

Crypto in the Public Capital Markets: Opportunities and Challenges

Published by **Capital Markets Compass** | Issue 4

December 22, 2022

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On October 20, Mark Wood, co-head of Katten's National Capital Markets practice, alongside representatives from investment bank H.C. Wainwright & Co., LLC and leading publicly traded Bitcoin miner Bitfarms Ltd., discussed the status of cryptocurrencies and capital raising by crypto-focused market participants as part of Katten's 2022 "[Crypto with Katten](#)" annual symposium (you can view the agenda for the symposium [here](#)). Below are highlights from the presentation.

Crypto in the US Public Capital Markets

A wide variety of companies in the crypto space have "gone public" in recent years — listing their common stock for trading on a securities exchange in the United States — including cryptocurrency mining companies, e-commerce and crypto- payment platforms, cryptocurrency exchanges and other financial services companies focusing on the evolving crypto ecosystem. Significantly, many overseas crypto businesses have also chosen to tap the United States capital markets for equity financing or chosen to list their stock on United States stock exchanges, including many of the largest crypto miners by market cap.ⁱ

From Record Highs to Challenging Markets

Publicly listed crypto companies experienced record growth through the end of 2021, with the market cap of publicly traded crypto miners alone exceeding \$16.5 billion by the end of the year. Indeed, during 2021, the stock of many crypto-oriented listed companies appreciated at a faster rate than even the price of Bitcoin itself during the same time period. However, prices of "crypto" stocks have fallen alongside the general market in 2022, with the three largest publicly traded Bitcoin mining companies losing more than \$4.5 billion in market cap, spurred on by the collapse of cryptocurrency

prices generally in addition to the rising costs of electricity and general economic and inflationary pressures. Year to date, the price of Bitcoin has fallen approximately 65 percent, with many leading Bitcoin mining companies experiencing percentage market cap declines of 74–90 percent over the same time period.

Price Correlation With Stocks

Prior to the COVID-19 pandemic, industry proponents cited the purported lack of correlation between the price of cryptocurrencies and traditional financial assets such as stocks and bonds as a major differentiator of the sector, arguing cryptocurrencies could act as a strategic hedge and diversification tool for investors. However, a recent [study](#) performed by the International Monetary Fund has confirmed that, at least over the last two years, a clear statistical correlation between the price of equity securities and cryptocurrencies (and thus crypto-focused stocks) has developed. In fact, the study notes the price of cryptocurrencies may be even more closely correlated to stock market prices than other traditional financial assets, such as bonds or precious metals.

Capital Raising Options for Public Crypto Companies

Despite a challenging economic environment, many publicly listed crypto companies continue to pursue capital raising opportunities, including via (1) traditional underwritten public offerings (and in some instances, confidentially marketed public offerings), (2) privately negotiated sales of common stock (referred to as private investments in public equity, or "PIPE" financings), (3) registered "direct" offerings, which are marketed directly to a select group of investors, (4) "at-the-market" (ATM) offerings and (5) the institution of "equity lines of credit," among other alternative financing structures.

Recent SEC Statements and Comments

While Securities and Exchange Commission (SEC) Chairman Gary Gensler continues to [publicly state](#) that the vast majority of cryptocurrencies themselves are securities and thus fall under the SEC's jurisdiction, the SEC has also continued its close scrutiny of publicly listed crypto companies, noting that increased regulation and oversight of the space remains a strategic priority. For example, the panel discussed the staff's focus on the accounting treatment of crypto assets held by publicly traded crypto asset custodians, including the staff's release of [guidance](#) suggesting crypto assets should be accounted for as liabilities on companies' balance sheets, resulting in a leading crypto exchange to begin including additional responsive risk factors in its [periodic reports](#). It also discussed an [enforcement action](#) brought against an international semiconductor chip manufacturer, which alleged that the company provided insufficient disclosure regarding the importance of crypto mining-related activity to the revenue growth of its specialty graphics processing unit chip business that produces chips used in Bitcoin and other cryptocurrency mining rigs. In addition, the panel noted that

the SEC had [nearly doubled](#) the size of its "Crypto Assets and Cyber Unit" of the Division of Enforcement in May 2022.

Most recently, the SEC's Division of Corporation Finance released guidance and a sample comment letter, available [here](#), advising companies to ensure they are adequately disclosing any material adverse exposure they may experience following recent crypto-related or adjacent bankruptcies and/or financial distress among crypto asset market participants. Specifically, the [sample comment letter](#) instructs companies to disclose, to the extent material, (1) how recent bankruptcies have impacted their business, (2) whether any crypto assets owned, issued and/or held by companies serve as collateral for loans or other financial activity to which they or any of their affiliates are a party and (3) any risks faced by companies related to regulatory developments in the crypto space, among other disclosures. The guidance notes that the sample comments are not intended to serve as an exhaustive list of crypto-related disclosures, and companies should evaluate how they may have individually been affected.

For more information on Katten's leading crypto and securities practices, please see overviews [here](#) and [here](#).

ⁱ As of December 2021, more than half of the largest publicly traded crypto miners were headquartered overseas.

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