



Department of Financial Protection and Innovation
Attn: Legal Division
2101 Arena Boulevard
Sacramento, CA 95834

BITCOIN DEPOT

www.bitcoindepot.com

PH:
FAX:

November 15, 2024

PRO 02-23

To whom it may concern,

Thank you for the opportunity to provide this comment letter on the proposed regulations under the Digital Financial Assets Law (DFAL) and as the Department continues to assess virtual currency kiosk business activity and regulations in California. As we shared during the crafting of the bill, we have concerns about the effectiveness of the bill and subsequent regulations to allow legitimate operators and customers to do business in the state. Before addressing our specific concerns and suggested considerations, we offer background on our Company.

Bitcoin Depot's Primary Business Model

The Company's primary business model is to buy Bitcoin. Bitcoin Depot operates company-owned Automated Teller Machines (BTMs or kiosks) throughout the United States, Puerto Rico, Australia and Canada that are installed at various locations, such as convenience stores and gas stations. Our customers value our product for its convenience, speed, physical presence, and ability to directly own their cryptocurrency as opposed to an exchange; shielding them from the risks of a total loss of their assets in the event of an exchange's financial collapse such as the one we saw in the case of FTX.

Bitcoin Depot's History and Commitment to Compliance

The Company was established in 2016 and has grown to its current state by investing in people, technology, and processes that support a culture of compliance. The Company became a public entity on June 30, 2023, and trades on the NASDAQ under the ticker symbol BTM. As a public company, the Company is fully accountable to and regulated by the Securities & Exchange Commission (SEC). Additionally, the Company is a registered Money Services Business (MSB) with the Financial Crimes Enforcement Network (FinCEN) and maintains state money transmitter licenses throughout the country.¹² The Company is and has always been committed to compliance and working cooperatively with state and federal agencies of all types for the betterment of the Company, industry, and financial system.

Bitcoin Depot's Monitoring Process and Consumer Safeguarding

The Company has implemented various safeguards for consumers and the financial system. It employs

¹ Currently, the company has nineteen state money transmitter or virtual currency licenses, and other pending license applications are in process. For states where the Company does not maintain a license, it periodically confirms with the state that no license is required to operate in such state.

² With the IRS being the primary regulatory body overseeing MSBs.



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the most state-of-the-art and sophisticated transaction monitoring and case management software to detect and prevent financial crimes.³ Additionally, the Company utilizes third-party blockchain analytics services to identify higher-risk and criminal wallets. More specifically:

- The Company has implemented a number of customer-facing safeguards to warn about scam-related activity, such as hard copy warnings physically present on the kiosk, on screen notices, several of which require the customer to make affirmative attestations before moving past the screen, and short text messages. (Copies of these warning messages are attached as **Appendix A** to this letter).
- The Company has invested considerable resources to deploy third-party blockchain analytic software and other technology-based solutions for sanction monitoring, Office of Foreign Assets Control (OFAC) and Politically Exposed Person (PEP) screening, and Know Your Customer (KYC) verification. These technologies allow us to flag and report suspicious activity at our kiosks in instances related to terrorist financing, child exploitation or human trafficking - regardless of transaction size.
- Customers designate a digital wallet of their choice that must be in the customer's control pursuant to the Company's Terms & Conditions. The Company does not host customer wallets, nor does it assume custody of customer funds.
- As a requirement prior to completing a transaction, the customer must agree to the Company's publicly available [Terms & Conditions](#) which mandate that the customer is required to send the Bitcoin only to their own wallet.
- The Company links the customer's wallet address to his/her user account in an effort to block Bitcoin from being sent to third parties. The Company's Bitaccess technology platform is configured to associate a digital wallet to only one account in order to deter an account from being used by other persons.
- The Company only sells Bitcoin and does not sell or provide services for any other cryptocurrency.

Bitcoin Depot's Mature Compliance Program

The Company's Chief Compliance Officer directly reports to the Company's Chief Executive Officer (CEO). Bitcoin Depot's compliance program is fully documented in policies and procedures and is reviewed annually by an independent third-party auditor. The Company's Compliance program includes the following:

- Bank Secrecy Act (BSA)/Anti-Money Laundering (AML)/Office of Foreign Assets Control (OFAC) Compliance.
 - The Chief Compliance Officer, Mark Smalley, has over 25 years of applicable legal and compliance experience.
 - Two dedicated AML compliance teams - one focused on customer diligence and one focused on transaction monitoring and investigations.
 - Dedicated analysts for Know Your Customer (KYC), OFAC, sanctions, and Politically Exposed Person (PEP) alerts.
 - The BSA / AML / OFAC Compliance team is comprised of approximately 15 individuals exclusively dedicated to financial crime and sanctions compliance.
 - Dedicated resources to suspicious activity reporting, currency transaction reporting, and funds travel rule compliance.

³ According to Chainalysis, the leading provider of blockchain analytics and data on the cryptocurrency economy, in 2022 there was \$20.6 billion in fraud across the entire cryptocurrency economy. Kiosks, such as BTMs, represented less than 1% of that total.



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- Enterprise Risk Management (assessments, self-testing, and training regarding compliance for the areas above in addition to third-party risk management and business resiliency).
- Licensing & Registration
 - Registered with FinCEN as an MSB (federal).
 - Registered with the Secretary of State in every state, the District of Columbia and Puerto Rico.
 - For state money transmitter licenses (MTL), the Company is either licensed in the state or periodically confirms with the state that its no-action position remains unchanged. Currently, the Company has nineteen state money transmitter or virtual currency licenses, with a dedicated team to licensing and registration.
 - Other pending MTL Applications are in process.
- Privacy and Consumer Compliance
 - Dedicated compliance resources to ensure compliance with all applicable consumer protection laws, including complaints, funds availability, abandoned property, and refunds.
 - Dedicated resources to compliance with all applicable federal and state privacy laws, including contract provisions, data accessibility, and opt-in / opt-out provisions.

Key Regulatory Components Should be Reconsidered

1. “Fee Caps” Will Remove Compliant Operators From California

Operating a cryptocurrency kiosk has unique costs, including purchasing, installing, and maintaining the kiosk equipment. There are also recurring costs, including rent to small businesses hosting a kiosk, insurance, legal fees, bank fees, blockchain access fees, cash management, armored vehicles, monitoring and surveillance, BSA / AML compliance, OFAC compliance, cybersecurity, fraud detection, and customer support. California should desire to have the most reputable BTM operators in the state (which have higher costs of compliance) for consumer protection. Other states allow for market-driven transaction exchange rates and fees, which allows for competition and larger more reputable operators to do business in their states. Unfortunately, California has not only broadly defined what constitutes a “fee” in the DFAL by including exchange rates (a practice inconsistent with how it treats foreign currency exchange) but has imposed unrealistic caps that will drive reputable operators from the state.

BTM companies must maintain an inventory of cryptocurrency offerings that could fluctuate as much as 10-30% on any given day. While cryptocurrency exchanges may charge a lower fee or have a lower exchange rate, they do not offer customers the same convenience and ease of using a kiosk at their local convenience store to make a voluntary purchase of cryptocurrency with cash. In fact, exchanges do not offer customers who want to buy cryptocurrency with cash any option — which also means exchanges have lower operational costs and can charge lower fees than crypto kiosk companies. This is because exchanges do not have hardware, cash management fees, maintenance and repair costs, wireless internet, insurance on hardware, rental payments to stores, or other operational expenses.

Since the implementation of SB 401 which limited a customer’s daily transaction volume to \$1,000, we have found that compliant operators have been pushed out of the state by overly burdensome regulatory practices and arbitrary transaction limitations put in place by the law. In 2024 alone, following the SB 401 mandated cap on transaction volumes, Bitcoin Depot has reduced its kiosk footprint by 36% and currently have plans to further reduce an additional 30% further in November. This represents approximately \$350,000 in lost kiosk rental payments to support the livelihood of small businesses throughout California. The exit of compliant operators is thus leaving only smaller operators who may lack similar resources to

combat fraud and effectively aid in addressing broader money laundering issues. California should reconsider its approach to how it defines a fee and the related requirements placed on kiosk operators.

2. *Transaction Limits and the Unintended Consequences*

Placing an arbitrary deposit and withdrawal limit on a customer may decrease customer protection and the ability to detect malicious actors. As customers increase their purchases, cryptocurrency kiosk companies require additional forms of identification and authentication. Imposing arbitrary limits on a transaction amount undermines the additional authentication and verification steps and instead encourages bad actors to spread transactions across multiple companies in smaller amounts, potentially obscuring their activities and identities. Additionally, daily limits such as that passed in California, skirt federal reporting requirements - Currency Exchange Record (CER) at \$1,000, Monetary Instrument Log (MIL) at \$3,000, Funds Travel Rule (FTR) at \$3,000, and Currency Transaction Report (CTR) at \$10,000 - which translates routine reporting obligations into obfuscation.

Pertinent suspicious activity reporting is also likely to be negatively impacted. Federal regulations have strict guidelines for filing a suspicious activity report (SAR) of any suspicious transaction over \$2,000. SARs, along with other transaction reporting, are indispensable tools of law enforcement (e.g., law enforcement has access to and can review and analyze these critical forms of intelligence to support its investigations, and quickly request supporting documentation regarding transactions, digital wallet addresses, correspondence, and KYC identification).⁴

Lower daily limits likely will lead to transactions being spread across multiple companies and eliminate certain reporting that is essential information to law enforcement. This is imperative at a time when human and drug trafficking are on the rise, with the Government Accountability Office (GAO) finding a fivefold increase from 2017 to 2020 for SARs filed that involved virtual currency and drug trafficking, and that sensitive data on virtual currency use for human and drug trafficking “may not be consistently captured.” (See U.S. Government Accountability Office report on virtual currencies, GAO-22-105462, dated December 2021.) While Bitcoin Depot understands the issues brought on by fraud by some bad actors and empathizes with the victims, California’s approach, although good intentioned, may end up having little effect on protecting consumers and a reverse effect on other public concerns and illicit activities as described in GAO-22-105462.

3. *Regulatory Efficiency and Supporting Innovation*

The Department should consider actions that create more efficiency for industry players and regulators alike, and reduce unnecessary regulatory burdens for larger multistate entities that are subject to multiple layers of regulation, especially those that are publicly traded on the NYSE or NASDAQ. For example, California should consider working more closely with other states to provide for streamlined licensing, examination coordination, information sharing, and license reciprocity, especially for entities that maintain the NY Bitlicense or have Money Transmitter licenses or similarly equivalent virtual currency licenses in a number of other states. These concepts support a healthy financial system, allowing companies to innovate to provide better products and services to consumers and allow regulators to focus limited resources on the true bad actors.

While Bitcoin Depot commends California’s efforts to build an economy that fosters responsible innovation, we emphasize that California should focus instead on enforcing its current licensing apparatus to ensure that compliant operators are not forced out of the state, leaving only kiosk operators in place who do not place proper emphasis on consumer protection and operate outside of the current licensing framework. As such, we reiterate our concerns that because of fee caps and the transaction limits in SB 401, compliant operators are being driven out of the state, leaving operators who are not following regulations in operation in an environment where the Department lacks the resources to adequately enforce violations. Driving out competition from the state through onerous regulation is likely to have the opposite effect of bolstering

⁴ See 31 CFR § 1022.320.



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consumer protection by giving consumers less options when choosing to use alternative banking methods, such as BTMs.

Conclusion

Bitcoin Depot is proud of the company that we have established and the services we provide to consumers in the United States, Canada, and California. California should be, likewise, excited to have companies like Bitcoin Depot doing business within the state. Bitcoin Depot has established itself as a key player in an emerging market that has balanced economic growth with Compliance and Consumer Protection. Our Company wants California to regulate this space to encourage the good actors to flourish while weeding out the bad actors.

Bitcoin Depot respectfully requests the opportunity to have additional conversations with the Legislature to allow for a better understanding of a complex and non-traditional technology that is elective yet appealing to many California citizens looking to diversify their assets and financial tools. We look forward to additional conversations, and please do not hesitate to contact me with any questions.

Sincerely,

/S/ Mark J. Smalley

Mark J. Smalley,
Chief Compliance Officer



Appendix A





Enter SMS Code

Please enter the 6-Digit verification code sent to your mobile

Haven't received your verification code yet?

Call me instead

[Empty input field]			
1	2	3	
4	5	6	
7	8	9	
+	0	⌫	Proceed ➔



Use a Secret PIN instead of SMS text going forward?

If someone else sent you to this machine and provided you with a QR Code or wallet ID to send funds to, it is most likely a scam.



Disclaimer

BITCOIN DEPOT® TERMS AND CONDITIONS

Thank you for visiting the Bitcoin Depot website located at www.bitcoindepot.com (the "Site") and/or one of the Bitcoin Depot virtual currency kiosks ("Kiosks," and together with the Site, the "Bitcoin Depot Venues"). The Bitcoin Depot Venues are properties of Bitcoin Depot Operating, LLC d/b/a Bitcoin Depot (collectively, "Bitcoin Depot" "we," "our" or "us"). The following Bitcoin Depot Terms and Conditions ("Terms and Conditions") are inclusive of the Bitcoin Depot Privacy Notice ("Privacy Notice"), the Bitcoin Depot Refund Policy ("Refund Policy"), the Bitcoin Depot Delivery Policy ("Delivery



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By checking this box, I consent to receive email communications with exclusive offers, promotions, and updates from Bitcoin Depot Operating, LLC at the email address provided. I understand that I can unsubscribe at any time by clicking the 'Unsubscribe' link in future emails.



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By checking this box, I consent to receive SMS messages from Bitcoin Depot Operating, LLC directly and by third parties acting on its behalf for marketing or promotional purposes at the phone number provided. I understand that message and data rates may apply. I can opt-out



I accept these terms and conditions.

Cancel



Exit

WARNING:

Bitcoin Depot® terms of service require all users to use Bitcoin wallets that they own. You selected that you do not own the wallet you are attempting to use.

Never scan a QR code that has been provided to you from a 3rd party. Remember all Bitcoin transactions are final and irreversible. QR codes provided to you by government entities including the IRS, law enforcement, employers, technical support companies, someone saying you've been hacked and significant other could be scams.


Please contact Bitcoin Depot customer support if you have questions about scams: (678) 435-9604

In order to proceed you will need to create your own Bitcoin wallet and provide the Bitcoin wallet address QR code from that wallet.

Start new transaction with my own Bitcoin wallet

Need a wallet?

Download our Bitcoin Depot wallet by scanning the QR code



OR

Text me the download link



Scan your digital wallet

Make sure that your entire QR Code is visible on the screen below



Wallet Already in Use

This wallet is already associated with another customer account. Please continue with a different wallet address or call or text Customer Support at (678) 435-9604 if you believe it's yours.

Continue transaction with a new wallet address that belongs to you

If you need a wallet, see the instructions below if you'd like to download our Bitcoin Depot mobile app.

Need a wallet?

Download our Bitcoin Depot wallet by scanning the QR code



OR

Text me the download link



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ATTENTION: SENDING TO A WALLET THAT YOU DO NOT CONTROL IS AN EXPRESS VIOLATION OF OUR TERMS AND WILL RESULT IN YOU BEING BANNED FROM OUR PLATFORM.



ARE YOU BEING SCAMMED?

ARE YOU BEING SCAMMED? Do not buy bitcoin for IRS payments, utility bills, or if someone says you have been hacked or are being investigated. These are scams!

WARNING: LOSSES DUE TO FRAUDULENT OR ACCIDENTAL TRANSACTIONS MAY NOT BE RECOVERABLE AND TRANSACTIONS IN VIRTUAL CURRENCY ARE IRREVERSIBLE

Exit

Continue



New Customer SMS Scam Warning

10:36 PM

Warning! Don't use Depot's ATMs for payments to any govt entities, law enforcement, employers, tech support companies, anyone saying you've been hacked, or significant others, as it's likely a scam. Don't use a QR code provided by a 3rd party. Need help? Call 678-435-9604.