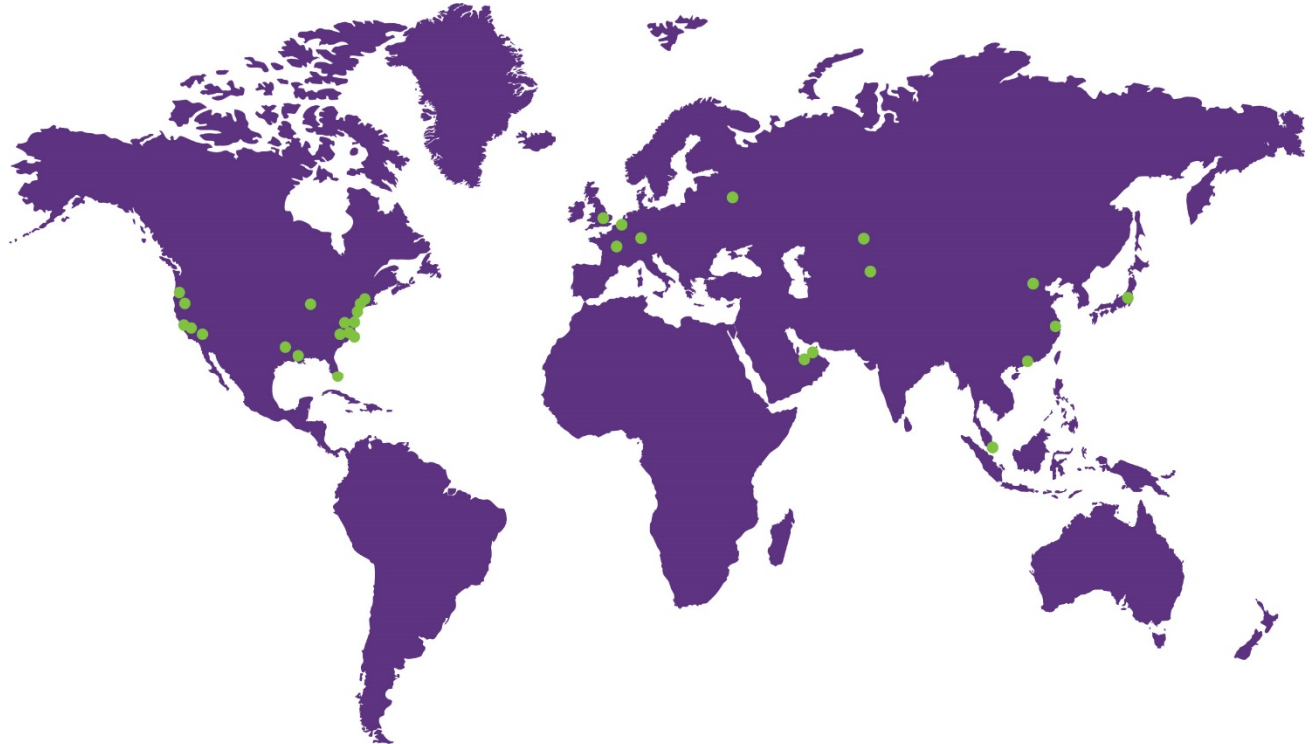
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Tokyo

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