

Fintech Group Of The Year: Davis Polk

By Aislinn Keely

Law360 (February 17, 2023, 2:03 PM EST) -- Davis Polk & Wardwell LLP levied its cross-border and cross-discipline capabilities to close a number of high-profile fintech transactions, including a dual Latin American and U.S. listing in late 2021 that became that year's fourth-largest initial public offering, earning it a spot among Law360's 2022 Fintech Groups of the Year.

Davis Polk in December 2021 advised Brazilian fintech startup Nubank through a \$2.6 billion global IPO, which concurrently listed shares on the New York Stock Exchange and Brazilian depository receipts on the São Paulo Stock Exchange. That required collaboration with Brazilian counsel and underwriters, as well as Cayman Islands counsel.

Handling a transaction that dealt not only in multiple jurisdictions, but also in multiple languages, made for a complex endeavor. Davis Polk's Byron Rooney, a lead partner on the deal, said Davis Polk's cross-border capabilities are "the jewel in our crown."

Transactions like the Nubank IPO involve expertise on a variety of jurisdictions and engage multiple practice areas, he said, including the capital markets team, financial regulatory team, tax team and employee benefits team. Davis Polk's ability to coordinate between practice groups, counsel in applicable jurisdictions and even between languages distinguishes its cross-border capabilities, he said.

"All are needed in a complex transaction like this," Rooney said. "We're not just dealing with one legal system. We're making sure it works across all those various jurisdictions and being the quarterback for each particular point of the deal."

That breadth and depth of expertise helped Davis Polk close the transaction before the downturn of the markets in 2022. Nubank touts itself as one of the world's largest digital banking platforms, and it ultimately went public at an estimated \$41 billion valuation. It raised \$2.6 billion, becoming the largest U.S. IPO of a Brazil-based company in a decade.

Still, it was not immune to the market struggles that began in late 2021. It sold shares at \$9 each on opening day, with a price range slightly under its initial projection of \$10 to \$11 per share.

Davis Polk managed to get the transaction done as the markets began softening in late 2021, but before the more significant market declines of 2022. Rooney said the team sees getting the deal completed on



that timeline as "a huge win," because the deal could have looked quite different if it had been completed in 2022.

Though the market for fintech deals is not what it once was, Rooney said the fintech space has reached a point of maturity that indicates these types of deals will continue.

"I think what you saw [in 2020 and 2021], and this is well-documented, is fintechs really sort of accelerated their growth and came of age and the reason why you saw so many deals in the market, especially the public markets, was because of that. And frankly I think those trends are here to stay," he said.

In addition to the Nubank IPO, Davis Polk advised cloud-based software provider and payments company Billtrust on a \$1.7 billion acquisition by EQT Private Equity that took the company private. Its shares once traded on the Nasdaq, where it listed through a special-purpose acquisition company transaction.

SPACs have been hotly debated as a means of going public or private, but Nicole Brookshire, a capital markets partner at Davis Polk and lead on the deal, said Billtrust was a particularly successful version of the deal structure. To go private, Billtrust shareholders received a more than 64% premium above their shares.

"[Billtrust] was a really exciting transaction given the premium to market that was ultimately paid," Brookshire said. "You see a lot of examples of the failed de-SPAC products or companies that went public through the de-SPAC build and were challenged, and I think that Billtrust is really a shining light of a company that performed overall, which is why they were able to have such a successful exit of business."

Other big deals led by the firm include the SPAC deal between crypto mining services firm Bitdeer and Blue Safari Group Acquisition Corp., which was originally announced in 2021. The \$4 billion merger will see all Bitdeer equity roll over into the public company.

On the litigation front, Davis Polk served as lead counsel to Binance in a proposed federal securities class action that was ultimately dismissed. The case was filed as part of a series of suits against crypto firms alleging they offered and sold unregistered securities. A federal judge ultimately decided that the traders didn't bring their claim within one year from when the violation occurred, and tossed the case.

Davis Polk also defeated all securities class actions against investment fintech company XP related to the firm's \$2 billion IPO. A short seller had claimed XP failed to make adequate disclosures in its financial statements, though Davis Polk got the case dismissed by pointing out a failure to identify an actionable omission or misstatement in the complaint.

Looking ahead, Rooney said that, despite the current economic conditions, he expects the firm's work in the fintech space to remain active.

"You may not see the same valuation trajectory of [recent] years continuing, but I think the adoption by customers of digital financial services has definitely crossed a tipping point," he said.

--Additional reporting by Tom Zanki, Al Barbarino and Elise Hansen. Editing by Daniel King.
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