



August 5, 2022

California Department of Financial Protection and Innovation, Legal Division  
Attn: Sandra Navarro, Regulations Coordinator  
2101 Arena Boulevard  
Sacramento, CA 95834

**Re: Comments to the Office of the California Department of Financial Protection and Innovation on Crypto Asset Related Financial Products and Services**

Dear Ms. Navarro,

Thank you for the opportunity to provide comments on the potential oversight of crypto asset-related financial products and services under the California Consumer Financial Protection Law. Exodus is pleased to submit comments and would welcome the opportunity to further discuss any proposed regulations or other legal developments.

**Introduction**

Exodus is a leader in the digital assets industry focused on providing users with a world-class platform to manage self-custody wallets.<sup>1</sup> Exodus firmly believes that the digital asset market will be improved and will experience further growth with the aid of intelligent, forward-thinking regulations that enhance consumer protections and provide much-needed clarity to the industry. We remain optimistic that California will impose smart regulations that will achieve these desired goals without stifling innovation in the digital asset industry.

This comment letter will primarily focus on consumer protections relating to scams and frauds, education and outreach, harmony in the regulatory approach with federal authorities, and how California can position itself to be the most desirable state for companies offering products and services in the digital asset market (Questions 1, 2, 7, and 9 of the invitation for comment by the DFPI).<sup>2</sup>

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<sup>1</sup> See [www.exodus.com](http://www.exodus.com) for more information.

<sup>2</sup> See, *generally* Invitation for public comment on oversight of crypto asset related financial products and services under California DFPI, <https://dfpi.ca.gov/2022/06/01/dfpi-seeks-public-comment-on-oversight-of-crypto-asset-related-financial-products-and-services-under-the-california-consumer-financial-protection-law/>

**Question 1: What steps should the DFPI take to better protect consumers from scams and frauds associated with crypto-asset related financial products and services?**

Exodus believes that the single best strategy to protect users from scams and frauds in the digital asset market is education. Malicious actors prey on new and uneducated users who are less likely to identify scams.<sup>3</sup> Proper education is the key to protecting users from scams before they become victims. The various ways users can store digital assets, and the benefits and risks associated with each option are invaluable knowledge for consumers to protect their digital assets. This knowledge would allow consumers to make informed choices that they believe are the most sensible for their individual circumstances, and to exercise proper precautions associated with any given storage method. Additionally, knowledge of some of the most common scams in the industry would allow new digital asset owners to avoid a large percentage of attempted scams.

For example, knowledge of how to safeguard a user's private key, and knowledge of common scams involving that key are some of the best ways to prevent users from falling victim to a scam. A very common scam involves tricking users into providing their private key to a third party.<sup>4</sup> This scam is usually perpetrated via an email or social media account posing as a legitimate entity promising a benefit to the user or posing as customer support for a crypto company. When the user provides their private key, they are unwittingly giving complete access to their wallet and control over their digital assets to a stranger. The scammer can then steal all the available cryptocurrencies and digital assets in a given wallet almost instantly. The importance of safeguarding a user's private key, and not revealing it to anyone under any circumstances, cannot be overstated. This simple piece of knowledge alone will prevent countless users from malicious actors.

Educating users on best security practices, as well as some of the common red flags from different types of scams are the best lines of defense. Moreover, an easy process for users to report suspicious activity and potential scams will significantly aid law enforcement in tracking criminal actors.

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<sup>3</sup> See, generally Shiraz Jagati, "Simple in practice, Crypto education is the key to curbing phishing scams" <https://cointelegraph.com/news/simple-in-practice-crypto-education-is-key-to-curbing-phishing-scams>; see also "Understanding the concept of crypto custody" <https://learncrypto.com/blog/keep-learning/understanding-the-concept-of-crypto-custody>;

<sup>4</sup> Exodus Movement, Ltd. <https://support.exodus.com/article/1688-dont-validate-your-wallet-phishing-scams-to-watch-out-for>

**Question 2: What steps should the DFPI take to improve consumer education and outreach for crypto-asset related financial products and services?**

Because cryptocurrencies and digital assets are emerging asset classes that are attracting a new type of investor, an increased focus on improving general financial literacy among users is important in educating users about digital assets as well as other financial products and services. Understanding general financial concepts will lower the education barrier for digital assets, as many of these concepts underpin the broader purpose and goals of digital assets. Concepts including but not limited to basic economics, monetary policy, commodities, risk management, investment diversification, and general investing apply to equally to digital and traditional financial assets.

Creating and including educational materials on crypto asset-related financial products and services in existing financial education programs and providing further expanded access to these materials will help educate consumers on crypto asset-related products and services.

Furthermore, while they share some of the same characteristics, digital assets and blockchain technology are unique innovations that are also distinct from traditional finance in many ways. As a result of the unique nature of these technologies, legacy regulatory schemes often attempt to fit digital assets into existing frameworks and definitions that are fundamentally incompatible with the technology. Exodus views this backward-looking regulatory application as both harmful to innovation and a cause for greater confusion for consumers. Creating accurate and appropriate regulations and definitions, rather than attempting to shoehorn digital assets into existing regulations and definitions, will significantly improve education. Clear and accurate definitions will further simplify the regulatory process and help streamline educational messaging regarding the digital asset market.

**Question 7: How should the DFPI strive to harmonize its regulatory approach to crypto-asset-related financial products and services with federal authorities?**

To maximize harmony between California regulations and federal authorities, state-level regulations and definitions should mirror federal regulations as closely as possible. State regulations and definitions that clash with federal authorities will create undue burdens on responsible companies hoping to operate in or choose California as the home base for their operations, and could ultimately steer companies away from California altogether, as has been seen in New York with the introduction of the controversial “Bit License.”<sup>5</sup> Any relevant and applicable federal regulations, definitions, or court rulings should be comprehensively consulted when drafting state regulations.

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<sup>5</sup> See ([https://www.dfs.ny.gov/virtual\\_currency\\_businesses](https://www.dfs.ny.gov/virtual_currency_businesses))

For example, some thought leaders have proposed a safe harbor from license requirements for Self-Custody wallets, such as Exodus, at the Federal level.<sup>6</sup> Self-Custody is inherently different from other digital asset models, in which a centralized company has control of user funds. Thus, a state law that would require similar licenses for these vastly different business models would be incongruous with the line of thinking seen at the federal level. Exodus further emphasizes the importance of following the current federal line of thinking exempting self-custody wallets from license requirements to ensure California attracts innovative digital asset companies. If such a requirement were imposed in California, that requirement may diverge from regulations in other states and at the federal level, and thus could put California at a clear disadvantage in attracting companies relative to other states. Further, providing a clear exemption from licensing requirements for Self-Custody wallets may actively attract companies currently innovating in this fast-growing sector of the market.

**Question 9: How can the DFPI make California the most desirable home state for responsible companies when developing guidance and, as appropriate, regulatory clarity and supervision of persons involved in the offering and provision of crypto asset-related financial products and services in California?**

The ability to interact across borders, both within the United States and abroad, is fundamental to the growth of the industry. If California seeks to be the go-to state for companies in this industry, potential interstate barriers to entry must be avoided.

For example, a cryptocurrency company that has been granted a license in Texas should be permitted to operate in California. While it is understandable that each state may want to develop its own license, this practice would create an arduous and expensive roadblock for companies seeking to enter new markets, especially as it relates to technology that exists on the internet and is easily accessible to users from any state. If California strongly believes it is necessary for companies to get a license specifically for California, a temporary clearance to operate while the licensing process is underway would be instrumental in achieving this goal. As seen with the New York Bitlicense, innovation within New York State has fallen behind many other states due to the lengthy and expensive process of obtaining a Bitlicense.<sup>7</sup>

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<sup>6</sup> See, generally Peter Van Valkenburgh, *Proposals for Clarifying Laws Around Cryptocurrency and Blockchain Technologies in response to request for feedback from senator Pat Toomey*, <https://www.coincenter.org/proposals-for-clarifying-laws-around-cryptocurrency-and-blockchain-technologies-in-response-to-requests-for-feedback-from-senator-pat-toomey/>

<sup>7</sup> Alex Adelman, Aubrey Strobel, *Kill the bitlicense*, (2021), <https://www.coindesk.com/policy/2021/10/19/kill-the-bitlicense/>

## **Conclusion**

Thank you again for the opportunity to provide on comments on the potential oversight of crypto asset-related financial products and services under the California Consumer Financial Protection Law.

In summary, Exodus appreciates the California DFPI's commitment to drafting smart, forward-thinking regulation that protects consumers while emphasizing the importance of innovation. Exodus hopes the DFPI agrees with our beliefs that education is the best way to address consumer protections, and that it is critically important for regulations and licenses to translate beyond the borders of California. Together, these strategies will help make California the go-to state for responsible digital asset innovation and growth.