PANORAMIC

FINANCIAL SERVICES M&A 2024

Contributing Editor

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Quick reference guide enabling side-by-side comparison of local insights, includinginto the market and policy climate; key legislation; required regulatory consents and filings; ownership restrictions; directors and officers' issues; foreign investment restrictions; competition law and merger control issues; deal structures and strategic considerations; tax; ESG, public relations, political and policy risk management; shareholder activism; due diligence, including in relation to emerging technologies; pricing and financing; purchase price adjustments; deal terms (including reps and warranties, indemnities and closing conditions); dispute resolution; and current trends.

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Introduction

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After a record-breaking year in 2021, global M&A activity in the financial services sector and bank M&A slowed in 2022 through 2023. The most salient factors impacting M&A activity in both sectors throughout 2023 included interest rate hikes across a variety of countries to combat inflation, a series of bank failures further undermining market confidence and expectations of a recession. Macroeconomic headwinds persist and geopolitical uncertainty is ever-present as conflict continues in Ukraine and arises in the Middle East. At the same time, both sectors continue to experience technological innovation and digitisation as consumers increasingly rely less on physical channels. The rise of generative AI has demonstrated a range of innovations and risks to both consumers and regulators alike. Combined with the waves that have hit the cryptocurrency industry, the dynamic regulatory environment that we experienced over the course of 2022 has continued through 2023, creating concerns over stricter review standards that could make attaining regulatory clearance in the United States more difficult, particularly for larger bank deals.

According to data from Bloomberg, globally completed M&A deals in the financial services sector totalled $202 billion in equity value as of November 2023, a decrease from $528 billion in equity value in 2022. The number of deals fell from 11,170 in 2022 to 4,688 completed deals as of November 2023. There were 1,933 pending deals, totalling approximately $191 billion as of November 2023. The value of completed global M&A activity in the bank sector also slowed down this year, with approximately $10 billion in equity value as of November 2023 compared with $17 billion in 2022. The number of completed deals fell from 184 in 2022 to 67 as of November 2023. There are 86 deals, totalling $24 billion in equity value, that have been announced but have not yet closed as of November 2023.

In the United States, M&A activity in financial services also fell, totalling $106 billion in equity value for completed deals as of November 2023, a decrease from $263 billion in 2022. The number of completed deals fell from 6,056 in 2022 to 2,669 for 2023. As of year-end, there were 387 deals still pending, totalling approximately $67 billion in equity value. As with global bank M&A activity, US bank M&A activity also fell in 2023, with approximately $1.5 billion of completed deals as of November 2023, a decrease from $4 billion in 2022. As of November 2023, 23 deals had been completed, a drop from 67 in 2022. There were 44 pending deals totalling approximately $18 billion as of November 2023.

The fintech market has also faced challenges in 2023. According to the Pulse of Fintech report published by KPMG, during the first half of the year, global fintech investment and deal volume fell from the second half of 2022, totalling $52.4 billion with 2,153 deals from a previous $63.2 billion across 2,885 deals. Not all markets saw decreased activity, however, with the Americas seeing funding for fintech increasing to $36 billion during the first half of the year from $28.9 billion in the second half of 2022. Just as there has been significant difference between regions, certain sectors have also seen increased funding, with funding in logistics, supply chain and ESG-focused fintech exceeding previous annual totals.

Despite headwinds from rising costs of capital and falling asset prices, the financial services sector continues to consolidate and undergo rapid technological transformation, driven by shifting consumer demand for digital financial services and investor demand for crypto assets. Companies are increasingly interested in building platforms and super apps with embedded financial services, and technology companies continue their push into the financial services sector, seeking to lessen friction points for consumers. With the rise in the number of digital transactions, there is also growing focus on cybersecurity, fraud detection, KYC, B2B services such as banking-as-a-service, and crypto assets. These changes in the private sector have greatly accelerated the innovation agenda of the public sector, as regulators around the world are gaining a heightened awareness of gaps in the regulation and oversight of new digital services and products and the new competitive landscape that is emerging.

In the United States, the growth of the fintech industry challenges traditional banking models and has led to an increased focus on competition issues more broadly by regulators and lawmakers alike. While it is not clear what the final outcome will be, over the next few years, bank merger activity is likely to face greater scrutiny under US antitrust and bank merger standards, particularly for deals at the larger end of the spectrum. In July 2021, President Biden signed an Executive Order that, among other things, called for the federal banking agencies to revitalise competitive review of bank mergers under US banking laws. Merger review modernisation efforts are a top priority now that leadership at the agencies has effectively been finalised. Recent applications and public statements by staff suggest that US bank regulators may be more focused on the impact of a merger on the ‘convenience and needs’ of the community to be served by the combined institution. Another important topic under consideration by US bank regulators is whether banking markets should be redefined in light of the broadening of the competitive landscape for banking services; for example, more systematically including credit unions in all competitive analyses, factoring in deposits at digital banks in relevant markets and considering non-bank financial firms in all competitive analyses. The regulatory uncertainty in this sector has pressured M&A activity in 2023 – one example being Toronto-Dominion Bank Group’s decision not to pursue its $13.4 billion takeover of the US regional bank, First Horizon Corp, over regulatory concerns.

Other topics on the US bank regulatory agenda that could impact bank M&A activity include implementation of regulatory capital requirements to align with the final set of Basel III standards (or Basel endgame), consideration of potential adjustments to the supplementary leverage ratio and new requirements for large, regional banks to raise additional long-term debt to absorb losses in case of insolvency. The implementation of regulatory capital requirements has been a particular area of concern for banks, as related draft proposals raised in 2023 by bank regulators associated with the US Federal Reserve seek to apply higher capital charges on non-interest revenue, an important source of income and growth for many banks.

Related to new competition, the growth of interest from the private and public sectors in blockchain and crypto assets has led regulators around the world to focus their attention on regulation of the use of this technology in financial services. Broadly speaking, however, efforts to bring crypto asset activities within the regulatory perimeter remain fragmented.

For example, in June 2022, the European Commission, the European Parliament and the Council of the European Union agreed on a new EU Market in Crypto-Assets Regulation (MiCA). MiCA will be one of the first comprehensive regulatory regimes tailored for crypto assets globally and was subsequently adopted in June 2023 with full application to be in place by December 2024.

Regulators and lawmakers in the United States, by contrast, have been warily watching the development of the asset class, particularly given the significant volatility and high-profile failures in 2022, and we have seen increased activity from regulators and government agencies in 2023. The Securities and Exchange Commission (SEC) brought lawsuits against two of the largest cryptocurrency exchanges, with charges including that these exchanges had operated as unregistered national securities exchanges, and the US Department of Justice entered into a $4 billion settlement with Binance Holdings Limited.

Inter-agency coordination is key in the United States because the federal agencies each have relevant and potentially overlapping authority. The SEC and Commodity Futures Trading Commission (CTFC) generally oversee the securities and commodities markets, respectively, and the federal bank regulators together exercise broad authority to decide which crypto asset-related technologies and services US banking organisations may use and offer. Though no comprehensive regulations have been advanced to date in the United States, federal financial regulators and the Treasury Department have been working together since 2021 on a set of policy frameworks for regulating crypto assets, and Congress has also been involved with these efforts as Senators Cynthia Lummis and Kirsten Gillibrand reintroduced a bill in 2023 that includes clarifying the current overlapping authority between the SEC and CTFC.

Notwithstanding the slow progress to date, we expect US crypto asset policy development to be forthcoming, most immediately for stablecoin arrangements that are pegged to fiat currency and backed by reserve assets (as compared to so-called algorithmic stablecoins).

Other developments that are likely to affect the competitive landscape include whether new, non-traditional firms are granted access to the Federal Reserve's payment system (following the Federal Reserve's adoption of new guidelines for access requests and legal challenges to the agency's previous actions and inactions), and the industry impact following the rollout of the FedNow Service, the new instant payment service that the Federal Reserve has been developing. Also, in October 2023, the Consumer Financial Protection Bureau proposed the Personal Financial Data Rights rule, a long-anticipated rule to provide consumers with rights to access information about their financial accounts, which could mandate certain financial data portability and provide more consumer choice (open banking standards).

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