

Ripple IPO Talk Sparks Buzz About Crypto-Related Floats

By Tom Zanki

Law360 (January 30, 2020, 5:59 PM EST) -- A statement from Ripple Labs Inc.'s CEO that the noted blockchain firm intends to go public within a year is fueling speculation that more cryptocurrency-related companies could soon migrate toward mainstream capital markets, though attorneys say barriers to public markets limit that avenue to select companies.

Ripple CEO Brad Garlinghouse spoke of an impending initial public offering for the cross-border payments company at the World Economic Forum last week in Davos, Switzerland. He added that more companies in the nascent digital currency and blockchain industries are planning the same.

"In the next 12 months, you'll see IPOs in the crypto/blockchain space," Garlinghouse said, according to a tweet posted on Jan. 23 by Asheesh Birla, Ripple's senior vice president of product and corporate development. "We're not going to be the first and we're not going to be the last, but I expect us to be on the leading side. ... It's a natural evolution for our company."

Viewed in the big picture, attorneys advising blockchain and financial technology firms said Garlinghouse's statement can be seen as confirming a slow but steady trend of cryptocurrency-related companies embracing mainstream capital markets as they mature.

Crowell & Moring LLP partner Michelle Gitlitz expects to see more companies involved in this "less traditional asset class going through more traditional capital raising means."

"If more crypto companies do IPOs and are approved by the SEC, it [demonstrates] more acceptance of this asset class and provides a mechanism for more people to invest in these types of companies rather than" a private placement that is only available to wealthier, accredited investors, Gitlitz said. "I think that's important. That moves the ball forward."

Crypto-related companies in the past often raised funds through novel ventures known as initial coin offerings, which involve fewer intermediaries and bypass the regulatory requirements of traditional capital-raising transactions like registered public offerings or private placements. But the U.S. Securities and Exchange Commission began cracking down on ICOs in 2017 on grounds that most coin offerings resembled securities sales but didn't comply with relevant laws.

Since their peak in early 2018, ICOs have plummeted, and more capital-raising activity among remaining crypto-related companies has taken place through private placements, which are only available to

wealthy investors. Plus, several companies have pursued registered offerings.

While Ripple, with a private valuation of \$10 billion according to venture capital database CB Insights, is publicly hinting at IPO plans, Gitlitz pointed out Ripple would not be the first crypto-related company to lay the groundwork for going public. Cryptocurrency exchange startup INX Ltd. has filed plans for an IPO of security tokens that could net the firm \$130 million to develop trading platforms, according to recent filings.

Lawyers also noted there are unanswered questions regarding Ripple's plans. Baker Botts LLP partner Sam Dibble said it was not clear whether the company wants to issue conventional shares to raise fresh capital as in a traditional IPO, or whether it wants to go public to register tokens it sold previously in initial coin offerings.

Ripple did not return requests for comment.

Ripple, which is developing a blockchain-based payment system that is intended to make it easier for banks and other entities to send money globally, first issued its XRP digital currency in 2013. The manner in which Ripple offered XRP tokens is also the subject of litigation.

Certain investors allege in a class action in California federal court that Ripple's sale of XRP tokens constituted an unregistered offering. Ripple denies the allegation and is seeking to dismiss the suit.

"They may have no choice but to actually register their XRP tokens with the SEC just to get out of the penalty box, if you will," Dibble said.

Ripple is also among several companies that have sought to improve the credibility of blockchain, which is the nascent technology that underpins digital currency but has additional applications, with regulators. It opened a Washington, D.C., office in October dedicated to regulatory issues.

San Francisco-based Ripple is seemingly well funded for now, having completed a Series C financing in December that raised \$200 million. Tetragon, SBI Holdings and Route 66 Ventures were lead investors in the company's latest funding round. Private investors ultimately seek to exit their stakes in startups, typically through an IPO or sale of the company.

Ripple is dubbed a "unicorn," market shorthand for private companies valued at \$1 billion or more. A few crypto-related companies fit that label, including digital currency exchange Coinbase, a venture-backed firm valued at \$8 billion that also been subject of IPO rumors. A message to Coinbase was not immediately returned on Thursday.

Dibble said it may make sense for a company the size of Ripple or other big players to pursue public markets. But the cost of doing is likely prohibitive for smaller companies, given the rigorous filing requirements and financial vetting that occurs with public companies. Many early-stage startups developing blockchain technologies lack finished products or revenue.

"Certainly, the cost to register creates a barrier to entry," Gitlitz said.

Plus, Dibble notes there are other barriers including the reluctance of accountants and auditors to sign off on financial statements for companies whose prime assets, such as digital tokens, are not physical and not as easily quantified as traditional hard assets.

Several firms involved in cryptocurrency or blockchain have sought to raise capital compliantly by fling for so-called Reg A+ offerings, which are liked scaled-down IPOs with fewer rules. But Reg A+ deals also come with other limitations, including an annual fundraising cap of \$50 million.

The Reg A+ regime also has rules that predate the growth of blockchain technology, including a requirement that companies use a transfer agent to record ownership of shares. This rule is seen as contradicting the intent of blockchain advocates to reduce reliance on intermediaries.

"The whole regulatory scheme that works for most companies doesn't quite work here," Dibble said.

Blockstack, which was the first company to have its token offering approved under the SEC's Reg A+ framework, also spent \$2 million to prepare offering documents, a sum that attorneys have noted may bar companies of limited means from accessing this capital-raising vehicle.

Yet certain companies that serve the growing cryptocurrency sector, even if they don't run on blockchain technology or issue digital currencies themselves, are finding traditional IPOs a feasible path. SilverGate Capital Corp., a California bank that serves cryptocurrency investors and exchanges, and Chinese Bitcoin miner Canann Inc. both completed IPOs in November.

Goodwin Procter LLP partner Mitzi Chang said it's natural to expect more IPOs involving cryptocurrency and blockchain companies as the industry evolves.

"Would I say in the next 12 months? Maybe," Chang said. "Would I say that in the next several years we are going to see more of this? Yes, I think so, definitely."

--Editing by Brian Baresch.