

# Forensic investigations of tomorrow

What does the future hold?





One of the great skills in any business or profession is the ability to gaze into the future and spot the next “big thing.” Forensic investigations are no different as experts try to anticipate what types of upskilling will be needed to capitalize on tomorrow’s opportunities. The following are five new areas where substantial forensic investigations work is likely to arise.

### Cryptocurrencies

At the time of writing this article, one of the largest cryptocurrency exchanges in the world, FTX, has filed for chapter 11 bankruptcy protection.<sup>1</sup> Earlier in the year, the cryptocurrency operator Terraform Labs collapsed after the US\$40 billion implosion of its Luna and TerraUSD tokens leading to a global manhunt for the company’s founder Do Kwon.

The true extent of any fraud is currently unknown; however, the collapse of the mentioned companies raises wider questions. For example, are many of these cryptocurrency exchanges genuine or are they in fact similar to shadow banks, lending depositors’ funds on speculative projects? According to the Financial Times, FTX only had US\$900 million of easily sellable assets despite having US\$9 billion in liabilities, which indicates that it is more than just a “conventional exchange.” In fact, other cryptocurrency exchanges may share similar inherent weaknesses.

This is only one aspect of crypto investigation; others include crypto’s use in financial crime, as well as market abuse through fictitious initial coin offerings and price manipulation.

### Greenwashing

Environmental, Social, and Governance (ESG) has been a matter of increasing importance for corporates for some time; however, only recently has the term “greenwashing” become prominent - a concise term for organizations fabricating or exaggerating their green credentials. Organizations may greenwash for many reasons, but typically do so to attract investment, reduce external funding costs,

or improve public perception. On 31 May 2022, German police raided DWS, a Deutsche Bank subsidiary, for allegedly making misleading statements about ESG investing in its sustainability statements, which leads us to believe that greenwashing is now on regulators’ radars.

As the spotlight grows ever stronger, a growing pipeline of ESG-related investigations will emerge. Such investigations could be motivated by a wide variety of stakeholders, such as ESG fund investors who feel misled, government regulators from inaccurate disclosures, or public interest groups motivated by raising awareness.

### Renewable investments

Tangentially linked to greenwashing is the proliferation in the number of renewable energy projects. Globally, as fossil fuels are being phased out on the path to net zero, many countries are investing heavily in solar, wind, tidal, and other types of renewable projects.

Despite the apparent need and demand for these projects, many are facing financial difficulties. Renewable projects often require a developer to agree to a fixed tariff for any electricity supplied when they submit their bid. These tariffs are usually fixed for 20 to 30 years. However, economic conditions can change between making the bid and developing the project. For instance, increasing global interest rates have eroded the profitability of some projects, which are heavily debt financed; global supply chain issues have also resulted in rapidly escalating costs.

For instance, the price of solar modules has increased by approximately 30% to 40% since the start of the pandemic.<sup>2</sup> As more competition emerges in the sector, profitability has also decreased.

In our forensic practice, we have already started seeing the consequences, with investors wanting to conduct investigations to understand why their projects haven’t been delivered the promised returns, and to identify any misconduct by the

developers and those charged with managing the investment.

### Metaverse

It’s too early to tell whether or not Mark Zuckerberg’s investment in the metaverse will pay off, or if the metaverse as a concept will indeed be a true success. If it is, there may be a significant stream of resulting investigations.

The metaverse envisages the widespread trading of goods and services, so inevitably, disputes will arise over consumer protection and intellectual property of these products, especially as appropriate laws and regulations are adopted. To transact, virtual currencies and non-fungible tokens (NFTs) will be the medium of trade in the metaverse and will be susceptible to the same manipulation as other cryptocurrencies.

Finally, we see potential for metaverse investigations arising from breaches of data protection laws as more jurisdictions introduce and enforce these laws, and the proliferation of cybercrime intensifies.

### Special purpose acquisition companies (SPACs)

SPACs emerged from financial obscurity during the pandemic to become a major investment class. To illustrate, SPAC IPOs increased from US\$13.6 billion in 2019 to US\$162.5 billion in 2021. A combination of financial markets and heightened regulatory scrutiny then resulted in a sharp reversal. By the end of September 2022, only US\$12 billion had been raised through SPAC IPOs.<sup>3</sup>

For those SPACs that did complete a reverse merger, investors have generally not fared well. When an investor buys into a SPAC, it costs US\$10 per share; however, as of July 2022, 90% of SPACs have been traded at below US\$10 per share.<sup>4</sup> The more relaxed rules around SPACs reverse mergers, as compared to IPOs, allowed SPAC sponsors to promote unrealistic growth projections/stories to entice investors.

Take the example of Nikola Corporation, an electric truck company whose sponsor said would rival Tesla.<sup>5</sup> Soon after its reverse merger in early 2020, its share price increased to US\$75. Following a more realistic assessment of the company's prospects, it is currently trading at just under US\$3 per share. Whereas investors have lost out, SPAC sponsors have generated hefty returns as they typically acquire 20% of a SPAC's shares for a nominal cost. Investors in these vehicles will likely want to investigate whether they invested under false pretences or not.

### The forensic investigator's role

What role can a forensic investigator play when investigating frauds in any of these areas?

Firstly, these types of fraud usually involve collecting vast quantities of electronic, and occasionally, hard copy data. A forensic technology team is instrumental in securing this data in a legally sound manner in case of future litigation, and then subsequently facilitating an efficient review of this data by lawyers and investigators.

Secondly, in the case of SPACs, renewables, and cryptocurrencies in particular, the nature of any investments can be very complicated. This requires forensic accounting expertise to understand and unpick the true nature of the investment, identify and trace all the different cashflows relating to the fraud, and overlay this with email data and other evidence to understand how the fraud occurred. These types of investigations also frequently require data analytics expertise to assimilate and analyze vast quantities of financial information.

Thirdly, fraud cases can often culminate in civil and criminal proceedings. Forensic investigation reports can be imperative pieces of evidence that explain how a fraud occurred in a clear and cogent manner, especially to an audience who may not be experts in the metaverse or crypto domain.

Finally, victims and regulators normally aim to recover any funds embezzled by

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fraudsters. Tracking these funds down requires intensive corporate intelligence work by investigators to identify any assets that a fraudster may hold in both the Middle East and further afield.

The traditional areas of forensic investigation, such as sanctions breaches, false accounting, and bribery and corruption, will always be a mainstay of the profession. However, the world of finance and technology is forever evolving. While this evolution may confer economic and societal benefits, it provides new pastures for fraudsters looking to take advantage as regulators and governments seek to catch-up. With just a glimpse into the 5 areas mentioned above, it becomes evident that there will be significant work for forensic investigators in the future. ●

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### Endnotes

1. <https://www.cnn.com/2022/11/21/collapsed-crypto-exchange-ftx-owes-top-50-creditors-3-billion-filing.html>.
2. 38% Increase in Module Prices in last 20 Months (August 2020 – March 2022) - JMK Research & Analytics.
3. <https://time.news/betting-against-the-spac-companies-and-against-cathy-wood-you-have-won-big/>.<https://sfmagazine.com/post-entry/november-2022-the-ups-and-downs-of-spacs/>.
4. <https://www.ft.com/content/1fecedf0-bf22-4e61-875a-5c185f441d12> (Financial Times).
5. <https://www.forbes.com/sites/alanohnsman/2022/08/10/nikola-and-teslas-electric-truck-rivalry-heats-up/?sh=1259602a1cf5>.