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RED FLAGS FOR BANKS AND PROCESSORS SERVICING THE NEW HIGH-RISK ENVIRONMENT

From garden variety fraud to dark patterns in the digital economy, the growth of consumer fraud in recent years has made it increasingly important for banks and payment processors to focus attention on red flags in servicing high-risk merchants. In this article, the author discusses these risks, beginning with FTC actions against processors. She then turns to "dark patterns" in negative option marketing; the role of digital assets in the metaverse; and crypto scams and investment fraud in the metaverse. She closes with notes on screening and monitoring high-risk accounts.

By Ellen T. Berge *

In February 2022, the Federal Trade Commission ("FTC") reported that consumers lost more than $5.8 billion to fraud in 2021, an increase of more than 70% over the previous year.[1] Imposter scams, online shopping scams, prize promotions, sweepstakes, lotteries, Internet services, and business and job opportunities topped the list. In a separate study issued in June 2022, the FTC reported that since the start of 2021, U.S. consumers reported losing over $1 billion to crypto scams.[2] Most of the crypto scams originated with social media and primarily involved bogus investment opportunities, with romance scams falling in second place.[3]

While the FTC would caution consumers never to mix dating and investment advice, it is not so simple for banks and payment processors that service high-risk merchant categories. Business, legal, regulatory, and

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[1] Press Release, FTC, *New Data Shows FTC Received 2.8 Million Fraud Reports from Consumers in 2021*, https://www.ftc.gov/news-events/news/press-releases/2022/02/new-data-shows-ftc-received-28-million-fraud-reports-consumers-2021-0 (Feb, 22, 2022).

[2] Emma Fletcher, FTC: *Reports show scammers cashing in on crypto craze* (June 3, 2022), https://www.ftc.gov/news-events/data-visualizations/data-spotlight/2022/06/reports-show-scammers-cashing-crypto-craze.

[3] *Id.*

* *ELLEN T. BERGE is a partner in the Washington, D.C. office of Venable LLP. She serves as co-chair of the firm's Payment Processing and Merchant Services practice and is a leading partner in the firm's Advertising Law practice. Ms. Berge has represented numerous financial institutions and payment processors in law enforcement investigations and regulatory matters before the FTC, the CFPB, and other federal and state agencies. She also works with merchants to help develop compliant marketing programs. Her e-mail address is etberge@venable.com.*

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