

Fintech Group Of The Year: Davis Polk

By Sarah Martinson

Law360 (February 18, 2025, 4:03 PM EST) -- Davis Polk & Wardwell LLP helped the first cryptocurrency exchange-traded fund get U.S. approval, persuaded a federal agency not to take enforcement action against a stablecoin issuer, and assisted Visa with creating a novel stockholder liquidity program, earning the firm a spot among the 2024 Law360 Fintech Groups of the Year.

The firm's fintech practice group is made up of more than 75 partners from its financial regulatory, capital markets, investment management, tax, technology and transactional practices. These attorneys are located in offices worldwide, including in New York City, Washington, D.C., London, São Paulo and Hong Kong.

Davis Polk partners expect a legislative and regulatory environment more favorable to blockchain technologies will lead to more fintech deals in the coming months and more attorneys getting involved in the practice area.

Gabe Rosenberg, a partner in Davis Polk's financial institutions and fintech practices, told Law360 that what sets his firm's fintech practice apart from other law firms is its interdisciplinary nature and ability to understand new technology and the historical context of regulations being applied to that emerging technology.

"What our clients find most challenging themselves and really need to turn to outside counsel for is bridging that gap. How do you apply an existing regime built for something completely different to a new technology?" he said.

Zachary Zweihorn, a partner in Davis Polk's financial institutions and fintech practices and a Law360 Rising Star in 2021, added that the firm's fintech and cryptocurrency clients appreciate that they work with and have knowledge of the traditional financial sector.

"Until this changes, and it may in the near future, those are the rules that apply to them, and those are the rules they have to navigate," he said.

One of the fintech practice's major victories in 2024 was helping Grayscale Investments get a cryptocurrency exchange-traded fund listed on a major U.S. securities exchange.

Davis Polk started assisting Grayscale in 2014 with securing approval to list its ETF Grayscale Bitcoin



Trust, and for nearly 10 years, the U.S. Securities and Exchange Commission denied Grayscale approval.

In October 2022, Davis Polk and Grayscale escalated their fight with the SEC and asked the D.C. Circuit to vacate the agency's order denying approval for Grayscale to list GBTC.

Grayscale argued the SEC violated the most basic requirements of the Administrative Procedures Act by failing to justify its vastly different treatment of bitcoin futures exchange-traded products, or ETPs, and spot bitcoin ETPs, which would track the cryptocurrency's price more directly.

In August 2023, the D.C. Circuit overturned the SEC's rejection of Grayscale's bitcoin ETF, finding that the listing exchange for the product, NYSE Arca, "presented substantial evidence that Grayscale is similar, across the relevant regulatory factors," to exchange-traded products holding bitcoin futures that the SEC permitted to list.

A few months later, the SEC finally approved Grayscale's bitcoin ETF listing on NYSE Arca along with 10 other bitcoin exchange-traded products.

In July 2024, the agency also greenlit trading of a series of ETPs holding cryptocurrency ether, including two offerings from Grayscale listed on NYSE.

Joseph Hall, a partner in Davis Polk's capital markets group and a Law360 MVP in 2024, said the SEC under the Biden administration never would have approved bitcoin ETFs if Grayscale hadn't taken them to court.

"Grayscale as an organization really did something courageous. It's not every day that a regulated entity will actually take the regulator to court, and it's even less common to take them to court and to win," he said.

Another accomplishment Davis Polk's fintech practice achieved in 2024 was persuading the SEC not to take enforcement action against stablecoin issuer Paxos.

In February 2023, the SEC sent a Wells notice to Paxos informing the company that the agency was considering taking action against it for not registering a stablecoin it issues in partnership with Binance called Binance USD or BUSD.

Paxos said in a statement at the time that it disagreed with the agency's characterization of BUSD as a security under federal securities law.

In July 2024, the SEC sent a formal termination notice to Paxos, saying that the company won't face an enforcement action over the issuance of BUSD.

Robert Cohen, a partner in Davis Polk's white collar defense and investigations practice, said it is challenging to convince the SEC to not pursue a case after the agency has issued a Wells notice, but the firm was able to do that in this case and get a formal termination notice.

He added that receiving a formal termination notice in this case was important for Paxos following the publicity of its Wells notice, which was not a public document.

"That was important because it gave Paxos a formal document that it could share with business partners

... There are a lot of investigations that ultimately don't go anywhere and nobody ever knew about them, but here the Wells notice was very public," Cohen said.

Davis Polk also helped Visa create a novel program to allow its Class B stockholders, which were mostly U.S. financial institutions, to sell a portion of their shares that they have been holding onto since the credit card company's initial public offering in 2008.

At the time of Visa's IPO, the company was owned by all the major U.S. banks and those banks converted their equity positions in Visa into common stock that was locked up to satisfy damages claims in ongoing litigation, Hall said.

Since before Visa's IPO, the company has been facing antitrust litigation by merchants who paid it fees over the years.

Hall noted that when Visa went public, the antitrust litigation was expected to be resolved in two or three years, and then the banks could sell their stock. That wasn't the case, though.

After 15 years, the banks' stock in Visa had gained substantial value, but the banks couldn't access that value, according to Hall.

So Davis Polk's fintech practice assisted Visa on the creation of an unprecedented financial transaction that kept in place protections implemented in the company's IPO, while allowing the banks to sell some of their stocks, Hall said.

Hall said the most challenging part of the Visa transaction was coming up with the structure.

"A lot of times when a client comes to you with something that they want to get done, somebody else has done it before, or done something pretty similar to it, and so there's a template," he said. "In the Visa situation ... there was no precedent."

The firm's fintech practice also advised Galaxy as an investment manager of billions of dollars' worth of digital assets in the bankruptcy proceedings of cryptocurrency exchange FTX.

The firm said the matter was "one of the first-ever appointments of an investment adviser to manage digital assets in a major crypto bankruptcy case."

Other important work Davis Polk accomplished in 2024 included the dismissal of a securities suit against digital finance platform MoneyLion and guiding a pair of multibillion-dollar take-private fintech deals.

--Additional reporting by Sarah Jarvis and Aislinn Keely. Editing by Alyssa Miller.
