

**Emerging Markets: Distributed Ledger
Technology, Esports, E-gaming,
Cannabis and Psychedelics**

**IBDC Conference
(May 8, 2023)**

Introductions

Moderator:

- Christopher P. Parrington, Esq.
- Zuber Lawler LLP
- Minneapolis, MN
- Securities and cannabis compliance and litigation counsel
- Admitted in Minnesota, North Dakota and Montana
- www.zuberlawler.com

Introductions

Panelist:

- Jeff Gery
- Alto Securities, LLC (Alto IRA)
 - Focused on investing in alternative assets using IRAs.
- Fort Wayne, IN
- Chief Compliance Officer
- FINRA registered since 2000
- www.altoira.com

Introductions

Panelist:

- Jason Chung, Esq.
- Zuber Lawler LLP
- New York, NY
- Regulatory and transactional lawyer in e-sports, virtual reality, artificial intelligence and data privacy
- Admitted in New York
- www.zuberlawler.com

Introductions

Panelist:

- Philip Milestone, Esq.
- Zuber Lawler LLP
- San Francisco, CA
- M&A and IP lawyer working in crypto, blockchain, privacy and digital assets
- Admitted in California and New York
- www.zuberlawyer.com

Esports and Egaming

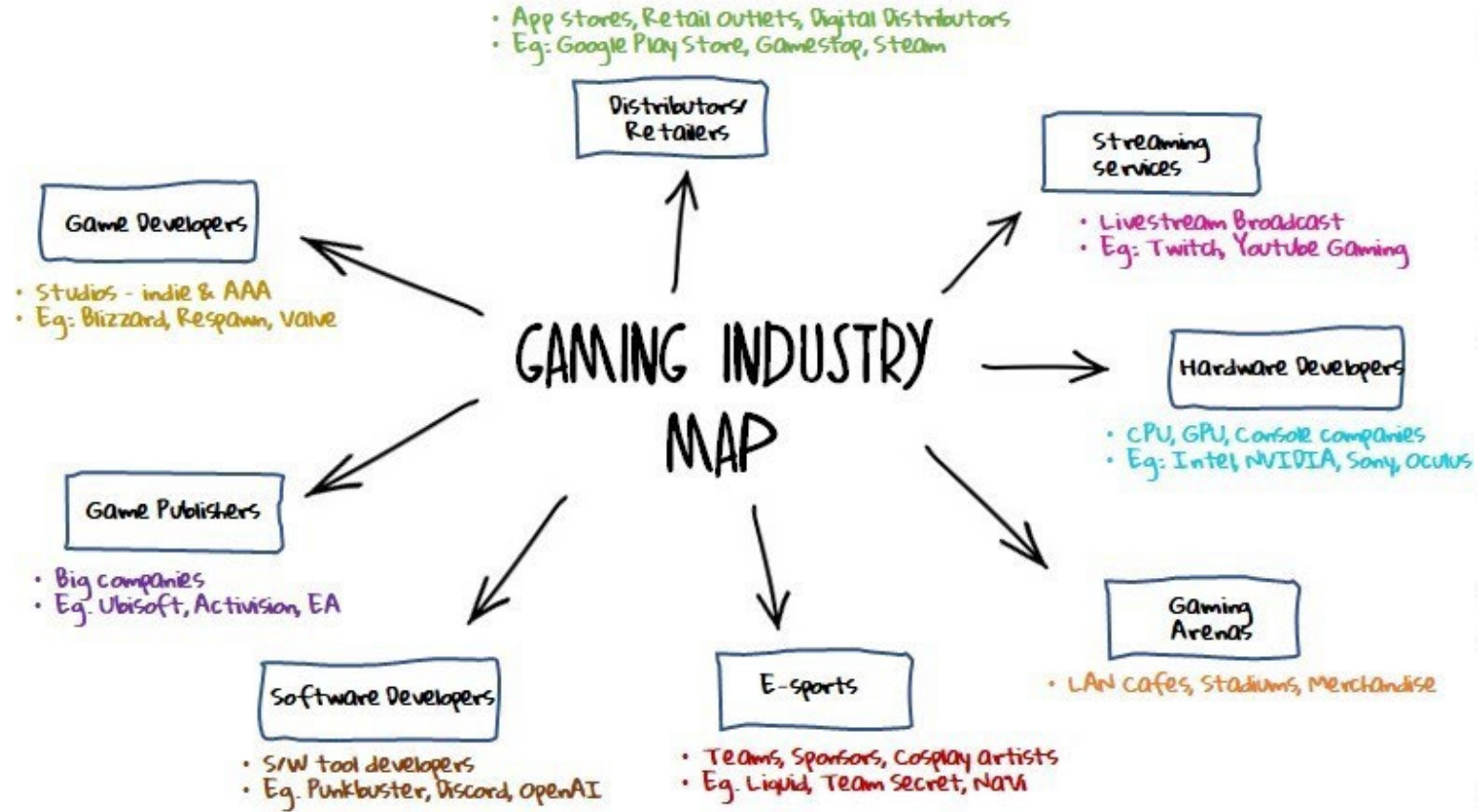
Understanding (Video) Gaming

- Video gaming is the world's largest entertainment sector
 - 3 billion+ gamers worldwide (NewZoo, 2022)
 - \$180 billion+ USD global revenue (NewZoo, 2022)
- Video gaming is expansive
 - Includes gaming on all platforms such as PC, consoles, mobile
 - Gaming includes both single-player and multiplayer titles
 - E.g. Both Call of Duty and Candy Crush count as gaming

Gaming ≠ Esports

- Esports is a form of competition using video games
- Esports generally takes the form of organized, multiplayer video game competitions typically between professional players on teams
- Esports is a catch-all title to include competition across multiple video game titles and differing genres

Ecosystem is complex



Investing in Gaming vs. Esports

Examples in mature gaming industry

- Equity investment into major publicly traded corporations across ecosystem:
 - Hardware (NVIDIA, AMD, Intel)
 - Video game publishers (Activision Blizzard, Electronic Arts)
 - Console manufacturers (Nintendo, Sony, Microsoft)
 - Infrastructure (Microsoft, Amazon)
- Video game focused ETFs
- Investment in video game studios
 - Equity crowdfunding from accredited and non-accredited investors (Reg CF, Reg A+)
 - Investment from accredited investors (Reg D)

Examples in emerging esports industry

- Equity investment into IP owners of esports titles
 - Video game publishers
- Private/public investments into esports organizations
 - Most esports organizations are privately owned
 - Some esports organizations hitting markets
 - E.g. FaZe Clan + B. Riley Principal 150 Merger Corp SPAC merger = FaZe Holdings Inc.
- Infrastructure investments (e.g. tournament platforms, streaming services, etc.)
 - Saudi Public Investment Fund

Key considerations when investing in gaming and/or esports

- Understand your investment
 - What is the primary industry focus (gaming vs. esports)?
 - Which part of the ecosystem does it occupy (publisher, team, technology, etc.)?
 - How established is the investment vehicle?
- Review the valuation
 - Was the valuation performed independently?
 - Is the valuation credible?
 - Is the relative valuation based on appropriate comparables?
- Review the business model
 - Is revenue sustainable and diversified?
 - Are there significant legal and financial risks to the business?
 - Are there governance/regulatory issues with the business (e.g. esports leagues)?

Crypto, Block Chain and Digital Assets

Crypto, block chain and digital assets

- Market Cap
 - High of 2.4 Trillion in 2021
 - Currently about 1.2 Trillion
 - 2015 = 3.5 Billion
 - <https://www.tradingview.com/symbols/TOTAL/>
- Of that
 - BTC = \$570B approx 24%
 - ETH = \$227B approx 9%
 - <https://coinmarketcap.com/>
- So, to state the obvious, there is value here...
- But why?

DLT = a new kind of computing

- Instead of a central authority deciding what is and is not a valid transaction (like a bank) transactions are only committed to the chain when the applicable consensus algorithm is satisfied
 - You've maybe heard of Proof of Work, and Proof of Stake, Proof of Authority/Identity etc.
- The math works to ensure:
 - the "approved" transactional record cannot be altered or deleted (immutable)
 - transactions written to the chain are dependable even if you don't know the counterparty beyond their wallet address (trustless)
 - See <https://bitcoin.org/bitcoin.pdf> - "Bitcoin: A Peer-to-Peer Electronic Cash System" by Satoshi Nakamoto
- With only these elements, we have created a method of tradeable, stored value, peer to peer

So what kinds of things can we put on chain?

Any record or transaction that you might want to trace:

- **Cryptocurrencies:** (traditional money and in-universe “coins of the realm” in gaming)
- **NFTs:** Records of ownership, Indicators of membership, Fractionalized Ownership, Digital Art
- **Tokens:** Governance tokens, Security Tokens, Authentication
- **Data of any kind:** Logistics, food, defense, health care, automotive, aviation, manufacturing
- **dApps (distributed applications):** apps that use the blockchain as its “Server”
- **Smart Contracts:** “Fancy” if/then functionalities usually open, immutable and attached to a blockchain automating complex transactions.

Data you want to trace and track and verify without having to trust your counterparty.

Investing in blockchain

- Same Dynamics as traditional investments
 - revenue, profitability, funding, team
- Consider also:
 - Is it truly Decentralized?
 - Beware the DINO (Dao In Name Only)
 - Centralization played a central role in the fall of FTX
 - Layer 1 vs Layer 2
 - What problem are they solving?
 - Why are they solving it?
 - Is Blockchain a good solution?
- How does it solve for Scalability & Security
 - Along with decentralization: the "trilemma"

Investing in blockchain

- Regulatory Environment
 - Access to banking
 - Chokepoint 2.0
 - Securities Regulation – e.g. Howey Test (SEC v. W.J. Howey Co., 1946)
 - It involves an investment of money.
 - There is an expectation of profits from the investment.
 - The investment is in a common enterprise.
 - The profits come primarily from the efforts of others.
 - IP
 - Who owns what?
 - Privacy, Confidentiality
 - Encryption, ZK, permissioned vs permissionless
- Market Environment
 - Is it Crypto like pets.com was web?
 - Or is it Crypto like the iPhone was mobile?

Alternatives are still offered traditionally

Offering Regulations

- Private Placements – Regulation D
 - 506(b) – No general solicitation, but need a pre-existing substantive relationship, up to 35 non-accredited investors
 - 506(c) – General solicitation allowed, accredited investors only, accreditation must be verified
- Exempt Public Offering – Regulation A
 - Tier 1 – Up to \$20 Million
 - Tier 2 – Up to \$75 Million
- Crowdfunding – Regulation CF
 - Access through funding portal
- Private Funds – 3(c)(1), 3(c)(7)

A quick look at the regulations

Regulation	Offering Limits w/ 12-Month Period	Is General Solicitations and Advertising Permitted?	Investor Requirements
Reg CF	\$5 Million	Permitted once Form C is filed	<ul style="list-style-type: none">• Unlimited accredited investors and no investment limits, and• Non-accredited investors investment limits based on NW and income tests
Reg A – Tier 1	\$20 Million	Permitted	None
Reg A – Tier 2	\$75 Million	Permitted	<ul style="list-style-type: none">• Unlimited accredited investors and no investment limits, and• Non-accredited investors investment limits based on NW and income tests
Reg D – 506(c)	None, unlimited	Permitted	Accredited investors only
Reg D – 506(b)	None, unlimited	Not Permitted	<ul style="list-style-type: none">• Unlimited accredited investors, and• Up to 35 sophisticated, but non-accredited investors
Reg D – 504	\$10 Million	Permitted in limited circumstances	None

A quick look at Funds

Type of Fund	Fund Requirements	Offering Method	Is General Solicitations and Advertising Permitted?
Unregistered 3(c)(1) - Traditional	<ul style="list-style-type: none"> • Only 99 or less investors in fund allowed • Unlimited investment amount 	Reg D	Same as Reg D <ul style="list-style-type: none"> • 506(c) – Permitted • 506(b) – Not Permitted
Unregistered 3(c)(1) – Qualifying Venture Capital	<ul style="list-style-type: none"> • Only 250 or less investors in fund allowed • \$10 Million investment limit 	Reg D	Same as Reg D <ul style="list-style-type: none"> • 506(c) – Permitted • 506(b) – Not Permitted
Unregistered 3(c)(7)	<ul style="list-style-type: none"> • Investors must be Qualified Purchasers • Unlimited investment amount 	Reg D	Same as Reg D <ul style="list-style-type: none"> • 506(c) – Permitted • 506(b) – Not Permitted
Registered Closed-End	<ul style="list-style-type: none"> • Technically, any level of investor may invest; but • If more than 15% is invested in private securities, then AI only • Unlimited investment amount 	Public	Yes

Cannabis

Cannabis

- Medical and adult-use recreational marijuana legal in 22 states
 - Delaware legalized in April 2023
 - Minnesota (to be 23rd state) to be legalized by May 22nd
- Medical marijuana (only) legal in 13 states
- CBD products containing low-potency THC legal in 7 states
- Marijuana illegal, but decriminalized in 2 states
- Marijuana completely illegal in 4 states:
 - Idaho, Wyoming, Kansas and South Carolina

Cannabis

- Hemp and hemp-infused products are federally legal
 - 2018 Farm Bill
 - States must submit a state-hemp plan for approval by U.S. Department of Agriculture
 - Most states regulate cultivation of hemp
 - Some states regulate manufacturing of hemp-infused products
 - Less states regulate retail sale of hemp-infused products
- Legalization of hemp does not necessarily mean legalization of hemp-infused additives in food and drugs.
 - Still regulated by FDA and most products not legal under FDA regulations

Cannabis

- Common marijuana products:
 - Flower, edibles, beverages, topicals, oils, vapes, etc.
- Common hemp products:
 - Flower, edibles, topicals, oils, vapes, etc.
 - Hemp-infused cannabis beverages becoming extremely popular
 - Minnesota is the pioneer in regulation of hemp-infused cannabis beverages because legally allowed for sale in bars, restaurants and liquor stores
 - Very hard to distinguish hemp and marijuana flower without testing
 - Caused several states to make smokable hemp illegal
 - Delta-8, Delta-9, Delta-10 and HHC products

Cannabis

- Federal guidance related to state-legalization of marijuana:
 - Ogden Memo (October 2009)
 - Guidance for prosecuting state-legal marijuana businesses under Controlled Substance Act (CSA)
 - Cole Memo (August 2013)
 - Further guidance for prosecuting state-legal marijuana businesses under CSA
 - FinCEN Memo (February 2014)
 - Guidance for prosecuting financial institutions servicing marijuana businesses under Bank Secrecy Act
 - Wilkenson Memo (October 2014)
 - Guidance for tribal marijuana conflicts with federal law
 - Sessions Memo (January 2018)
 - Rescinded prior marijuana guidance memos
 - Rohrabacher – Farr Amendment
 - Appropriations bill makes it illegal to use federal funds to prosecute state-compliant medical marijuana businesses

Cannabis

- Current challenges for state-legal marijuana businesses:
 - No bankruptcy protection
 - No federal court jurisdiction
 - No federal trademark, copyright or patent protection
 - Lack of access to banks
 - Lack of access to U.S. financial markets
 - Unable to transport across state lines

Psychedelics

Psychedelics

- Psilocybin (mushrooms) legalization status:
 - Legalized in Oregon for therapeutic use
 - Decriminalized in certain municipalities in Washington, California, Colorado and Washington DC
 - Santa Cruz, CA; San Francisco, CA; Berkley, CA; and Oakland, CA.
 - Denver, CO.
 - Medical research approval in Utah, Texas, Maryland and Connecticut
 - Pending legalization (in some fashion) legislation in 7 states: Kansas; Illinois; Georgia; West Virginia; Virginia; Pennsylvania; and New York

Psychedelics

- Psilocybin is a Schedule I controlled substance under the CSA
 - Same as marijuana
 - Mushrooms are not necessarily illegal – their active ingredients are illegal: psilocybin and psilocin.
- Mushroom spores (used for cultivation) are legal in many states because they do not contain psilocybin or psilocin
- Benefits of psilocybin include help with depression, anxiety, trauma and addiction

Psychedelics

- Oregon and Psilocybin:
 - Began taking business license applications in January 2023
 - No limits on number of licenses issued
 - Four (4) types of licenses:
 - Manufacturing
 - Cultivate and process psilocybin products
 - Service centers
 - Legal location where psilocybin may be purchased and consumed
 - Facilitator
 - Present with clients during 3 components of psilocybin services: preparation session (intake / consulting); administration session (consumption); and integration session (post-consumption experience assessment)
 - Testing

Psychedelics

- Legal / regulatory framework:
 - At the same stage as cannabis in late 1990s
 - No federal guidance memos similar to cannabis
 - President Biden considering approval of psilocybin for designated therapeutic treatment for PTSD and depression
 - Exploring designation of federal task force for exploration
- Many assume legalization and regulation of psilocybin will follow cannabis over past 25-30 years
 - Both controlled substances under CSA
 - Both first legalized by state(s) for medical purposes
 - Both have recognized medical benefits for certain conditions

CLE CODE WORD

EMERGING

Questions?

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