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FinTech and Sports
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Introduction

- **What is the definition of “FinTech”?**
  - The modern term “FinTech” is used to describe digital financial technologies applicable to primarily banking and payment innovations.
  - FinTech and its continuing evolution of applications have been embraced by a multitude of businesses from banking institutions to professional sports teams.
  - Today we examine some ways in which FinTech has, and will continue to change, the manner in which the business of sports is transacted.

Blockchain and Sports

- Blockchain technologies is that part of FinTech which serves as a vital underpinning permitting multiple applications of FinTech to the business of sports.
- “Blockchain” means a list of linked, unalterable records or “blocks” each containing a cryptographic hash of the previous block, a timestamp and transaction data.
- FinTech and the underpinnings of blockchain technology is changing the way sports is consumed, played, purchased and monitored – from payment systems, to unique content access, to the sale of merchandise like NFT’s.

Examples of FinTech Application in Sports

- Payment methods are changing – biometric payment authentication; wearables; apps with digitally issued cards, etc. . . . All should help make transactions easier to execute and with blockchain, more secure
- Cashless venues are becoming more of the norm as leagues and teams embrace digital team branded affinity cards.
- Affinity cards demonstrate the fan's loyalty to teams and can be loaded with the fan's digital profile and match the fan's preferences to customized, in venue offerings.
- Electronic ticketing is everywhere today, eliminating the need for paper ticketing; long entry lines and reducing the likelihood of counterfeit tickets. Tickets can also be loaded with other information such as seating charts, parking availability and opportunities for upgrades to VIP game experiences.

Other Applications of Blockchain to Sports

- Using Blockchain records with the requisite permission, sensitive records relating to an athlete's health and performance can be collected by teams to provide insights (e.g., heart rate, dietary monitoring, reaction times, speed, etc.) on how performance can be improved.
- These highly sensitive records can be securely stored, accessed and transferred using Blockchain.
- Sports doping has, and will continue to be, a concern of the governing bodies of sport, as well as athletes seeking to compete on a "level playing field."
- Blockchain technology can better handle the secure recordation of doping test results data producing an accurate, reliable medical record which can be used to make more timely determinations for both, just and unjust doping accusations leveled against an athlete.
- NFT's initially held promise to provide a fabulous source of wealth for athletes, teams and leagues. Unfortunately, the NFT marketplace has contracted greatly and continues to draw increasing scrutiny from courts and governmental agencies.

NFT's

An NFT or non-fungible token means a unit of data stored and tracked on a digital Blockchain ledger that certifies a digital asset as unique; and therefore, not interchangeable (i.e., non-fungible) i.e., a true and unique collectable.

Fractionalized NFT's that allow numerous purchasers to acquire a partial ownership interest in a single NFT increases the likelihood that the NFT interests may be deemed a security as defined by the SEC. The sale of unregistered securities in the United States is illegal.

- **The Howey Test:** Since the arrival of NFT's, the decision of the Unites States Supreme Court in *Securities and Exchange Commission v. W.J. Howey Co. (1946)* has been used to determine whether an NFT's purchase and sale transaction may or may not be be, classified as investment contract for the purchase of securities.

- The three-pronged Howey test helps determine what an investment contact is:

  (i) An investment of money;
  (ii) In a common enterprise; and
  (iii) With the expectation that profits will be derived from the efforts of the promotor or a third party or parties.

- In a recent US District Court case in the Southern District of New York Ruling concerning a Motion to Dismiss filed by the defendant, in *Friel v. Dapper Labs the Court* held that on the facts of this case, NFT's sold by the defendant, Dapper Labs, inc. could be classified as a security. The case will now move to trial and will be closely monitored throughout the NFT and FinTech communities.

FinTech & Sports Gaming

- **FinTech and the sports gaming industries are similarly-situated industries**
  - Highly regulated
  - Focused on promoting user experience through technology
- **Recent expansion of mobile sports betting driving synergies with FinTech**
  - Politics around expanded gaming legislation has historically been an obstacle to technological advances
  - Repeal of Professional and Amateur Sports Protection Act (PASPA) has motivated industry expansion, including incorporation of FinTech solutions
- **FinTech: Changing the Game**
  - Gaming industry now embracing FinTech, propelled by:
    - COVID-19 pandemic and the need for online and touchless capabilities
    - Ease/speed of payments for users

Regulated Gaming in the U.S.

- **Gaming is a highly regulated industry**
  - Generally, anti-gambling laws prohibit placing a bet, stake or wager on an event whose outcome is determined predominantly by chance in the hope of receiving something of value, and anti-lottery laws generally prohibit private lotteries consisting of a prize (anything of value), chance, and mandatory consideration which can be monetary or non-monetary
- **Regulated primarily at state level, but gaming companies also need to be aware of the federal legal framework**
  - Examples of key federal laws:
    - Travel Act - Prohibits and criminalizes interstate travel or use of any facility, e.g., telephone lines, in interstate commerce to participate in illegal gambling
    - Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA) - Prohibits gambling businesses from knowingly accepting payments to settle unlawful internet gambling debts
    - Wire Act - Prohibits gambling businesses from knowingly using wire communication facilities for the transmission of bets or wagers (prohibits sports betting from occurring across state lines

Sports Betting

- Over 30 states have some form of legalized sports betting
  - In person vs. mobile betting
  - Similar elements pervade state sports betting legislation
  - Legislation pending in several jurisdictions
- Each state has its own regulatory scheme
  - Usually governed by a sports-betting specific statute and accompanying regulations and criminal anti-gambling law – strictly enforced by gaming agency (e.g., fines, suspension, revocation of licensure)
  - Sports betting operators, key employees, material shareholders generally required to obtain licenses
    - Application process includes paying fees, investigation by gaming regulator to ensure the applicant has sufficient moral character and fitness (generally, no history of fraud, deceit, gaming violations etc.), which involves extensive background checks and submitting forms and documentation
  - Most states require vendor licensing or registration for casino or sports betting service providers

Fantasy Sports

- **Fantasy sports:** assemble virtual teams of players and compete against others or the house; win money or prizes based on performance of your team
    - Head-to-head vs. against-the-house contests
- Broadly considered a game of skill and not gambling in most jurisdictions – UIGEA carve-out
- Becoming increasingly more regulated
    - states adding licensing and dedicated regulatory schemes

Mobile Payments in Sports Gaming

- **Online Sports Gaming: Gateway to FinTech**
  - Necessitates the use of FinTech in connection with payment processing
  - High volume of transactions lends itself to FinTech solutions
  - Opened the door to further innovation for mobile payments, enhancing the customer experience, and giving customers more options
- **Mobile Payments**
  - Development and use of e-wallet capabilities that offer an “omnichannel approach”
    - Permit customers to transfer funds, wager across the platforms, and engage in sports betting and internet gaming where legal
    - Incorporates customer loyalty programs to personalize the user experience based on the data collected
  - Borrowing from retail apps, e.g., Starbucks
  - Recall that many states require payment processors to obtain vendor licenses

Mobile Payments in Sports Gaming

- **Regulatory Challenges**
  - This remains a highly regulated area
  - Regulators need continued education on FinTech, including innovations in mobile payment mechanisms, to enable the creation of laws and regulations that permit the development and implementation of FinTech solutions
  - Access to banking – high risk industry

Cryptocurrency in Sports Betting

- Betting directly with cryptocurrency not currently allowed in the U.S. – **cautious approach**
  - Majority of states lack a specific gaming regulatory framework for use of crypto
  - Friction between the anonymity of crypto and Know Your Customer ("KYC") requirements
  - Anti-money laundering ("AML") regulations
- Pre-FTX, states began taking steps to incorporate crypto in sports betting, but **is crypto part of sports betting's future?**:
  - WY law permits sports betting platforms to accept cryptocurrencies provided that the currency can be converted into a cash-based currency.
  - CO - Digital Token Act (early 2022): permits residents to use cryptocurrency for sports betting and for tax payments, with strict licensing standards.
  - Major sportsbook began accepting deposits in cryptocurrency in VA and CO via third-party provider.
  - This year, other states, including NC and TX, proposed legislation that would permit the use of digital, crypto, and virtual currency, respectively, in sports betting.

Omnichannel Sports Betting

- **“Omnichannel”:** serving customers across various media
- Bridging digital and in-person retail/gaming experience
- FinTech is the key to an omnichannel experience
  - Flexible, convenient, fast payment options
  - “Seamless” entertainment between digital and in-person
  - Enhanced loyalty programs through data collection
- Omnichannel approach could be a solution to dealing with high regulatory cost and narrow profit margins of sports betting

Tribal Sports Betting

- **Tribal gaming operators, like their commercial counterparts, are pursuing opportunities in sports betting**

- **Regulation through Indian Gaming Regulatory Act (IGRA)**

  - Tribal-state compacts have been expanding legal gaming to include iGaming and sports betting, which are considered Class III betting under IGRA.
  - “Hub and spoke model” litigation – roadblock to innovation
  - Proposed updates to IGRA would significantly shift the landscape of legal sports betting by tribes on off-reservation lands – DOI policy to promote modernization of tribal gaming

- **Tribal-commercial partnerships continue to be prevalent**

  - Tribal operators either partner with a sportsbook and apply their own branding or partner with a B2C commercial operator and offer that company’s brand
  - Gaming under IGRA – tax-advantaged, potentially more streamlined regulatory framework
  - Some states may be more inclined to provide opportunities to tribal nations for expanded gaming

Sports Gaming in the Metaverse

- **Metaverse**
  - Immersive online universe on the blockchain where users interact with a multitude of digital worlds and with each other
  - Players can buy, sell or gamble items in the metaverse for digital assets that can convert to fiat currency, or what most consider traditional money (legal tender)
  - Digital replication of gaming/betting experience - blurred lines between virtual world and reality
- **Gaming in the Metaverse**
  - Fiat currency usually not accepted – crypto and NFTs that are won can be converted into fiat
  - Metaverse casinos recently targeted by securities regulators
  - Significant regulatory and legal uncertainty surrounding gaming in the metaverse
    - State gaming regulators have jurisdiction over gaming activity being offered to their residents in the metaverse – new legal parameters expected

Presenter Biographies

KATHERINE BAKER

Katherine chairs the Gaming Industry Group at the firm. She is a business litigator and assists operators and service providers to navigate the state, federal, tribal, and commercial gaming regulatory landscape.

CRAIG NAZZARO

Craig advises a variety of entities on all regulatory and compliance issues that impact the financial services industry including banks, non-bank lenders, servicers, investors, third party payment processors, and debt collectors. He also defends clients against charges of liability and regulatory violations.

Moderator Biography

RICHARD B. LEVIN

Richard is chair of the FinTech and Regulation Practice and was one of the first lawyers to focus on the regulation of blockchain and digital assets. He is considered a thought leader in the FinTech space. Richard brings his experience as a senior legal and compliance officer on Wall Street and in London to bear in advising clients on corporate, FinTech, securities, and regulatory issues. A problem-solver by nature, he has been advising FinTech clients on legal and regulatory issues since the start of electronic trading in the late 1990s. His practice focuses on helping financial services and technology clients identify and address regulatory issues as they build their businesses.

Richard's practice focuses on the representation of early stage and publicly traded companies in the FinTech space, including investment banks, broker-dealers, investment advisers, peer-to-peer lending platforms, digital currency trading platforms, alternative trading systems (ATSs), exchanges, and custodians. He represents these firms before the U.S. Securities and Exchange Commission (SEC), the U.S. Commodity Futures Trading Commission (CFTC), the Financial Industry Regulatory Authority (FINRA), the U.S. Department of the Treasury, Office of the Comptroller of the Currency (OCC), state regulators, and Congress. Richard has represented clients before regulators in Australia, Canada, France, Germany, Hong Kong, Ireland, Japan, Singapore, South Korea, and the United Kingdom. His current and past clients include leading national financial institutions, multinational financial services holding companies, leading firms in the FinTech space, and institutions engaging in global investment banking, investment management, securities, and other financial services with institutional clients.

Richard has been identified by Chambers and Partners as one of the leading lawyers in the Blockchain and Cryptocurrencies category since the inception of the category. He has been recognized by Chambers for his knowledge on regulatory matters, great relationships with regulators, for helping clients push the boundaries of the FinTech sector, and for his advice on matters such as broker-dealer licensing and alternative trading systems. Richard is routinely quoted by leading publications including Bloomberg, the New York Times, Reuters, and the Wall Street Journal and is a frequent speaker at conferences around the world on the regulation of FinTech, blockchain, and digital assets.

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